

Infrastructure of the House of Representatives written responses to each of the recommendations of the Research and Technology Coordinating Committee under paragraph (3)(A)(ii)(II).

“(d) **CONSISTENCY WITH GOVERNMENT PERFORMANCE AND RESULTS ACT OF 1993.**—The plans and reports developed under this section shall be consistent with and incorporated as part of the plans developed under section 306 of title 5 and sections 1115 and 1116 of title 31.

**“§ 509. New strategic highway research program**

“(a) **IN GENERAL.**—The National Research Council shall establish and carry out, through fiscal year 2009, a new strategic highway research program.

“(b) **BASIS; PRIORITIES.**—With respect to the program established under subsection (a)—

“(1) the program shall be based on—

“(A) National Research Council Special Report No. 260, entitled ‘Strategic Highway Research’; and

“(B) the results of the detailed planning work subsequently carried out to scope the research areas through National Cooperative Research Program Project 20–58.

“(2) the scope and research priorities of the program shall—

“(A) be refined through stakeholder input in the form of workshops, symposia, and panels; and

“(B) include an examination of—

“(i) the roles of highway infrastructure, drivers, and vehicles in fatalities on public roads;

“(ii) high-risk areas and activities associated with the greatest numbers of highway fatalities;

“(iii) the roles of various levels of government agencies and non-governmental organizations in reducing highway fatalities (including recommendations for methods of strengthening highway safety partnerships);

“(iv) measures that may save the greatest number of lives in the short- and long-term;

“(v) renewal of aging infrastructure with minimum impact on users of facilities;

“(vi) driving behavior and likely crash causal factors to support improved countermeasures;

“(vii) reduction in congestion due to non-recurring congestion;

“(viii) planning and designing of new road capacity to meet mobility, economic, environmental, and community needs;

“(3) 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; and

“(4) the research results of the program, expressed in terms of technologies, methodologies, and other appropriate categorizations, shall be disseminated to practicing engineers as soon as practicable for their use.

“(c) **PROGRAM ADMINISTRATION.**—In carrying out the program under this section, the National Research Council shall ensure, to the maximum extent practicable, that—

“(1) the best projects and researchers are selected to conduct research for the program and priorities described in subsection (b)—

“(A) on the basis of the merit of each submitted proposal; and

“(B) through the use of open solicitations and selection by a panel of appropriate experts;

“(2) the National Research Council acquires a qualified, permanent core staff with the ability and expertise to manage a large research program and multiyear budget;

“(3) 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

“(4) there is no duplication of research effort between the program established under this section and the surface transportation-environment cooperative research program established under section 507 or any other research effort of the Department.

“(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 research, technology, and technology transfer described in subsections (b) and (c) as the Secretary determines to be appropriate.

“(e) **REPORT ON IMPLEMENTATION OF RESULTS.**—

“(1) **IN GENERAL.**—Not later than October 1, 2007, the Secretary shall enter into a contract with the Transportation Research Board of the National Academy of Sciences under which the Transportation Research Board shall complete a report on the strategies and administrative structure to be used for implementation of the results of new strategic highway research program.

“(2) **COMPONENTS.**—The report under paragraph (1) shall include, with respect to the new strategic highway research 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 that would be incurred in expediting implementation of those results; and

“(D) recommendations for the way in which implementation of the results of the program under this section should be conducted, coordinated, and supported in future years, including a discussion of the administrative structure and organization best suited to carry out those responsibilities.

“(3) **CONSULTATION.**—In developing the report, the Transportation Research Board shall consult with a wide variety of stakeholders, including—

“(A) the American Association of State Highway Officials;

“(B) the Federal Highway Administration; and

“(C) the Surface Transportation Research Technology Advisory Committee.

“(4) **SUBMISSION.**—Not later than February 1, 2009, 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 the report under this subsection.

**“§ 510. University transportation centers**

“(a) **CENTERS.**—

“(1) **IN GENERAL.**—During fiscal year 2005, the Secretary shall provide grants to 40 nonprofit institutions of higher learning (or consortia of institutions of higher learning) to establish centers to address transportation design, management, research, development, and technology matters, especially the education and training of greater numbers of individuals to enter into the professional field of transportation.

“(2) **DISTRIBUTION OF CENTERS.**—Not more than 1 university transportation center (or lead university in a consortia of institutions of higher learning), other than a center or university selected through a competitive process, may be located in any State.

“(3) **IDENTIFICATION OF CENTERS.**—The university transportation centers established under this section shall—

“(A) comply with applicable requirements under subsection (c); and

“(B) be located at the institutions of higher learning specified in paragraph (4).

“(4) **IDENTIFICATION OF GROUPS.**—For the purpose of making grants under this subsection, the following grants are identified:

“(A) **GROUP A.**—Group A shall consist of the 10 regional centers selected under subsection (b).

“(B) **GROUP B.**—Group B shall consist of the following:

“(i) [ ]

“(ii) [ ]

“(iii) [ ]

“(iv) [ ]

“(v) [ ]

“(vi) [ ]

“(vii) [ ]

“(viii) [ ]

“(ix) [ ]

“(x) [ ]

“(xi) [ ]

“(C) **GROUP C.**—Group C shall consist of the following:

“(i) [ ]

“(ii) [ ]

“(iii) [ ]

“(iv) [ ]

“(v) [ ]

“(vi) [ ]

“(vii) [ ]

“(viii) [ ]

“(ix) [ ]

“(x) [ ]

“(xi) [ ]

“(D) **GROUP D.**—Group D shall consist of the following:

“(i) [ ]

“(ii) [ ]

“(iii) [ ]

“(iv) [ ]

“(v) [ ]

“(vi) [ ]

“(vii) [ ]

“(viii) [ ]

“(b) **REGIONAL CENTERS.**—

“(1) **IN GENERAL.**—Not later than September 30, 2005, the Secretary shall provide to nonprofit institutions of higher learning (or consortia of institutions of higher learning) grants to be used during the period of fiscal years 2005 through 2009 to establish and operate 1 university transportation center in each of the 10 Federal regions that comprise the Standard Federal Regional Boundary System.

“(2) **SELECTION OF REGIONAL CENTERS.**—

“(A) **PROPOSALS.**—In order to be eligible to receive a grant under this subsection, an institution described in paragraph (1) shall submit to the Secretary a proposal, in response to any request for proposals that shall be made by the Secretary, that is in such form and contains such information as the Secretary shall prescribe.

“(B) **REQUEST SCHEDULE.**—The Secretary shall request proposals once for the period of fiscal years 2005 and 2006 and once for the period of fiscal years 2007 through 2009.

“(C) **ELIGIBILITY.**—Any institution of higher learning (or consortium of institutions of higher learning) that meets the criteria described in subsection (c) (including any institution identified in subsection (a)(4)) may apply for a grant under this subsection.

“(D) **SELECTION CRITERIA.**—The Secretary shall select each recipient of a grant under this subsection through a competitive process on the basis of—

“(i) the location of the center within the Federal region to be served;

“(ii) the demonstrated research capabilities and extension resources available to the recipient to carry out this section;

“(iii) the capability of the recipient to provide leadership in making national and regional contributions to the solution of immediate and long-range transportation problems;

“(iv) the demonstrated ability of the recipient to disseminate results of transportation research and education programs through a statewide or regionwide continuing education program; and

“(v) the strategic plan that the recipient proposes to carry out using funds from the grant.

“(E) SELECTION PROCESS.—In selecting the recipients of grants under this subsection, the Secretary shall consult with, and consider the advice of—

“(i) the Research and Special Programs Administration;

“(ii) the Federal Highway Administration; and

“(iii) the Federal Transit Administration.

“(c) CENTER REQUIREMENTS.—

“(1) IN GENERAL.—With respect to a university transportation center established under subsection (a) or (b), the institution or consortium that receives a grant to establish the center—

“(A) shall annually contribute at least \$250,000 to the operation and maintenance of the center, except that payment by the institution or consortium of the salary required for transportation-related faculty and staff for a period greater than 90 days may not be counted against that contribution;

“(B) shall have established, as of the date of receipt of the grant, undergraduate or graduate programs in—

“(i) civil engineering;

“(ii) transportation engineering;

“(iii) transportation systems management and operations; or

“(iv) any other field significantly related to surface transportation systems, as determined by the Secretary; and

“(C) not later than 120 days after the date on which the institution or consortium receives notice of selection as a site for the establishment of a university transportation center under this section, shall submit to the Secretary a 6-year program plan for the university transportation center that includes, with respect to the center—

“(i) a description of the purposes of programs to be conducted by the center;

“(ii) a description of the undergraduate and graduate transportation education efforts to be carried out by the center;

“(iii) a description of the nature and scope of research to be conducted by the center;

“(iv) a list of personnel, including the roles and responsibilities of those personnel within the center; and

“(v) a detailed budget, including the amount of contributions by the institution or consortium to the center; and

“(D) shall establish an advisory committee that—

“(i) is composed of a representative from each of the State transportation department of the State in which the institution or consortium is located, the Department of Transportation, and the institution or consortia, as appointed by those respective entities;

“(ii) in accordance with paragraph (2), shall review and approve or disapprove the plan of the institution or consortium under subparagraph (C); and

“(iii) shall, to the maximum extent practicable, ensure that the proposed research to be carried out by the university transportation center will contribute to the national highway research and technology agenda, as periodically updated by the Secretary, in consultation with stakeholders representing the highway community.

“(2) PEER REVIEW.—

“(A) IN GENERAL.—The Secretary shall require peer review for each report on research carried out using funds made available for this section.

“(B) PURPOSES OF PEER REVIEW.—Peer review of a report under this section shall be carried out to evaluate—

“(i) the relevance of the research described in the report with respect to the strategic plan under, and the goals of, this section;

“(ii) the research covered by the report, and to recommend modifications to individual project plans;

“(iii) the results of the research before publication of those results; and

“(iv) the overall outcomes of the research.

“(C) INTERNET AVAILABILITY.—Each report under this section that is received by the Secretary shall be published—

“(i) by the Secretary, on the Internet website of the Department of Transportation; and

“(ii) by the University Transportation Center.

“(3) APPROVAL OF PLANS.—A plan of an institution or consortium described in paragraph (1)(C) shall not be submitted to the Secretary until such time as the advisory committee established under paragraph (1)(D) reviews and approves the plan.

“(4) FAILURE TO COMPLY.—If a recipient of a grant under this subsection fails to submit a program plan acceptable to the Secretary and in accordance with paragraph (1)(C)—

“(A) the recipient shall forfeit the grant and the selection of the recipient as a site for the establishment of a university transportation center; and

“(B) the Secretary shall select a replacement recipient for the forfeited grant.

“(5) APPLICABILITY.—This subsection does not apply to any research funds received in accordance with a competitive contract offered and entered into by the Federal Highway Administration.

“(d) OBJECTIVES.—Each university transportation center established under subsection (a) or (b) shall carry out—

“(1) undergraduate or graduate education programs that include—

“(A) multidisciplinary coursework; and

“(B) opportunities for students to participate in research;

“(2) basic and applied research, the results and products of which shall be judged by peers or other experts in the field so as to advance the body of knowledge in transportation; and

“(3) an ongoing program of technology transfer that makes research results available to potential users in such form as will enable the results to be implemented, used, or otherwise applied.

“(e) MAINTENANCE OF EFFORT.—To be eligible to receive a grant under this section, an applicant shall—

“(1) enter into an agreement with the Secretary to ensure that the applicant will maintain total expenditures from all other sources to establish and operate a university transportation center and related educational and research activities at a level that is at least equal to the average level of those expenditures during the 2 fiscal years before the date on which the grant is provided;

“(2) provide the annual institutional contribution required under subsection (c)(1); and

“(3) submit to the Secretary, in a timely manner, for use by the Secretary in the preparation of the annual research report under section 508(c)(5) of title 23, an annual report on the projects and activities of the university transportation center for which funds are made available under section 2001 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 that contains, at a minimum, for the fiscal year covered by the report, a description of—

“(A) the goals of the center;

“(B) the educational activities carried out by the center (including a detailed summary of the budget for those educational activities);

“(C) teaching activities of faculty at the center;

“(D) each research project carried out by the center, including—

“(i) the identity and location of each investigator working on a research project;

“(ii) the overall funding amount for each research project (including the amounts expended for the project as of the date of the report);

“(iii) the current schedule for each research project; and

“(iv) the results of each research project through the date of submission of the report, with particular emphasis on results for the fiscal year covered by the report; and

“(E) overall technology transfer and implementation efforts of the center.

“(f) PROGRAM COORDINATION.—The Secretary shall—

“(1) coordinate the research, education, training, and technology transfer activities carried out by recipients of grants under this section; and

“(2) establish and operate a clearinghouse for, and disseminate, the results of those activities.

“(g) FUNDING.—

“(1) NUMBER AND AMOUNT OF GRANTS.—The Secretary shall make the following grants under this subsection:

“(A) GROUP A.—For each of fiscal years 2005 through 2009, the Secretary shall make a grant in the amount of \$938,629 to each of the institutions in group A (as described in subsection (a)(4)(A)).

“(B) GROUP B.—The Secretary shall make a grant to each of the institutions in group B (as described in subsection (a)(4)(B)) in the amount of—

“(i) \$375,452 for fiscal year 2005; and

“(ii) \$563,177 for each of fiscal years 2006 and 2007.

“(C) GROUP C.—For each of fiscal years 2005 through 2007, the Secretary shall make a grant in the amount of \$938,629 to each of the institutions in group C (as described in subsection (a)(4)(C)).

“(D) GROUP D.—For each of fiscal years 2005 through 2009, the Secretary shall make a grant in the amount of \$1,877,258 to each of the institutions in group D (as described in subsection (a)(4)(D)).

“(E) LIMITED GRANTS FOR GROUPS B AND C.—For each of fiscal years 2008 and 2009, of the institutions classified in groups B and C (as described in subsection (a)(4)(B)), the Secretary shall select and make grants in an amount totaling \$37,545,924 to not more than 15 institutions.

“(2) USE OF FUNDS.—

“(A) IN GENERAL.—Of the funds made available for a fiscal year to a university transportation center established under subsection (a) or (b)—

“(i) not less than \$250,000 shall be used to establish and maintain new faculty positions for the teaching of undergraduate, transportation-related courses;

“(ii) not more than \$500,000 for the fiscal year, or \$1,000,000 in the aggregate, may be used to construct or improve transportation-related laboratory facilities; and

“(iii) not more than \$300,000 for the fiscal year may be used for student internships of not more than 180 days in duration to enable students to gain experience by working on transportation projects as interns with design or construction firms.

“(B) FACILITIES AND ADMINISTRATION FEE.—Not more than 10 percent of any grant made available to a university transportation center (or any institution or consortium that establishes such a center) for a fiscal year

may be used to pay to the appropriate non-profit institution of higher learning any administration and facilities fee (or any similar overhead fee) for the fiscal year.

“(3) LIMITATION ON AVAILABILITY OF FUNDS.—Funds made available under this subsection shall remain available for obligation for a period of 2 years after September 30 of the fiscal year for which the funds are authorized.

**“§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 I-95 CORRIDOR COALITION TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.—

“(1) IN GENERAL.—The Secretary shall make grants under this subsection to States to continue intelligent transportation system management and operations in the Interstate Route I-95 corridor coalition region initiated under the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240).

“(2) FUNDING.—Of the amounts made available under section 2001(a)(4) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, the Secretary shall use to carry out this subsection—

“(A) \$9,386,289 for fiscal year 2005; and

“(B) \$11,263,547 for each of fiscal years 2006 through 2009.

**“§512. Transportation analysis simulation system**

“(a) CONTINUATION OF TRANSIMS DEVELOPMENT.—

“(1) IN GENERAL.—The Secretary shall continue the deployment of the advanced transportation model known as the ‘Transportation Analysis Simulation System’ (referred to in this section as ‘TRANSIMS’) developed by the Los Alamos National Laboratory.

“(2) REQUIREMENTS AND CONSIDERATIONS.—In carrying out paragraph (1), the Secretary shall—

“(A) further improve TRANSIMS to reduce the cost and complexity of using the TRANSIMS;

“(B) continue development of TRANSIMS for applications to facilitate transportation planning, regulatory compliance, and response to natural disasters and other transportation disruptions; and

“(C) assist State transportation departments and metropolitan planning organizations, especially smaller metropolitan planning organizations, in the implementation of TRANSIMS by providing training and technical assistance.

“(b) ELIGIBLE ACTIVITIES.—The Secretary shall use funds made available to carry out this section—

“(1) 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;

“(2) 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;

“(3) develop methods to simulate the national transportation infrastructure as a sin-

gle, integrated system for the movement of individuals and goods;

“(4) provide funding to State transportation departments and metropolitan planning organizations for implementation of TRANSIMS.

“(c) ALLOCATION OF FUNDS.—Of the funds made available to carry out this section for each fiscal year, not less than 15 percent shall be allocated for activities described in subsection (b)(3).

“(d) FUNDING.—Of the amounts made available under section 2001(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for each of fiscal years 2005 through 2009, the Secretary shall use \$893,082 to carry out this section.

“(e) AVAILABILITY OF FUNDS.—Funds made available under this section shall be available to the Secretary through the Transportation Planning, Research, and Development Account of the Office of the Secretary.”.

(b) OTHER UNIVERSITY FUNDING.—No university (other than university transportation centers specified in section 510 of title 23, United States Code (as added by subsection (a))) shall receive funds made available under section 2001 to carry out research unless the university is selected to receive the funds—

(1) through a competitive process that incorporates merit-based peer review; and

(2) based on a proposal submitted to the Secretary by the university in response to a request for proposals issued by the Secretary.

(c) CONFORMING AMENDMENT.—Section 5505 of title 49, United States Code, is repealed.

**SEC. 2102. STUDY OF DATA COLLECTION AND STATISTICAL ANALYSIS EFFORTS.**

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATION.—The term “Administration” means the Federal Highway Administration.

(2) BOARD.—The term “Board” means the Transportation Research Board of the National Academy of Sciences.

(3) BUREAU.—The term “Bureau” means the Bureau of Transportation Statistics.

(4) DEPARTMENT.—The term “Department” means the Department of Transportation.

(5) SECRETARY.—The term “Secretary” means the Secretary of Transportation.

(b) PRIORITY AREAS OF EFFORT.—

(1) STATISTICAL STANDARDS.—The Secretary shall direct the Bureau to assume the role of the lead agency in working with other agencies of the Department to establish, by not later than the date that is 1 year after the date of enactment of this Act, statistical standards for the Department.

(2) STATISTICAL ANALYSIS EFFORT.—

(A) IN GENERAL.—The Bureau shall provide to the Secretary, on an annual basis, an overview of the level of effort expended on statistical analyses by each agency within the Department.

(B) DUTY OF AGENCIES.—Each agency of the Department shall provide to the Bureau such information as the Bureau may require in carrying out subparagraph (A).

(3) NATIONAL SECURITY.—The Bureau shall—

(A) conduct a study of the ways in which transportation statistics are and may be used for the purpose of national security; and

(B) submit to the Transportation Security Administration recommendations for means by which the use of transportation statistics for the purpose of national security may be improved.

(4) MODERNIZATION.—The Bureau shall develop new protocols for adapting data collection and delivery efforts in existence as of the date of enactment of this Act to deliver information in a more timely and frequent fashion.

(c) STUDY.—

(1) IN GENERAL.—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 Board for the conduct of a study of the data collection and statistical analysis efforts of the Department with respect to the modes of surface transportation for which funds are made available under this Act.

(2) PURPOSE.—The purpose of the study shall be to provide to the Department information for use by agencies of the Department in providing to surface transportation agencies and individuals engaged in the surface transportation field higher quality, and more relevant and timely, data, statistical analyses, and products.

(3) CONTENT.—The study shall include—

(A) an examination and analysis of the efforts, analyses, and products (with respect to usefulness and policy relevance) of the Bureau as of the date of the study, as compared with the duties of the Bureau specified in subsections (c) through (f) of section 111 of title 49, United States Code;

(B) an examination and analysis of data collected by, methods of data collection of, and analyses performed by, agencies within the Department; and

(C) recommendations relating to—

(i) the future efforts of the Department in the area of surface transportation with respect to—

(I) types of data collected;

(II) methods of data collection;

(III) types of analyses performed; and

(IV) products made available by the Secretary to the transportation community and Congress;

(ii) the means by which the Department may cooperate with State transportation departments to provide technical assistance in the use of data collected by traffic operations centers; and

(iii) duplication of efforts within the Department, including ways in which—

(I) the duplication may be reduced or eliminated; and

(II) each agency of the Department may cooperate with, and complement the efforts of, the others.

(4) CONSULTATION.—In conducting the study, the Board shall consult with such stakeholders, agencies, and other entities as the Board considers to be appropriate.

(5) REPORT.—Not later than 1 year after the date on which a grant is provided, or a cooperative agreement or contract is entered into, for a study under paragraph (1)—

(A) 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; and

(B) the results of the study shall be published—

(i) by the Secretary, on the Internet website of the Department; and

(ii) by the Board, on the Internet website of the Board.

(6) IMPLEMENTATION OF RESULTS.—The Bureau shall, to the maximum extent practicable, implement any recommendations made with respect to the results of the study under this subsection.

(7) COMPLIANCE.—

(A) IN GENERAL.—The Comptroller General of the United States shall conduct a review of the study under this subsection.

(B) NONCOMPLIANCE.—If the Comptroller General of the United States determines that the Bureau failed to conduct the study under this subsection, the Bureau shall be ineligible to receive funds from the Highway Trust Fund until such time as the Bureau conducts the study under this subsection.

(d) CONFORMING AMENDMENTS.—Section 111 of title 49, United States Code, is amended—

(1) by redesignating subsection (k) as subsection (m);

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

“(k) ANNUAL REPORT.—

“(1) IN GENERAL.—For fiscal year 2005 and each fiscal year thereafter, the Bureau shall prepare and submit to the Secretary an annual report that—

“(A) describes progress made in responding to study recommendations for the fiscal year; and

“(B) summarizes the activities and expenditure of funds by the Bureau for the fiscal year.

“(2) AVAILABILITY.—The Bureau shall—

“(A) make the report described in paragraph (1) available to the public; and

“(B) publish the report on the Internet website of the Bureau.

“(3) COMBINATION OF REPORTS.—The report required under paragraph (1) may be included in or combined with the Transportation Statistics Annual Report required by subsection (j).

“(1) EXPENDITURE OF FUNDS.—Funds from the Highway Trust Fund (other than the Mass Transit Account) that are authorized to be appropriated, and made available, in accordance with section 2001(a)(3) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 shall be used only for the collection and statistical analysis of information relating to surface transportation systems.”; and

(3) in subsection (m) (as redesignated by subparagraph (A)), by inserting “surface transportation” after “sale of”.

#### SEC. 2103. CENTERS FOR SURFACE TRANSPORTATION EXCELLENCE.

(a) ESTABLISHMENT.—The Secretary shall establish the centers for surface transportation excellence described in subsection (b) to promote high-quality outcomes in support of strategic national programs and activities, including—

- (1) the environment;
- (2) operations;
- (3) surface transportation safety;
- (4) project finance; and
- (5) asset management.

(b) CENTERS.—The centers for surface transportation excellence referred to in subsection (a) are—

(1) a Center for Environmental Excellence to provide technical assistance, information sharing of best practices, and training in the use of tools and decision-making processes to assist States in planning and delivering environmentally-sound surface transportation projects;

(2) a Center for Operations Excellence to provide support for an integrated and coordinated national program for implementing operations in planning and management (including standards development) for the transportation system in the United States;

(3) a Center for Excellence in Surface Transportation Safety to implement a program of support for State transportation departments, including—

(A) the maintenance of an Internet site to provide critical information on safety programs;

(B) the provision of technical assistance to support a lead State transportation department for each of the safety emphasis areas (as identified by the Secretary); and

(C) the provision of training and education to enhance knowledge of personnel of State transportation departments in support of safety highway goals;

(4) a Center for Excellence in Project Finance—

(A) to provide support to State transportation departments in the development of finance plans and project oversight tools; and

(B) to develop and offer training in state-of-the-art financing methods to advance projects and leverage funds; and

(5) a Center for Excellence in Asset Management to develop and conduct research, provide training and education, and disseminate information on the benefits and tools for asset management.

(c) PROGRAM ADMINISTRATION.—

(1) IN GENERAL.—Before funds authorized under this section for fiscal years 2005 through 2009 are obligated, the Secretary shall review and approve a multiyear strategic plan to be submitted by each of the centers.

(2) TIMING.—The plan shall be submitted before the beginning of fiscal year 2005 and, subsequently, shall be annually updated.

(3) CONTENT.—The plan shall include—

(A) a list of research and technical assistance projects and objectives; and

(B) a description of any other technology transfer activities, including a summary of training efforts.

(4) COOPERATION AND COMPETITION.—

(A) IN GENERAL.—The Secretary shall carry out this section by making grants to, or entering into contracts, cooperative agreements, and other transactions with—

- (i) the National Academy of Sciences;
- (ii) the American Association of State Highway and Transportation Officials;
- (iii) planning organizations;
- (iv) a Federal laboratory;
- (v) a State agency;
- (vi) an authority, association, institution, or organization; or
- (vii) a for-profit or nonprofit corporation.

(B) COMPETITION; REVIEW.—All parties entering into contracts, cooperative agreements, or other transactions with the Secretary, or receiving grants, to perform research or provide technical assistance under this section shall be selected, to the maximum extent practicable—

- (i) on a competitive basis; and
- (ii) on the basis of the results of peer review of proposals submitted to the Secretary.

(5) NONDUPLICATION.—The Secretary shall ensure that activities conducted by each of the centers do not duplicate, and to the maximum extent practicable, are integrated and coordinated with similar activities conducted by the Federal Highway Administration, the local technical assistance program, university transportation centers, and other research efforts supported with funds authorized by this title.

(d) ALLOCATIONS.—

(1) IN GENERAL.—For each of fiscal years 2005 through 2009, of the funds made available under section 2001(a)(1)(A), the Secretary shall set aside \$9,386,289 to carry out this section.

(2) ALLOCATION OF FUNDS.—Of the funds made available under paragraph (1)—

(A) 20 percent shall be allocated to the Center for Environmental Excellence established under subsection (b)(1);

(B) 30 percent shall be allocated to the Center for Operations Excellence established under subsection (b)(2);

(C) 20 percent shall be allocated to the Center for Excellence in Surface Transportation Safety established under subsection (b)(3);

(D) 10 percent shall be allocated to the Center for Excellence in Project Finance established under subsection (b)(4); and

(E) 20 percent shall be allocated to the Center for Excellence in Asset Management established under subsection (b)(5).

(3) APPLICABILITY OF TITLE 23.—Funds made available 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, except that the Federal share shall be 100 percent.

#### SEC. 2104. MOTORCYCLE CRASH CAUSATION STUDY GRANTS.

(a) GRANTS.—The Secretary shall provide grants 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 2001(a)(3), \$1,407,943 for each of fiscal years 2005 and 2006 shall be available to carry out this section.

#### SEC. 2105. 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.

“(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.—

“(I) IN GENERAL.—The term ‘metropolitan area’ means any area that—

“(aa) has a population exceeding 300,000; and

“(bb) meets criteria established by the Secretary in conjunction with the intelligent vehicle highway systems corridors program.

“(II) INCLUSIONS.—The term ‘metropolitan area’ includes a major transportation corridor serving a metropolitan area.

“(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 Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, 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 shall be—

“(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 build-out, maintenance, and operation of greater than 40 metropolitan area systems with a total cost of 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 Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 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 commit 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 the intelligent transportation infrastructure 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 Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, 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 supplement the funds made available for each of the deployment areas or congested areas submitting the application by using for that purpose the funds not used for deployment of the system in the nonparticipating deployment area or congested area.

“(ii) NO INCLUSION IN COST LIMITATION.—Costs paid using funds provided through a supplementation 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 of the program under subparagraph (C) or (D), respectively, including through a supplementation 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) FUNDING.—

“(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out subparagraph (D) \$4,465,409 for each fiscal year.

“(ii) ADDITIONAL AMOUNTS.—In addition to the amounts authorized to be appropriated under this subparagraph, funds made available under title II of the Safe, Affordable, Flexible, and Efficient Transportation Equity Act of 2005, and titles 23 and 49, United States Code, for projects and activities the objectives of which are consistent with the objectives described in subparagraph (B)(ii), may be used to carry out part II of the program under subparagraph (D).

“(iii) AVAILABILITY; NO REDUCTION OR SET-ASIDE.—Amounts made available by this subparagraph—

“(I) shall remain available until expended; and

“(II) shall not be subject to any reduction or setaside.

“(iv) NO EFFECT ON PREVIOUSLY COMMITTED FUNDS.—Nothing in this paragraph affects any funds committed under the original contract before the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005.

“(v) CONTRACT AUTHORITY.—Except as provided in subparagraph (F)(i), funds authorized to be appropriated under this subparagraph shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code.”.

### Subtitle C—Intelligent Transportation System Research

#### SEC. 2201. INTELLIGENT TRANSPORTATION SYSTEM RESEARCH AND TECHNICAL ASSISTANCE PROGRAM.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code (as amended by section 2101), is amended by adding at the end the following:

#### “SUBCHAPTER II—INTELLIGENT TRANSPORTATION SYSTEM RESEARCH AND TECHNICAL ASSISTANCE PROGRAM

##### “§ 521. Finding

“Congress finds that continued investment in architecture and standards development, research, technical assistance for State and local governments, and systems integration is needed to accelerate the rate at which intelligent transportation systems—

“(1) are incorporated into the national surface transportation network; and

“(2) as a result of that incorporation, improve transportation safety and efficiency and reduce costs and negative impacts on communities and the environment.

##### “§ 522. Goals and purposes

“(a) GOALS.—The goals of the intelligent transportation system research and technical assistance program include—

“(1) enhancement of surface transportation efficiency and facilitation of intermodalism and international trade—

“(A) to meet a significant portion of future transportation needs, including public access to employment, goods, and services; and

“(B) to reduce regulatory, financial, and other transaction costs to public agencies and system users;

“(2) the acceleration of the use of intelligent transportation systems to assist in the achievement of national transportation safety goals, including the enhancement of safe operation of motor vehicles and non-motorized vehicles, 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 in achieving national environmental goals;

“(4) accommodation of the needs of all users of surface transportation systems, including—

“(A) operators of commercial vehicles, passenger vehicles, and motorcycles;

“(B) users of public transportation users (with respect to intelligent transportation system user services); and

“(C) individuals with disabilities; and

“(5)(A) improvement of the ability of the United States to respond to emergencies and natural disasters; and

“(B) enhancement of national security and defense mobility.

“(b) PURPOSES.—The Secretary shall carry out activities under the intelligent transportation system research and technical assistance program to, at a minimum—

“(1) assist in the development of intelligent transportation system technologies;

“(2) ensure that Federal, State, and local transportation officials have adequate knowledge of intelligent transportation systems for full consideration in the transportation planning process;

“(3) improve regional cooperation, interoperability, and operations for effective intelligent transportation system performance;

“(4) promote the innovative use of private resources;

“(5) assist State transportation departments in developing a workforce capable of developing, operating, and maintaining intelligent transportation systems;

“(6) maintain an updated national ITS architecture and consensus-based standards while ensuring an effective Federal presence in the formulation of domestic and international ITS standards;

“(7) advance commercial vehicle operations components of intelligent transportation systems—

“(A) to improve the safety and productivity of commercial vehicles and drivers; and

“(B) to reduce costs associated with commercial vehicle operations and Federal and State commercial vehicle regulatory requirements;

“(8) evaluate costs and benefits of intelligent transportation systems projects;

“(9) improve, as part of the Archived Data User Service and in cooperation with the Bureau of Transportation Statistics, the collection of surface transportation system condition and performance data through the use of intelligent transportation system technologies; and

“(10) ensure access to transportation information and services by travelers of all ages.

#### “§ 523. Definitions

“In this subchapter:

“(1) COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS.—The term ‘commercial vehicle information systems and networks’ means the information systems and communications networks that support commercial vehicle operations.

“(2) COMMERCIAL VEHICLE OPERATIONS.—

“(A) IN GENERAL.—The term ‘commercial vehicle operations’ means motor carrier operations and motor vehicle regulatory activities associated with the commercial movement of goods (including hazardous materials) and passengers.

“(B) INCLUSIONS.—The term ‘commercial vehicle operations’, with respect to the public sector, includes—

“(i) the issuance of operating credentials;

“(ii) the administration of motor vehicle and fuel taxes; and

“(iii) roadside safety and border crossing inspection and regulatory compliance operations.

“(3) INTELLIGENT TRANSPORTATION INFRASTRUCTURE.—The term ‘intelligent transportation infrastructure’ means fully integrated public sector intelligent transportation system components, as defined by the Secretary.

“(4) 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.

“(5) NATIONAL ITS ARCHITECTURE.—The term ‘national ITS architecture’ means the common framework for interoperability adopted by the Secretary 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.

“(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—

“(i) support the national ITS architecture; and

“(ii) 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.

#### “§ 524. General authorities and requirements

“(a) SCOPE.—Subject to this subchapter, the Secretary shall carry out an ongoing intelligent transportation system research program—

“(1) to research, develop, and operationally test intelligent transportation systems; and

“(2) to provide technical assistance in the nationwide application of those systems as a component of the surface transportation systems of the United States.

“(b) POLICY.—Intelligent transportation system operational tests and projects funded under this subchapter shall encourage, but not displace, public-private partnerships or private sector investment in those tests and projects.

“(c) COOPERATION WITH GOVERNMENTAL, PRIVATE, AND EDUCATIONAL ENTITIES.—The Secretary shall carry out the intelligent transportation system research and technical assistance program in cooperation with—

“(1) State and local governments and other public entities;

“(2) the private sector;

“(3) Federal laboratories (as defined in section 501); and

“(4) 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 research program, the Secretary, as appropriate, shall consult with—

“(1) the Secretary of Commerce;

“(2) the Secretary of the Treasury;

“(3) the Administrator of the Environmental Protection Agency;

“(4) the Director of the National Science Foundation; and

“(5) the Secretary of Homeland Security.

“(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 system management and operations (including intelligent transportation systems) within metropolitan and statewide transportation planning processes.

“(g) INFORMATION CLEARINGHOUSE.—The Secretary shall—

“(1) maintain a repository for technical and safety data collected as a result of federally sponsored projects carried out under this subchapter; and

“(2) on request, make that information (except for proprietary information and data) readily available to all users of the repository at an appropriate cost.

“(h) ADVISORY COMMITTEES.—

“(1) IN GENERAL.—In carrying out this subchapter, the Secretary—

“(A) may use 1 or more advisory committees; and

“(B) shall designate a public-private organization, the members of which participate in on-going research, planning, standards development, deployment, and marketing of ITS programs, products, and services, and coordinate the development and deployment of intelligent transportation systems in the United States, as the Federal advisory committee authorized by section 5204(h) of the Transportation Equity Act for the 21st Century (112 Stat. 454).

“(2) FUNDING.—Of the amount made available to carry out this subchapter, the Secretary may use \$1,407,943 for each fiscal year for advisory committees described in paragraph (1).

“(3) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—Any advisory committee described in paragraph (1) shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

“(i) PROCUREMENT METHODS.—The Secretary shall develop and provide appropriate technical assistance and guidance to assist State and local agencies in evaluating and selecting appropriate methods of deployment and procurement for intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including innovative and non-traditional methods such as Information Technology Omnibus Procurement (as developed by the Secretary).

“(j) EVALUATIONS.—

“(1) GUIDELINES AND REQUIREMENTS.—

“(A) IN GENERAL.—The Secretary shall issue revised guidelines and requirements for the evaluation of operational tests and other intelligent transportation system projects carried out under this subchapter.

“(B) OBJECTIVITY AND INDEPENDENCE.—The guidelines and requirements issued under subparagraph (A) shall include provisions to ensure the objectivity and independence of the evaluator so as to avoid any real or apparent conflict of interest or potential influence on the outcome by—

“(i) parties to any such test; or

“(ii) any other formal evaluation carried out under this subchapter.

“(C) FUNDING.—The guidelines and requirements issued under subparagraph (A) shall establish evaluation funding levels based on the size and scope of each test that ensure adequate evaluation 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 evaluation of any test or program assessment activity under this subchapter shall not be subject to chapter 35 of title 44.

#### “§ 525. National ITS Program Plan

“(a) IN GENERAL.—

“(1) UPDATES.—Not later than 1 year after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, the Secretary, in consultation with interested stakeholders (including State transportation departments) shall develop a 5-year National 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 transmitted and biennially updated as part of the surface transportation research and technology development strategic plan developed under section 508(c).

#### “§ 526. National ITS architecture and standards

“(a) IN GENERAL.—

“(1) DEVELOPMENT, IMPLEMENTATION, AND MAINTENANCE.—In accordance 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 ITS 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 ITS 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.

“(b) PROVISIONAL STANDARDS.—

“(1) IN GENERAL.—If the Secretary finds that the development or selection of an intelligent transportation system standard jeopardizes the timely achievement of the objectives identified in subsection (a), the Secretary may establish a provisional standard—

“(A) after consultation with affected parties; and

“(B) by using, to the maximum extent practicable, the work product of appropriate standards development organizations.

“(2) CRITICAL STANDARDS.—If a standard identified by the Secretary as critical has not been adopted and published by the appropriate standards development organization by the date of enactment of this subchapter,

the Secretary shall establish a provisional standard—

“(A) after consultation with affected parties; and

“(B) by using, to the maximum extent practicable, the work product of appropriate standards development organizations.

“(3) PERIOD OF EFFECTIVENESS.—A provisional standard established under paragraph (1) or (2) shall—

“(A) be published in the Federal Register; and

“(B) remain in effect until such time as the appropriate standards development organization adopts and publishes a standard.

“(c) WAIVER OF REQUIREMENT TO ESTABLISH PROVISIONAL CRITICAL STANDARD.—

“(1) IN GENERAL.—The Secretary may waive the requirement under subsection (b)(2) to establish a provisional standard if the Secretary determines that additional time would be productive in, or that establishment of a provisional standard would be counterproductive to, the timely achievement of the objectives identified in subsection (a).

“(2) NOTICE.—The Secretary shall publish in the Federal Register a notice that describes—

“(A) each standard for which a waiver of the provisional standard requirement is granted under paragraph (1);

“(B) the reasons for and effects of granting the waiver; and

“(C) an estimate as to the date on which the standard is expected to be adopted through a process consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note; 110 Stat. 783).

“(3) WITHDRAWAL OF WAIVER.—

“(A) IN GENERAL.—The Secretary may withdraw a waiver granted under paragraph (1) at any time.

“(B) NOTICE.—On withdrawal of a waiver, the Secretary shall publish in the Federal Register a notice that describes—

“(i) each standard for which the waiver has been withdrawn; and

“(ii) the reasons for withdrawing the waiver.

“(d) CONFORMITY WITH NATIONAL ITS 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 conform to the national ITS architecture, applicable standards or provisional standards, and protocols developed under subsection (a).

“(2) DISCRETION OF SECRETARY.—The Secretary may authorize exceptions to paragraph (1) for projects designed to achieve specific research objectives outlined in—

“(A) the National ITS Program Plan under section 525; or

“(B) the surface transportation research and technology development strategic plan developed under section 508(c).

“(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 subchapter.

#### “§ 527. Commercial vehicle information systems and networks deployment

“(a) DEFINITIONS.—In this section:

“(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 vehicle operations;

“(B) increase the efficiency of regulatory inspection processes to reduce administra-

tive 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 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 VEHICLE OPERATIONS.—

“(A) IN GENERAL.—The term ‘commercial vehicle operations’ means motor carrier operations and motor vehicle regulatory activities associated with the commercial movement of goods (including hazardous materials) and passengers.

“(B) INCLUSIONS.—The term ‘commercial vehicle operations’, with respect to the public sector, includes—

“(i) the issuance of operating credentials;

“(ii) the administration of motor vehicle and fuel taxes; and

“(iii) the administration of 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—

“(A) safety information exchange to—

“(i) electronically collect and transmit commercial vehicle and driver inspection data at a majority of inspection sites;

“(ii) connect to the Safety and Fitness Electronic Records system for access to—

“(I) interstate carrier and commercial vehicle data;

“(II) summaries of past safety performance; and

“(III) commercial vehicle credentials information; and

“(iii) exchange carrier data and commercial vehicle safety and credentials information within the State and connect to Safety and Fitness Electronic Records system for access to interstate carrier and commercial vehicle data;

“(B) interstate credentials administration to—

“(i) perform end-to-end (including carrier application) jurisdiction application processing, and credential issuance, of at least the International Registration Plan and International Fuel Tax Agreement credentials; and

“(ii) extend the processing to other credentials, including intrastate, titling, oversize or overweight requirements, carrier registration, and hazardous materials;

“(ii) connect to the International Registration Plan and International Fuel Tax Agreement clearinghouses; and

“(iii) have at least 10 percent of the transaction volume handled electronically; and

“(II) have the capability to add more carriers and to extend to branch offices where applicable; and

“(C) roadside electronic screening to electronically screen transponder-equipped commercial vehicles at a minimum of 1 fixed or mobile inspection site and to replicate the screening at other sites.

“(4) EXPANDED DEPLOYMENT.—The term ‘expanded deployment’ means the deployment of systems in a State that—

“(A) exceed the requirements of a core deployment of commercial vehicle information systems and networks;

“(B) improve safety and the productivity of commercial vehicle operations; and

“(C) enhance transportation security.



“(b) PROGRAM.—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.

“(c) PURPOSE.—It is the purpose of the program to 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.

“(d) 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) ELIGIBILITY.—To be eligible for a core deployment grant under this subsection, a State shall—

“(A) have a commercial vehicle information systems and networks program plan and a top level system design approved by the Secretary;

“(B) certify to the Secretary that the commercial vehicle information systems and networks deployment activities of the State (including hardware procurement, software and system development, and infrastructure modifications)—

“(i) are consistent with the national intelligent transportation systems and commercial vehicle information systems and networks architectures and available standards; and

“(ii) promote interoperability and efficiency, to the maximum extent practicable; and

“(C) agree to execute interoperability tests developed by the Federal Motor Carrier Safety Administration to verify that the systems of the State conform with the national intelligent transportation systems architecture, applicable standards, and protocols for commercial vehicle information systems and networks.

“(3) AMOUNT OF GRANTS.—The maximum aggregate amount a State may receive under this subsection for the core deployment of commercial vehicle information systems and networks may not exceed \$2,500,000, including funds received under section 2001(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for the core deployment of commercial vehicle information systems and networks.

“(4) USE OF FUNDS.—

“(A) IN GENERAL.—Subject to subparagraph (B), funds from a grant under this subsection may only be used for the core deployment of commercial vehicle information systems and networks.

“(B) REMAINING FUNDS.—An eligible State that has completed the core deployment of commercial vehicle information systems and networks, or completed the deployment before core deployment grant funds are expended, may use the remaining core deployment grant funds for the expanded deployment of commercial vehicle information systems and networks in the State.

“(e) EXPANDED DEPLOYMENT GRANTS.—

“(1) IN GENERAL.—For each fiscal year, from the funds remaining after the Secretary has made core deployment grants under subsection (d), the Secretary may make grants to each eligible State, on 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 net-

works shall be eligible for an expanded deployment grant.

“(3) AMOUNT OF GRANTS.—Each fiscal year, the Secretary may distribute funds available for expanded deployment grants equally among the eligible States in an amount that does not exceed \$1,000,000 for each 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.

“(f) FEDERAL SHARE.—The Federal share of the cost of a project payable from funds made available to carry out this section shall be the share applicable under section 120(b), as adjusted under subsection (d) of that section.

“(g) FUNDING.—Funds authorized to be appropriated to carry out 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, except that the funds shall remain available until expended.

#### “§ 528. 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 subchapter.

“(b) PRIORITY AREAS.—Under the program, the Secretary shall give priority to funding projects that—

“(1) assist in the development of an interconnected national intelligent transportation system network that—

“(A) improves the reliability of the surface transportation system;

“(B) supports national security;

“(C) reduces, by at least 20 percent, the cost of manufacturing, deploying, and operating intelligent transportation systems network components;

“(D) could assist in deployment of the Armed Forces in response to a crisis; and

“(E) improves response to, and evacuation of the public during, an emergency situation;

“(2) address traffic management, incident management, transit management, toll collection traveler information, or highway operations systems with goals of—

“(A) reducing metropolitan congestion by 5 percent by 2010;

“(B) ensuring that a national, interoperable 511 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) improving incident management response, particularly in rural areas, so that rural emergency response times are reduced by an average of 10 minutes; and

“(ii) subject to subsection (d), improving communication between emergency care providers and trauma centers;

“(3) address traffic management, incident management, transit management, toll collection, traveler information, or highway operations systems;

“(4) conduct operational tests of the integration of at least 3 crash-avoidance technologies in passenger vehicles;

“(5) incorporate human factors research, including the science of the driving process;

“(6) facilitate the integration of intelligent infrastructure, vehicle, and control technologies;

“(7) incorporate research on the impact of environmental, weather, and natural conditions on intelligent transportation systems, including the effects of cold climates;

“(8) as determined by the Secretary, will improve the overall safety performance of vehicles and roadways, including the use of real-time setting of speed limits through the use of speed management technology;

“(9) examine—

“(A) the application to intelligent transportation systems of appropriately modified existing technologies from other industries; and

“(B) the development of new, more robust intelligent transportation systems technologies and instrumentation;

“(10) develop and test communication technologies that—

“(A) are based on an assessment of the needs of officers participating in a motor carrier safety program funded under section 31104 of title 49;

“(B) take into account the effectiveness and adequacy of available technology;

“(C) address systems integration, connectivity, and interoperability challenges; and

“(D) provide the means for officers participating in a motor carrier safety program funded under section 31104 of title 49 to directly assess, without an intermediary, current and accurate safety and regulatory information on motor carriers, commercial motor vehicles and drivers at roadside or mobile inspection facilities;

“(11) enhance intermodal use of intelligent transportation systems for diverse groups, including for emergency and health-related services;

“(12) improve sensing and wireless communications that provide real-time information regarding congestion and incidents;

“(13) develop and test high-accuracy, lane-level, real-time accessible digital map architectures that can be used by intelligent vehicles and intelligent infrastructure elements to facilitate safety and crash avoidance (including establishment of national standards for an open-architecture digital map of all public roads that is compatible with electronic 9-1-1 services);

“(14) encourage the dual-use of intelligent transportation system technologies (such as wireless communications) for—

“(A) emergency services;

“(B) road pricing; and

“(C) local economic development; and

“(15) advance the use of intelligent transportation systems to facilitate high-performance transportation systems, such as through—

“(A) congestion-pricing;

“(B) real-time facility management;

“(C) rapid-emergency response; and

“(D) just-in-time transit.

“(c) OPERATIONAL TESTS.—Operational tests conducted under this section shall be designed for—

“(1) the collection of data to permit objective evaluation of the results of the tests;

“(2) the derivation of cost-benefit information that is useful to others contemplating deployment of similar systems; and

“(3) the development and implementation of standards.

“(d) FEDERAL SHARE.—The Federal share of the costs of operational tests under subsection (a) shall not exceed 80 percent.

#### “§ 529. Use of funds

“(a) IN GENERAL.—For each fiscal year, not more than \$5,000,000 of the funds made available to carry out this subchapter 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.—Title V of the Transportation Equity Act for the 21st Century is amended by striking subtitle C (23 U.S.C. 502 note; 112 Stat. 452).



### TITLE III—RECREATIONAL BOATING SAFETY PROGRAMS

#### SEC. 3001. SHORT TITLE.

This title may be cited as the “Sport Fishing and Recreational Boating Safety Act”.

#### SEC. 3002. AMENDMENT OF FEDERAL AID IN FISH RESTORATION ACT.

Except as otherwise expressly provided, whenever in this subtitle 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 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 (64 Stat. 430; 16 U.S.C. 777 et seq.).

#### SEC. 3003. 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.—Section 3 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777b) is amended in the first sentence—

(A) by striking “Sport Fish Restoration Account” and inserting “Sport Fish Restoration 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, 2004.

#### SEC. 3004. DIVISION OF ANNUAL APPROPRIATIONS.

Section 4 (16 U.S.C. 777c) is amended—

(1) by striking subsections (a) through (c) and redesignating subsections (d) through (g) as subsections (b) through (e), respectively;

(2) by inserting before subsection (b) (as redesignated by paragraph (1)), the following:

“(a) IN GENERAL.—For fiscal years 2004 through 2009, the balance of each annual appropriation made in accordance with the provisions of section 3 of this title remaining after the distributions are made for administrative expenses and other purposes under section 4(b) and for multistate conservation grants under section 14 shall be distributed as follows:

“(1) COASTAL WETLANDS.—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.—18.5 percent to the Secretary of Homeland Security for State recreational boating safety programs under section 13106 of title 46, United States Code.

“(3) CLEAN VESSEL ACT.—2 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.—2 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.—2 percent to the Secretary of the Interior for the National Outreach and Communications Program under section 8(d) of this title. Such amounts shall remain avail-

able 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).”;

(3) in subsection (b)(1) (as redesignated by paragraph (1)), by striking subparagraph (A) and inserting the following:

“(A) SET-ASIDE.—For fiscal year 2006 and each subsequent fiscal year, before making a distribution under subsection (a), the Secretary of the Interior may use not more than the available amount specified in subparagraph (B) for the fiscal year for expenses of administration incurred in the implementation of this chapter, in accordance with this section and section 9.”;

(4) in subsection (c) (as redesignated by paragraph (1)), by striking the subsection heading and all that follows through the colon in the first sentence and inserting the following:

“(c) APPORTIONMENT AMONG STATES.—For fiscal year 2006 and each subsequent fiscal year, after the distribution, transfer, use, and deduction under subsection (b), and after deducting amounts for grants under section 14, the Secretary of the Interior shall apportion 57 percent of the balance of each annual appropriation among the several States in the following manner.”;

(5) by striking “per centum” each place it appears in subsection (c) (as redesignated by paragraph (1)) and inserting “percent”;

(6) in paragraph (1) of subsection (e) (as redesignated by paragraph (1)), by striking “subsections (a), (b)(3)(A), (b)(3)(B), and (c)” and inserting “paragraphs (1), (3), (4), and (5) of subsection (a)”;

(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 after 3 fiscal years shall be transferred to the Secretary of Homeland Security and shall be expended for State recreational boating safety programs under section 13106(a) of title 46, United States Code.”.

#### SEC. 3005. 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).”;

(2) in subsection (d)(3), by striking “subsection (c) or (d) of section 4” and inserting “section 4(a)(5) or section 4(b)”.

#### SEC. 3006. 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)” and inserting “section 4(a)(4)”.

#### SEC. 3007. 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)”;

(2) by striking “section 4(d)(1)” in subsection (b)(1) and inserting “section 4(b)”.

#### SEC. 3008. 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 title.”.

#### SEC. 3009. 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 fiscal year 2004 and each subsequent fiscal year, not more than \$3,000,000 of each annual appropriation made in accordance with the provisions of section 3 of this title 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)”;

(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—”.

### TITLE IV—SOLID WASTE DISPOSAL

#### SEC. 4001. 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;

“(B) coal combustion fly ash;

“(C) blast furnace slag aggregate; and

“(D) 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. 4002. 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 4001(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 4001(b)) is amended by adding after the item relating to section 6005 the following:

“Sec. 6006. Use of granular mine tailings.”.

#### TITLE V—HIGHWAY REAUTHORIZATION AND EXCISE TAX SIMPLIFICATION

#### SEC. 5000. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This title may be cited as the “Highway Reauthorization and Excise Tax Simplification Act of 2005”.

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

#### Subtitle A—Trust Fund Reauthorization

#### SEC. 5101. 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).

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

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

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

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

(A) by striking “2005” each place it appears and inserting “2011”, and

(B) by striking “2006” each place it appears and inserting “2012”.

(b) EXTENSION OF CERTAIN EXEMPTIONS.—The following provisions are each amended by striking “2005” and inserting “2011”:

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

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

(c) EXTENSION OF TRANSFERS OF CERTAIN TAXES.—

(1) IN GENERAL.—Paragraphs (1), (2), and (4)(D)(iii) of subsection (b) and subsection (c)(3) 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.—Paragraphs (4)(A)(i) and (5)(A) of section 9503(c) are each 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. 4601–11(b)) is amended—

(i) by striking “2003” and inserting “2009”, and

(ii) by striking “2004” each place it appears and inserting “2010”.

(d) EXTENSION AND EXPANSION OF EXPENDITURES FROM TRUST FUNDS.—

(1) HIGHWAY TRUST FUND.—

(A) HIGHWAY ACCOUNT.—Paragraph (1) of section 9503(c) is amended—

(i) in the matter before subparagraph (A), by striking “June 1, 2005” and inserting “October 1, 2009”;

(ii) by striking “or” at the end of subparagraph (J),

(iii) by striking the period at the end of subparagraph (K) and inserting “, or”,

(iv) by inserting after subparagraph (K) the following new subparagraph:

“(L) authorized to be paid out of the Highway Trust Fund under the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005.”, and

(v) in the matter after subparagraph (L), as added by clause (iv), by striking “Surface Transportation Extension Act of 2004, Part V” and inserting “Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005”.

(B) MASS TRANSIT ACCOUNT.—Paragraph (3) of section 9503(e) is amended—

(i) in the matter before subparagraph (A), by striking “June 1, 2005” and inserting “October 1, 2009”;

(ii) by striking “or” at the end of subparagraph (H),

(iii) by inserting “or” at the end of subparagraph (I),

(iv) by inserting after subparagraph (I) the following new subparagraph:

“(J) Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005,” and

(v) in the matter after subparagraph (J), as added by clause (iv), by striking “Surface Transportation Extension Act of 2004, Part V” and inserting “Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005”.

(C) EXCEPTION TO LIMITATION ON TRANSFERS.—Subparagraph (B) of section 9503(b)(6) is amended by striking “June 1, 2005” and inserting “October 1, 2009”.

(D) EXPENDITURES FOR HIGHWAY USE TAX EVASION PROJECTS.—Section 9503(c) is amended by adding at the end the following new paragraph:

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

“(A) for the period beginning with fiscal year 2006 and ending with fiscal year 2009 to the Internal Revenue Service—

“(i) \$120,000,000 for enforcement of fuel tax compliance, including the pre-certification of tax-exempt users, and

“(ii) \$80,000,000 for the excise fuel information reporting system, of which \$40,000,000 shall be allocated to the excise summary terminal activity reporting system, and

“(B) for each of the fiscal years 2006, 2007, 2008, and 2009 to the Federal Highway Administration, \$50,000,000 to be allocated \$1,000,000 to each State to combat fuel tax evasion on the State level.”.

(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 2004, Part V” each place it appears and inserting “Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005”.

(B) EXCEPTION TO LIMITATION ON TRANSFERS.—Paragraph (2) of section 9504(d) is amended by striking “June 1, 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. 5102. 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 I—HIGHWAY EXCISE TAXES

##### SEC. 5201. 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. 5202. 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 such tractor has a gross vehicle weight of 19,500 pounds or less (as determined under regulations prescribed by the Secretary).”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after September 30, 2005.

##### SEC. 5203. EXEMPTION FOR EQUIPMENT FOR TRANSPORTING BULK BEDS OF FARM CROPS FROM EXCISE TAX ON RETAIL SALE OF HEAVY TRUCKS AND TRAILERS.

(a) IN GENERAL.—Section 4053 of the Internal Revenue Code of 1986 (relating to exemptions) is amended by adding at the end the following new paragraph:

“(9) EQUIPMENT FOR TRANSPORTING BULK BEDS OF FARM CROPS.—Any box, container, receptacle, bin, or other similar article the length of which does not exceed 26 feet, which is mounted or placed on an automobile truck, and which is sold to a person who certifies to the seller that—

“(A) such person is actively engaged in the trade or business of farming, and

“(B) the primary use of the article is to haul to and on farms bulk beds of farm crops grown in connection with such trade or business.”.

(b) RECAPTURE OF TAX UPON RESALE OR NONEXEMPT USE.—Section 4052 (relating to definitions and special rules) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

“(g) IMPOSITION OF TAX ON SALES, ETC., WITHIN 2 YEARS OF EQUIPMENT FOR TRANSPORTING BULK BEDS OF FARM CROPS PURCHASED TAX-FREE.—

“(1) IN GENERAL.—If—

“(A) no tax was imposed under section 4051 on the first retail sale of any article described in section 4053(9) by reason of its exempt use, and

“(B) within 2 years after the date of such first retail sale, such article is resold by the purchaser or such purchaser makes a substantial nonexempt use of such article, then such sale or use of such article by such purchaser shall be treated as the first retail sale of such article for a price equal to its fair market value at the time of such sale or use.

“(2) EXEMPT USE.—For purposes of this subsection, the term ‘exempt use’ means any use of an article described in section 4053(9) if the first retail sale of such article is not taxable under section 4051 by reason of such use.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after September 30, 2005.

### PART II—AQUATIC EXCISE TAXES

#### SEC. 5211. ELIMINATION OF AQUATIC RESOURCES TRUST FUND AND TRANSFORMATION OF SPORT FISH RESTORATION ACCOUNT.

(a) SIMPLIFICATION OF FUNDING FOR BOAT SAFETY ACCOUNT.—

(1) IN GENERAL.—Section 9503(c)(4) (relating to transfers from Trust Fund for motorboat fuel taxes) is amended—

(A) by striking “Fund—” and all that follows through “shall be transferred” in subparagraph (B) and inserting “Fund which is attributable to motorboat fuel taxes shall be transferred”,

(B) by striking subparagraph (A), and

(C) by redesignating subparagraphs (B) through (E) as subparagraphs (A) through (D), respectively.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 9503(c)(4), as redesignated by paragraph (1)(C), is amended—

(i) by striking “ACCOUNT” in the heading thereof and inserting “AND BOATING TRUST FUND”,

(ii) by striking “or (B)” in clause (ii), and

(iii) by striking “account in the Aquatic Resources” and inserting “and Boating”.

(B) 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 5001 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 “AND BOATING TRUST FUND”.

(B) Subsection (d) of section 9504, as amended by section 5001 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 Sports 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”.

(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, and Efficient Transportation Equity Act of 2005). 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. 5212. 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. 5213. 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 III—AERIAL EXCISE TAXES

#### SEC. 5221. 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. 5222. 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. 5223. 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) EFFECTIVE DATE.—The amendments made by this section shall apply to transportation beginning after September 30, 2005.

#### SEC. 5224. 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 IV—TAXES RELATING TO ALCOHOL

#### SEC. 5231. 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 and registration 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. 5121. 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, in-

serted 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 record-keeping 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 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)”,

(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. 5232. MODIFICATION OF LIMITATION ON RATE OF RUM EXCISE TAX COVER OVER TO PUERTO RICO AND VIRGIN ISLANDS.**

(a) IN GENERAL.—Section 7652(f)(1) (relating to limitation on cover over of tax on distilled spirits) is amended by inserting “, and \$13.50 in the case of distilled spirits brought into the United States after December 31, 2005, and before January 1, 2007” after “2006”.

(b) SPECIAL RULE.—

(1) IN GENERAL.—After December 31, 2005, and before January 1, 2007, the Commonwealth of Puerto Rico shall make a Conservation Trust Fund transfer from the treasury of Puerto Rico within 30 days from the date of each cover overpayment to such treasury under section 7652(e) of the Internal Revenue Code of 1986.

(2) CONSERVATION TRUST FUND TRANSFER.—

(A) IN GENERAL.—For purposes of this subsection, the term “Conservation Trust Fund transfer” means a transfer to the Puerto Rico Conservation Trust Fund of an amount equal to 50 cents per proof gallon of the taxes imposed under section 5001 or section 7652 of such Code on distilled spirits that are covered over to the treasury of Puerto Rico under section 7652(e) of such Code.

(B) TREATMENT OF TRANSFER.—Each Conservation Trust Fund transfer shall be treated as principal for an endowment, the income from which to be available for use by the Puerto Rico Conservation Trust Fund for the purposes for which the Trust Fund was established.

(C) RESULT OF NONTRANSFER.—

(i) IN GENERAL.—Upon notification by the Secretary of the Interior that a Conservation Trust Fund transfer has not been made by the Commonwealth of Puerto Rico, the Secretary of the Treasury shall, except as provided in clause (ii), deduct and withhold

from the next cover overpayment to be made to the treasury of Puerto Rico under section 7652(e) of such Code an amount equal to the appropriate Conservation Trust Fund transfer and interest thereon at the underpayment rate established under section 6621 of such Code as of the due date of such transfer. The Secretary of the Treasury shall transfer such amount deducted and withheld, and the interest thereon, directly to the Puerto Rico Conservation Trust Fund.

(ii) **GOOD-CAUSE EXCEPTION.**—If the Secretary of the Interior finds, after consultation with the Governor of Puerto Rico, that the failure by the Commonwealth of Puerto Rico to make a required transfer was for good cause, and notifies the Secretary of the Treasury of the finding of such good cause before the due date of the next cover overpayment following the notification of non-transfer, then the Secretary of the Treasury shall not deduct the amount of such non-transfer from any cover overpayment.

(3) **PUERTO RICO CONSERVATION TRUST FUND.**—For purposes of this subsection, the term “Puerto Rico Conservation Trust Fund” means the fund established pursuant to a Memorandum of Understanding between the United States Department of the Interior and the Commonwealth of Puerto Rico, dated December 24, 1968.

**SEC. 5233. 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 with-

out 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. 5234. 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 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 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 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 V—SPORT EXCISE TAXES**

**SEC. 5241. 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. 5301. MOTOR FUEL TAX ENFORCEMENT ADVISORY COMMISSION.**

(a) **ESTABLISHMENT.**—There is established a Motor Fuel Tax Enforcement Advisory Commission (in this section referred to as the “Commission”).

(b) **FUNCTION.**—The Commission shall—

(1) review motor fuel revenue collections, historical and current;

(2) review the progress of investigations;

(3) develop and review legislative proposals with respect to motor fuel taxes;

(4) monitor the progress of administrative regulation projects relating to motor fuel taxes;

(5) review the results of Federal and State agency cooperative efforts regarding motor fuel taxes;

(6) review the results of Federal inter-agency 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. 5302. 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; and

(E) 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 suffi-

cient 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. 5303. EXPANSION OF HIGHWAY TRUST FUND EXPENDITURE PURPOSES TO INCLUDE FUNDING FOR STUDIES OF SUPPLEMENTAL OR ALTERNATIVE FINANCING FOR THE HIGHWAY TRUST FUND.**

(a) **IN GENERAL.**—From amounts available in the Highway Trust Fund, there is authorized to be expended for 2 comprehensive studies of supplemental or alternative funding sources for the Highway Trust Fund—

(1) \$1,000,000 to the Western Transportation Institute of the College of Engineering at Montana State University for the study and report described in subsection (b), and

(2) \$16,500,000 to the Public Policy Center of the University of Iowa for the study and report described in subsection (c).

(b) **STUDY OF FUNDING MECHANISMS.**—Not later than December 31, 2006, the Western Transportation Institute of the College of Engineering at Montana State University shall report to the Secretary of the Treasury and the Secretary of Transportation on a study of highway funding mechanisms of other industrialized nations, an examination of the viability of alternative funding proposals, including congestion pricing, greater reliance on tolls, privatization of facilities, and bonding for construction of added capacity, and an examination of increasing the rates of motor fuels taxes in effect on the date of the enactment of this Act, including the indexation of such rates.

(c) **STUDY ON FIELD TEST OF ONBOARD COMPUTER ASSESSMENT OF HIGHWAY USE TAXES.**—Not later than December 31, 2011, the Public Policy Center of the University of Iowa shall direct, analyze, and report to the Secretary of the Treasury and the Secretary of Transportation on a long-term field test of an approach to assessing highway use taxes 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 tax 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 taxes due in each jurisdiction traversed. The components of the field test shall include 2 years for preparation, including selection of vendors and test participants, and 3-year testing period.

**SEC. 5304. DELTA REGIONAL TRANSPORTATION PLAN.**

(a) **STUDY.**—The Delta Regional Authority shall conduct a study of the transportation



assets and needs in the States of Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee which comprise the Delta region.

(b) **REGIONAL STRATEGIC TRANSPORTATION PLAN.**—Upon completion of the study required under subsection (a), the Delta Regional Authority shall establish a regional strategic transportation plan to achieve efficient transportation systems in the Delta region. In developing the regional strategic transportation plan, the Delta Regional Authority shall consult with local planning and development districts, local and regional governments, metropolitan planning organizations, State transportation entities, and Federal transportation agencies.

(c) **ELEMENTS OF STUDY AND PLAN.**—The study and plan under this section shall include the following transportation modes and systems: transit, rail, highway, interstate, bridges, air, airports, waterways, and ports.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Delta Regional Authority \$500,000 for each of the fiscal years 2005 and 2006 to carry out the purposes of this section, to remain available until expended.

#### **SEC. 5305. BUILD AMERICA CORPORATION.**

(a) **ESTABLISHMENT OF BUILD AMERICA CORPORATION.**—There is established 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 purpose of the Corporation is to issue Build America bonds. The Corporation shall be subject, to the extent consistent with this section, to the laws of the State of Delaware applicable to corporations not for profit.

(b) **USE OF BUILD AMERICA BOND PROCEEDS.**—The proceeds from the sale of any Build America bonds issued by the Build America Corporation as authorized by subsection (a) may be used to fund any qualified project.

(c) **QUALIFIED PROJECTS.**—For purposes of this section—

(1) **IN GENERAL.**—With respect to any Build America bonds issued by the Build America Corporation as authorized by subsection (a), the term “qualified project” means any—

(A) qualified highway project,

(B) qualified public transportation project, and

(C) congestion relief project, proposed by 1 or more States and approved by the Build America Corporation, which meets the requirements under subparagraphs (A), (B), and (C) of paragraph (5).

(2) **QUALIFIED HIGHWAY PROJECT.**—The term “qualified highway project” means a project for highway facilities or other facilities which are eligible for assistance under title 23, United States Code.

(3) **QUALIFIED PUBLIC TRANSPORTATION PROJECT.**—The term “qualified public transportation project” means a project for public transportation facilities or other facilities which are eligible for assistance under title 49, United States Code.

(4) **CONGESTION RELIEF PROJECT.**—The term “congestion relief project” means an intermodal freight transfer facility, freight rail facility, freight movement corridor, intercity passenger rail facility, intercity bus facility, border crossing facility, or other public or private facility approved as a congestion relief project by the Secretary of Transportation. In making such approvals, the Secretary of Transportation shall—

(A) consider the economic, environmental, mobility, and national security improvements to be realized through the project, and

(B) give preference to projects with national or regional significance, including any

projects sponsored by a coalition of States or a combination of States and private sector entities, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system.

(5) **ADDITIONAL REQUIREMENTS FOR QUALIFIED PROJECTS.**—For purposes of paragraph (1)—

(A) **COSTS OF QUALIFIED PROJECTS.**—The requirement of this subparagraph is met if the costs of the qualified project funded by Build America bonds only relate to capital investments and do not include any costs relating to operations, maintenance, or rolling stock.

(B) **APPLICABILITY OF FEDERAL LAW.**—The requirement of this subparagraph is met if the requirements of any Federal law, including titles 23, 40, and 49 of the United States Code, which would otherwise apply to projects to which the United States is a party or to funds made available under such law and projects assisted with those funds are applied to—

(i) funds made available under Build America bonds for similar qualified projects, and

(ii) similar qualified projects assisted by the Build America Corporation through the use of such funds.

(C) **UTILIZATION OF UPDATED CONSTRUCTION TECHNOLOGY FOR QUALIFIED PROJECTS.**—The requirement of this subparagraph is met if the appropriate State agency relating to the qualified project has updated its accepted construction technologies to match a list prescribed by the Secretary of Transportation and in effect on the date of the approval of the project as a qualified project.

#### **SEC. 5306. INCREASE IN DOLLAR LIMITATION FOR QUALIFIED TRANSPORTATION FRINGE BENEFITS.**

(a) **IN GENERAL.**—Section 132(f)(2) (relating to limitation on exclusion) is amended—

(1) by striking “\$100” in subparagraph (A) and inserting “\$155”, and

(2) by striking “\$175” in subparagraph (B) and inserting “\$200”.

(b) **INFLATION ADJUSTMENT CONFORMING AMENDMENTS.**—Subparagraph (A) of section 132(f)(6) (relating to inflation adjustment) is amended—

(1) by striking the last sentence,

(2) by striking “1999” and inserting “2008”, and

(3) by striking “1998” and inserting “2007”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

#### **SEC. 5307. TREASURY STUDY OF HIGHWAY FUELS USED BY TRUCKS FOR NON-TRANSPORTATION PURPOSES.**

(a) **STUDY.**—The Secretary of the Treasury shall conduct a study regarding the use of highway motor fuel by trucks that is not used for the propulsion of the vehicle. As part of such study—

(1) in the case of vehicles carrying equipment that is unrelated to the transportation function of the vehicle—

(A) the Secretary of the Treasury, in consultation with the Secretary of Transportation, and with public notice and comment, shall determine the average annual amount of tax paid fuel consumed per vehicle, by type of vehicle, used by the propulsion engine to provide the power to operate the equipment attached to the highway vehicle, and

(B) the Secretary of the Treasury shall review the technical and administrative feasibility of exempting such nonpropulsive use of highway fuels for the highway motor fuels excise taxes,

(2) in the case where non-transportation equipment is run by a separate motor—

(A) the Secretary of the Treasury shall determine the annual average amount of fuel exempted from tax in the use of such equipment by equipment type, and

(B) the Secretary of the Treasury shall review issues of administration and compliance related to the present-law exemption provided for such fuel use, and

(3) the Secretary of the Treasury shall—

(A) estimate the amount of taxable fuel consumed by trucks and the emissions of various pollutants due to the long-term idling of diesel engines, and

(B) determine the cost of reducing such long-term idling through the use of plug-ins at truck stops, auxiliary power units, or other technologies.

(b) **REPORT.**—Not later than January 1, 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. 5308. 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 by adding at the end the following:

“(15) qualified highway facilities, or

“(16) qualified surface freight transfer facilities.”.

(b) **QUALIFIED HIGHWAY FACILITIES AND QUALIFIED SURFACE FREIGHT TRANSFER FACILITIES.**—Section 142 is amended by adding at the end the following:

“(m) **QUALIFIED HIGHWAY AND SURFACE FREIGHT TRANSFER FACILITIES.**—

“(1) **QUALIFIED HIGHWAY FACILITIES.**—For purposes of subsection (a)(15), the term ‘qualified highway 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), or

“(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 such title 23.

“(2) **QUALIFIED SURFACE FREIGHT TRANSFER FACILITIES.**—For purposes of subsection (a)(16), the term ‘qualified surface freight transfer facilities’ means facilities 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 in effect on the date of the enactment of this subsection).

“(3) **NATIONAL LIMITATION ON AMOUNT OF TAX-EXEMPT FINANCING FOR FACILITIES.**—

“(A) **NATIONAL LIMITATION.**—There is a national highway and surface freight transfer facilities bond limitation for each calendar year. Such limitation is \$130,000,000 for 2005, \$750,000,000 for 2006, 2007, 2008, and 2009, \$1,870,000,000 for 2010, \$2,000,000,000 for 2011, 2012, 2013, 2014, and 2015, and zero thereafter.

“(B) **ENFORCEMENT OF NATIONAL LIMITATION.**—An issue shall not be treated as an issue described in subsection (a)(15) or (a)(16) if the aggregate face amount of bonds issued pursuant to such issue for any calendar year (when added to the aggregate face amount of bonds previously issued by all States as part of issues described in subsections (a)(15) and (a)(16) for such calendar year) exceeds the national highway and surface freight transfer facilities bond limitation for such calendar year.

“(C) **ALLOCATION BY SECRETARY OF TRANSPORTATION.**—The Secretary of Transportation shall allocate the amount described in subparagraph (A) among projects for qualified highway facilities and qualified surface freight transfer facilities in such manner as the Secretary determines appropriate.

“(4) EXPENDITURE OF PROCEEDS.—An issue shall not be treated as an issue described in subsection (a)(15) or (a)(16) unless at least 95 percent of the net proceeds of the issue is expended for projects described in paragraph (3)(C) within the 5-year period beginning on the date of issuance. If at least 95 percent of such net proceeds is not expended with 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.”.

(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), (15), or (16) 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.

#### Subtitle D—Fuels-related Technical Corrections

##### SEC. 5401. FUELS-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 non-commercial 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) 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.

#### Subtitle E—Revenue Offset Provisions

##### PART I—GENERAL PROVISIONS

##### SEC. 5501. TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT INSTRUMENTS.

(a) IN GENERAL.—Section 1275(d) (relating to regulation authority) is amended—

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

“(1) IN GENERAL.—The Secretary”, and

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

“(2) TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT.—

“(A) IN GENERAL.—In the case of a debt instrument which—

“(i) is convertible into stock of the issuing corporation, into stock or debt of a related party (within the meaning of section 267(b) or 707(b)(1)), or into cash or other property in an amount equal to the approximate value of such stock or debt, and

“(ii) provides for contingent payments, any regulations which require original issue discount to be determined by reference to the comparable yield of a noncontingent fixed-rate debt instrument shall be applied as if the regulations require that such comparable yield be determined by reference to a noncontingent fixed-rate debt instrument which is convertible into stock.

“(B) SPECIAL RULE.—For purposes of subparagraph (A), the comparable yield shall be determined without taking into account the yield resulting from the conversion of a debt instrument into stock.”.

(b) CROSS REFERENCE.—Section 163(e)(6) (relating to cross references) is amended by adding at the end the following:

“For the treatment of contingent payment convertible debt, see section 1275(d)(2).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued on or after the date of the enactment of this Act.

##### SEC. 5502. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

##### “SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

“(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of \$5,000 if—

“(1) such person files what purports to be a return of a tax imposed by this title but which—

“(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

“(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

“(2) the conduct referred to in paragraph (1)—

“(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

“(B) reflects a desire to delay or impede the administration of Federal tax laws.

“(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

“(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of \$5,000.

“(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

“(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term ‘specified frivolous submission’ means a specified submission if any portion of such submission—

“(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

“(ii) reflects a desire to delay or impede the administration of Federal tax laws.

“(B) SPECIFIED SUBMISSION.—The term ‘specified submission’ means—

“(i) a request for a hearing under—

“(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

“(II) section 6330 (relating to notice and opportunity for hearing before levy), and

“(ii) an application under—

“(I) section 6159 (relating to agreements for payment of tax liability in installments),

“(II) section 7122 (relating to compromises), or

“(III) section 7811 (relating to taxpayer assistance orders).

“(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

“(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

“(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

“(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.”.

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

“(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”.

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking “(A)” and inserting “(A)(i)”;

(B) by striking “(B)” and inserting “(ii)”;

(C) by striking the period at the end of the first sentence and inserting “; or”;

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

“(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).”.

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing”.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing”, and

(2) in subsection (c), by striking “and (e)” and inserting “(e), and (g)”.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

“(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”.

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

“Sec. 6702. Frivolous tax submissions.”.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

#### SEC. 5503. INCREASE IN CERTAIN CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking “Any person who—” and inserting “(a) IN GENERAL.—Any person who—”, and

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

“(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.”.

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking “\$100,000” and inserting “\$500,000”,

(B) by striking “\$500,000” and inserting “\$1,000,000”, and

(C) by striking “5 years” and inserting “10 years”.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking “Any person” and inserting the following:

“(a) IN GENERAL.—Any person”, and

(ii) by striking “\$25,000” and inserting “\$50,000”.

(B) in the third sentence, by striking “section” and inserting “subsection”, and

(C) by adding at the end the following new subsection:

“(b) AGGRAVATED FAILURE TO FILE.—

“(1) IN GENERAL.—In the case of any failure described in paragraph (2), the first sentence of subsection (a) shall be applied by substituting—

“(A) ‘felony’ for ‘misdemeanor’,

“(B) ‘\$500,000 (\$1,000,000’ for ‘\$25,000 (\$100,000’, and

“(C) ‘10 years’ for ‘1 year’.

“(2) FAILURE DESCRIBED.—A failure described in this paragraph is a failure to make a return described in subsection (a) for a period of 3 or more consecutive taxable years and the aggregated tax liability for such period is at least \$100,000.”.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking “\$100,000” and inserting “\$500,000”,

(B) by striking “\$500,000” and inserting “\$1,000,000”, and

(C) by striking “3 years” and inserting “5 years”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions, and failures to act, occurring after the date of the enactment of this Act.

#### SEC. 5504. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

(a) DETERMINATION OF PENALTY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, in the case of an applicable taxpayer—

(A) the determination as to whether any interest or applicable penalty is to be imposed with respect to any arrangement described in paragraph (2), or to any underpayment of Federal income tax attributable to items arising in connection with any such arrangement, shall be made without regard to the rules of subsections (b), (c), and (d) of section 6664 of the Internal Revenue Code of 1986, and

(B) if any such interest or applicable penalty is imposed, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(2) APPLICABLE TAXPAYER.—For purposes of this subsection—

(A) IN GENERAL.—The term “applicable taxpayer” means a taxpayer which—

(i) has underreported its United States income tax liability with respect to any item which directly or indirectly involves—

(I) any financial arrangement which in any manner relies on the use of offshore payment mechanisms (including credit, debit, or charge cards) issued by banks or other entities in foreign jurisdictions, or

(II) any offshore financial arrangement (including any arrangement with foreign banks, financial institutions, corporations, partnerships, trusts, or other entities), and

(ii) has not signed a closing agreement pursuant to the Voluntary Offshore Compliance Initiative established by the Department of the Treasury under Revenue Procedure 2003-11 or voluntarily disclosed its participation in such arrangement by notifying the Internal Revenue Service of such arrangement prior to the issue being raised by the Internal Revenue Service during an examination.

(B) AUTHORITY TO WAIVE.—The Secretary of the Treasury or the Secretary’s delegate may waive the application of paragraph (1) to any taxpayer if the Secretary or the Secretary’s delegate determines that the use of such offshore payment mechanisms is incidental to the transaction and, in addition, in the case of a trade or business, such use is conducted in the ordinary course of the trade or business of the taxpayer.

(C) ISSUES RAISED.—For purposes of subparagraph (A)(ii), an item shall be treated as an issue raised during an examination if the individual examining the return—

(i) communicates to the taxpayer knowledge about the specific item, or

(ii) has made a request to the taxpayer for information and the taxpayer could not make a complete response to that request without giving the examiner knowledge of the specific item.

(b) DEFINITIONS AND RULES.—For purposes of this section—

(1) APPLICABLE PENALTY.—The term “applicable penalty” means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) FEES AND EXPENSES.—The Secretary of the Treasury may retain and use an amount not in excess of 25 percent of all additional interest, penalties, additions to tax, and fines collected under this section to be used for enforcement and collection activities of the Internal Revenue Service. The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this paragraph.

(c) REPORT BY SECRETARY.—The Secretary shall each year conduct a study and report to

Congress on the implementation of this section during the preceding year, including statistics on the number of taxpayers affected by such implementation and the amount of interest and applicable penalties asserted, waived, and assessed during such preceding year.

(d) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if, as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

#### SEC. 5505. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) (relating to passive foreign investment company) is amended by adding at the end the following flush sentence:

“Such term shall not include any period if the earning of subpart F income by such corporation during such period would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of controlled foreign corporations beginning after March 2, 2005, and to taxable years of United States shareholders with or within which such taxable years of controlled foreign corporations end.

#### SEC. 5506. DECLARATION BY CHIEF EXECUTIVE OFFICER RELATING TO FEDERAL ANNUAL CORPORATE INCOME TAX RETURN.

(a) IN GENERAL.—The Federal annual tax return of a corporation with respect to income shall also include a declaration signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary of the Treasury may designate if the corporation does not have a chief executive officer), under penalties of perjury, that the corporation has in place processes and procedures that ensure that such return complies with the Internal Revenue Code of 1986 and that the chief executive officer was provided reasonable assurance of the accuracy of all material aspects of such return. The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851 of such Code).

(b) EFFECTIVE DATE.—This section shall apply to Federal annual tax returns for taxable years ending after the date of the enactment of this Act.

#### SEC. 5507. TREASURY REGULATIONS ON FOREIGN TAX CREDIT.

Section 901 (relating to taxes of foreign countries and of possessions of United States) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) REGULATIONS.—The Secretary may prescribe regulations disallowing a credit under subsection (a) for all or a portion of any foreign tax, or allocating a foreign tax among 2 or more persons, in cases where the foreign tax is imposed on any person in respect of income of another person or in other cases involving the inappropriate separation of the foreign tax from the related foreign income.”.

#### SEC. 5508. WHISTLEBLOWER REFORMS.

(a) IN GENERAL.—Section 7623 (relating to expenses of detection of underpayments and fraud, etc.) is amended—

(1) by striking “The Secretary” and inserting “(a) IN GENERAL.—The Secretary”,

(2) by striking “and” at the end of paragraph (1) and inserting “or”,

(3) by striking “(other than interest)”, and

(4) by adding at the end the following new subsections:

“(b) AWARDS TO WHISTLEBLOWERS.—

“(1) IN GENERAL.—If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary’s attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action.

“(2) AWARD IN CASE OF LESS SUBSTANTIAL CONTRIBUTION.—

“(A) IN GENERAL.—In the event the action described in paragraph (1) is one which the Whistleblower Office determines to be based principally on disclosures of specific allegations (other than information provided by the individual described in paragraph (1)) resulting from a judicial or administrative hearing, from a governmental report, hearing, audit, or investigation, or from the news media, the Whistleblower Office may award such sums as it considers appropriate, but in no case more than 10 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action, taking into account the significance of the individual’s information and the role of such individual and any legal representative of such individual in contributing to such action.

“(B) NONAPPLICATION OF PARAGRAPH WHERE INDIVIDUAL IS ORIGINAL SOURCE OF INFORMATION.—Subparagraph (A) shall not apply if the information resulting in the initiation of the action described in paragraph (1) was originally provided by the individual described in paragraph (1).

“(3) REDUCTION IN OR DENIAL OF AWARD.—If the Whistleblower Office determines that the claim for an award under paragraph (1) or (2) is brought by an individual who planned and initiated the actions that led to the underpayment of tax or actions described in subsection (a)(2), then the Whistleblower Office may appropriately reduce such award. If such individual is convicted of criminal conduct arising from the role described in the preceding sentence, the Whistleblower Office shall deny any award.

“(4) APPEAL OF AWARD DETERMINATION.—Any determination regarding an award under paragraph (1), (2), or (3) shall be subject to the filing by the individual described in such paragraph of a petition for review with the Tax Court under rules similar to the rules under section 7463 (without regard to the amount in dispute) and such review shall be subject to the rules under section 7461(b)(1).

“(5) APPLICATION OF THIS SUBSECTION.—This subsection shall apply with respect to any action—

“(A) against any taxpayer, but in the case of any individual, only if such individual’s gross income exceeds \$200,000 for any taxable year subject to such action, and

“(B) if the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed \$20,000.

“(6) ADDITIONAL RULES.—

“(A) NO CONTRACT NECESSARY.—No contract with the Internal Revenue Service is necessary for any individual to receive an award under this subsection.

“(B) REPRESENTATION.—Any individual described in paragraph (1) or (2) may be represented by counsel.

“(C) AWARD NOT SUBJECT TO INDIVIDUAL ALTERNATIVE MINIMUM TAX.—No award received under this subsection shall be included in gross income for purposes of determining alternative minimum taxable income.

“(c) WHISTLEBLOWER OFFICE.—

“(1) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the ‘Whistleblower Office’ which—

“(A) shall at all times operate at the direction of the Commissioner and coordinate and consult with other divisions in the Internal Revenue Service as directed by the Commissioner,

“(B) shall analyze information received from any individual described in subsection (b) and either investigate the matter itself or assign it to the appropriate Internal Revenue Service office,

“(C) shall monitor any action taken with respect to such matter,

“(D) shall inform such individual that it has accepted the individual’s information for further review,

“(E) may require such individual and any legal representative of such individual to not disclose any information so provided,

“(F) in its sole discretion, may ask for additional assistance from such individual or any legal representative of such individual, and

“(G) shall determine the amount to be awarded to such individual under subsection (b).

“(2) FUNDING FOR OFFICE.—There is authorized to be appropriated \$10,000,000 for each fiscal year for the Whistleblower Office. These funds shall be used to maintain the Whistleblower Office and also to reimburse other Internal Revenue Service offices for related costs, such as costs of investigation and collection.

“(3) REQUEST FOR ASSISTANCE.—

“(A) IN GENERAL.—Any assistance requested under paragraph (1)(F) shall be under the direction and control of the Whistleblower Office or the office assigned to investigate the matter under subparagraph (A). To the extent the disclosure of any returns or return information to the individual or legal representative is required for the performance of such assistance, such disclosure shall be pursuant to a contract entered into between the Secretary and the recipients of such disclosure subject to section 6103(n). No individual or legal representative whose assistance is so requested may by reason of such request represent himself or herself as an employee of the Federal Government.

“(B) FUNDING OF ASSISTANCE.—From the amounts available for expenditure under subsection (b), the Whistleblower Office may, with the agreement of the individual described in subsection (b), reimburse the costs incurred by any legal representative of such individual in providing assistance described in subparagraph (A).

“(d) REPORT BY SECRETARY.—The Secretary shall each year conduct a study and report to Congress on the use of this section, including—

“(1) an analysis of the use of this section during the preceding year and the results of such use, and

“(2) any legislative or administrative recommendations regarding the provisions of this section and its application.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to information provided on or after the date of the enactment of this Act.

## SEC. 5509. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

“(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

“(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION.—Paragraph (1) shall not apply to any amount which—

“(A) the taxpayer establishes constitutes restitution (including remediation of property) for damage or harm caused by or which may be caused by the violation of any law or the potential violation of any law, and

“(B) is identified as restitution in the court order or settlement agreement.

Identification pursuant to subparagraph (B) alone shall not satisfy the requirement under subparagraph (A). This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

“(3) EXCEPTION FOR AMOUNTS PAID OR INCURRED AS THE RESULT OF CERTAIN COURT ORDERS.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

“(4) CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—An entity is described in this paragraph if it is—

“(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

“(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

“(5) EXCEPTION FOR TAXES DUE.—Paragraph (1) shall not apply to any amount paid or incurred as taxes due.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred on or after the date of the enactment of this Act, except that such amendment shall not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained before such date.

## SEC. 5510. FREEZE OF INTEREST SUSPENSION RULES WITH RESPECT TO LISTED TRANSACTIONS.

(a) IN GENERAL.—Paragraph (2) of section 903(d) of the American Jobs Creation Act of 2005 is amended to read as follows:

“(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—

“(A) IN GENERAL.—The amendments made by subsection (c) shall apply with respect to interest accruing after October 3, 2004.

“(B) SPECIAL RULE FOR CERTAIN LISTED TRANSACTIONS.—

“(i) IN GENERAL.—Except as provided in clause (ii) or (iii), in the case of any listed transaction, the amendments made by subsection (c) shall also apply with respect to interest accruing on or before October 3, 2004.

“(ii) PARTICIPANTS IN SETTLEMENT INITIATIVES.—Clause (i) shall not apply to a listed transaction if, as of May 9, 2005—

“(I) the taxpayer is participating in a published settlement initiative which is offered by the Secretary of the Treasury or his delegate to a group of similarly situated taxpayers claiming benefits from the listed transaction, or

“(II) the taxpayer has entered into a settlement agreement pursuant to such an initiative with respect to the tax liability arising in connection with the listed transaction.

Subclause (I) shall not apply to the taxpayer if, after May 9, 2005, the taxpayer withdraws from, or terminates, participation in the initiative or the Secretary or his delegate determines that a settlement agreement will not be reached pursuant to the initiative within a reasonable period of time.

“(iii) CLOSED TRANSACTIONS.—Clause (i) shall not apply to a listed transaction if, as of May 9, 2005—

“(I) the assessment of all Federal income taxes for the taxable year in which the tax liability to which the interest relates arose is prevented by the operation of any law or rule of law, or

“(II) a closing agreement under section 7121 has been entered into with respect to the tax liability arising in connection with the listed transaction.”

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 to which it relates.

**SEC. 5511. MODIFICATIONS OF EFFECTIVE DATES OF LEASING PROVISIONS OF THE AMERICAN JOBS CREATION ACT OF 2004.**

(a) REPEAL OF EXCEPTION FOR QUALIFIED TRANSPORTATION PROPERTY.—Section 849(b) of the American Jobs Creation Act of 2004 is amended by striking paragraphs (1) and (2) and by redesignating paragraphs (3) and (4) as paragraphs (1) and (2).

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the American Jobs Creation Act of 2004.

**SEC. 5512. IMPOSITION OF MARK-TO-MARKET TAX ON INDIVIDUALS WHO EXPATRIATE.**

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

**“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

“(a) GENERAL RULES.—For purposes of this subtitle—

“(1) MARK TO MARKET.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

“(2) RECOGNITION OF GAIN OR LOSS.—In the case of any sale under paragraph (1)—

“(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

“(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

“(3) EXCLUSION FOR CERTAIN GAIN.—

“(A) IN GENERAL.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by \$600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be

treated in the same manner as an amount required to be includible in gross income.

“(B) COST-OF-LIVING ADJUSTMENT.—

“(i) IN GENERAL.—In the case of an expatriation date occurring in any calendar year after 2005, the \$600,000 amount under subparagraph (A) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting ‘calendar year 2004’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of \$1,000, such amount shall be rounded to the next lower multiple of \$1,000.

“(4) ELECTION TO CONTINUE TO BE TAXED AS UNITED STATES CITIZEN.—

“(A) IN GENERAL.—If a covered expatriate elects the application of this paragraph—

“(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

“(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

“(B) REQUIREMENTS.—Subparagraph (A) shall not apply to an individual unless the individual—

“(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

“(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

“(iii) complies with such other requirements as the Secretary may prescribe.

“(C) ELECTION.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

“(b) ELECTION TO DEFER TAX.—

“(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

“(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

“(3) TERMINATION OF POSTPONEMENT.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

“(4) SECURITY.—

“(A) IN GENERAL.—No election may be made under paragraph (1) with respect to

any property unless adequate security is provided to the Secretary with respect to such property.

“(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

“(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

“(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

“(5) WAIVER OF CERTAIN RIGHTS.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

“(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

“(7) INTEREST.—For purposes of section 6601—

“(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

“(B) section 6621(a)(2) shall be applied by substituting ‘5 percentage points’ for ‘3 percentage points’ in subparagraph (B) thereof.

“(c) COVERED EXPATRIATE.—For purposes of this section—

“(1) IN GENERAL.—Except as provided in paragraph (2), the term ‘covered expatriate’ means an expatriate.

“(2) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—

“(A) the individual—

“(i) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

“(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

“(B)(i) the individual’s relinquishment of United States citizenship occurs before such individual attains age 18½, and

“(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

“(d) EXEMPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

“(1) EXEMPT PROPERTY.—This section shall not apply to the following:

“(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

“(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

“(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

“(A) IN GENERAL.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

“(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

“(ii) an amount equal to the present value of the expatriate’s nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

“(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

“(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan’s behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

“(D) APPLICABLE PLANS.—This paragraph shall apply to—

“(i) any qualified retirement plan (as defined in section 4974(c)),

“(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

“(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

“(e) DEFINITIONS.—For purposes of this section—

“(1) EXPATRIATE.—The term ‘expatriate’ means—

“(A) any United States citizen who relinquishes citizenship, and

“(B) any long-term resident of the United States who—

“(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

“(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

“(2) EXPATRIATION DATE.—The term ‘expatriation date’ means—

“(A) the date an individual relinquishes United States citizenship, or

“(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

“(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

“(A) the date the individual renounces such individual’s United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

“(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

“(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

“(D) the date a court of the United States cancels a naturalized citizen’s certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

“(4) LONG-TERM RESIDENT.—The term ‘long-term resident’ has the meaning given to such term by section 877(e)(2).

“(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES’ INTERESTS IN TRUST.—

“(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

“(A) the individual shall not be treated as having sold such interest,

“(B) such interest shall be treated as a separate share in the trust, and

“(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

“(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

“(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual’s share in the trust.

“(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

“(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

“(i) paragraph (1) and subsection (a) shall not apply, and

“(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

“(B) AMOUNT OF TAX.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

“(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

“(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases under subparagraph (C)(ii) after the 30th day preceding the distribution.

“(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(i)—

“(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

“(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting ‘5 percentage points’ for ‘3 percentage points’ in subparagraph (B) thereof.

“(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

“(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

“(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from

the trust with respect to nonvested interests not held by such person.

“(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary’s interest in a trust is the amount of gain which would be allocable to such beneficiary’s vested and nonvested interests in the trust if the beneficiary held directly all assets allocable to such interests.

“(E) TAX DEDUCTED AND WITHHELD.—

“(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

“(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

“(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

“(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

“(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

“(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

“(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

“(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

“(i) QUALIFIED TRUST.—The term ‘qualified trust’ means a trust which is described in section 7701(a)(30)(E).

“(ii) VESTED INTEREST.—The term ‘vested interest’ means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

“(iii) NONVESTED INTEREST.—The term ‘nonvested interest’ means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

“(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

“(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

“(3) DETERMINATION OF BENEFICIARIES’ INTEREST IN TRUST.—

“(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary’s interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument



and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

“(B) OTHER DETERMINATIONS.—For purposes of this section—

“(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

“(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

“(I) the methodology used to determine that taxpayer's trust interest under this section, and

“(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

“(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

“(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

“(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

“(h) IMPOSITION OF TENTATIVE TAX.—

“(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

“(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

“(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

“(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

“(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

“(1) IMPOSITION OF LIEN.—

“(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

“(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate's income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

“(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

“(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

“(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

“(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

“(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.”

(b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

“(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

“(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

“(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

“(A) the gift, bequest, devise, or inheritance is—

“(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

“(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

“(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.”

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

“(49) TERMINATION OF UNITED STATES CITIZENSHIP.—

“(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(3).

“(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.”

(d) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

“(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation).”

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(1) (relating to disclosure of returns and return information) is amended by adding at the end the following new paragraph:

“(21) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General's delegate, the Secretary shall disclose whether an individual is in

compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).”

(B) SAFEGUARDS.—Section 6103(p)(4) (relating to safeguards) is amended by striking “or (20)” each place it appears and inserting “(20), or (21)”.

(3) EFFECTIVE DATES.—The amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(e) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

“(h) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after the date of the enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005.”

(2) Section 2107 is amended by adding at the end the following new subsection:

“(f) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.”

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

“(C) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.”

(f) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

“Sec. 877A. Tax responsibilities of expatriation.”

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after the date of the enactment of this Act.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after the date of the enactment of this Act, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

#### SEC. 5513. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) DISALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(B) by striking “If” and inserting:

“(1) TREBLE DAMAGES.—If”, and

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

“(2) PUNITIVE DAMAGES.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).”



(2) CONFORMING AMENDMENT.—The heading for section 162(g) is amended by inserting “OR PUNITIVE DAMAGES” after “LAWS”.

(b) INCLUSION IN INCOME OF PUNITIVE DAMAGES PAID BY INSURER OR OTHERWISE.—

(1) IN GENERAL.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

**“SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.**

“Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer’s liability (or agreement) to pay punitive damages.”.

(2) REPORTING REQUIREMENTS.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

“(f) SECTION TO APPLY TO PUNITIVE DAMAGES COMPENSATION.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person’s liability (or agreement) to pay punitive damages.”.

(3) CONFORMING AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

“Sec. 91. Punitive damages compensated by insurance or otherwise.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

**SEC. 5514. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERS WHICH ARE C CORPORATIONS.**

(a) IN GENERAL.—Section 163(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

“(8) ALLOCATIONS TO CERTAIN CORPORATE PARTNERS.—If a C corporation is a partner in a partnership—

“(A) the corporation’s allocable share of indebtedness and interest income of the partnership shall be taken into account in applying this subsection to the corporation, and

“(B) if a deduction is not disallowed under this subsection with respect to any interest expense of the partnership, this subsection shall be applied separately in determining whether a deduction is allowable to the corporation with respect to the corporation’s allocable share of such interest expense.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after the date of the enactment of this Act.

**SEC. 5515. PROHIBITION ON DEFERRAL OF GAIN FROM THE EXERCISE OF STOCK OPTIONS AND RESTRICTED STOCK GAINS THROUGH DEFERRED COMPENSATION ARRANGEMENTS.**

(a) IN GENERAL.—Section 83 (relating to property transferred in connection with performance of services) is amended by adding at the end the following new subsection:

“(i) PROHIBITION ON ADDITIONAL DEFERRAL THROUGH DEFERRED COMPENSATION ARRANGEMENTS.—If a taxpayer exchanges—

“(1) an option to purchase employer securities—

“(A) to which subsection (a) applies, or

“(B) which is described in subsection (e)(3), or

“(2) employer securities or any other property based on employer securities transferred to the taxpayer,

for a right to receive future payments, then, notwithstanding any other provision of this title, there shall be included in gross income for the taxable year of the exchange an

amount equal to the present value of such right (or such other amount as the Secretary may by regulations specify). For purposes of this subsection, the term ‘employer securities’ includes any security issued by the employer.”.

(b) CONTROLLED GROUP RULES.—Section 414(t)(2) is amended by inserting “83(i),” after “79.”.

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

**PART II—ECONOMIC SUBSTANCE DOCTRINE**

**SEC. 5521. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.**

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

“(o) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

“(1) GENERAL RULES.—

“(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

“(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

“(i) IN GENERAL.—A transaction has economic substance only if—

“(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer’s economic position, and

“(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

“(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

“(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

“(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

“(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

“(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

“(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

“(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

“(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party’s economic income or gain, or

“(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

“(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) ECONOMIC SUBSTANCE DOCTRINE.—The term ‘economic substance doctrine’ means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

“(B) TAX-INDIFFERENT PARTY.—The term ‘tax-indifferent party’ means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person’s liability under subtitle A.

“(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

“(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

“(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

“(I) depreciation,

“(II) any tax credit, or

“(III) any other deduction as provided in guidance by the Secretary, and

“(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

“(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

“(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

**SEC. 5522. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.**

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

**“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.**

“(a) IMPOSITION OF PENALTY.—If a taxpayer has a noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

“(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting ‘20 percent’ for ‘40 percent’ with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant

facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

“(C) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘noneconomic substance transaction understatement’ means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

“(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term ‘noneconomic substance transaction’ means any transaction if—

“(A) there is a lack of economic substance (within the meaning of section 7701(o)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(o)(2), or

“(B) the transaction fails to meet the requirements of any similar rule of law.

“(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

“(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

“(2) APPLICABLE RULES.—The rules of paragraphs (2) and (3) of section 6707A(d) shall apply for purposes of paragraph (1).

“(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

“(f) CROSS REFERENCES.—

“(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

“(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).”.

(b) COORDINATION WITH OTHER UNDERSTATEMENTS AND PENALTIES.—

(1) The second sentence of section 6662(d)(2)(A) is amended by inserting “and without regard to items with respect to which a penalty is imposed by section 6662B” before the period at the end.

(2) Subsection (e) of section 6662A is amended—

(A) in paragraph (1), by inserting “and noneconomic substance transaction understatements” after “reportable transaction understatements” both places it appears,

(B) in paragraph (2)(A), by inserting “and a noneconomic substance transaction understatement” after “reportable transaction understatement”,

(C) in paragraph (2)(B), by inserting “6662B or” before “6663”,

(D) in paragraph (2)(C)(i), by inserting “or section 6662B” before the period at the end,

(E) in paragraph (2)(C)(ii), by inserting “and section 6662B” after “This section”,

(F) in paragraph (3), by inserting “or noneconomic substance transaction understatement” after “reportable transaction understatement”, and

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

“(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term ‘noneconomic substance transaction understatement’ has the meaning given such term by section 6662B(c).”.

(3) Subsection (e) of section 6707A is amended—

(A) by striking “or” at the end of subparagraph (B), and

(B) by striking subparagraph (C) and inserting the following new subparagraphs:

“(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction, or

“(D) is required to pay a penalty under section 6662(h) with respect to any transaction and would (but for section 6662A(e)(2)(C)) have been subject to penalty under section 6662A at a rate prescribed under section 6662A(c) or under section 6662B.”.

(c) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

“Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

#### SEC. 5523. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) IN GENERAL.—Section 163(m) (relating to interest on unpaid taxes attributable to nondisclosed reportable transactions) is amended—

(1) by striking “attributable” and all that follows and inserting the following: “attributable to—

“(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

“(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).”, and

(2) by inserting “AND NONECONOMIC SUBSTANCE TRANSACTIONS” in the heading thereof after “TRANSACTIONS”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after the date of the enactment of this Act in taxable years ending after such date.

#### PART III—IMPROVEMENTS IN EFFICIENCY AND SAFEGUARDS IN INTERNAL REVENUE SERVICE COLLECTION

##### SEC. 5531. WAIVER OF USER FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.

(a) IN GENERAL.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

“(e) WAIVER OF USER FEES FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.—In the case of a taxpayer who enters into an installment agreement in which automated installment payments are agreed to, the Secretary shall waive the fee (if any) for entering into the installment agreement.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date which is 180 days after the date of the enactment of this Act.

##### SEC. 5532. TERMINATION OF INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—Section 6159(b)(4) (relating to failure to pay an installment or any other tax liability when due or to provide requested financial information) is amended by striking “or” at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (E), and by inserting after subparagraph (B) the following:

“(C) to make a Federal tax deposit under section 6302 at the time such deposit is required to be made,

“(D) to file a return of tax imposed under this title by its due date (including extensions), or”.

(b) CONFORMING AMENDMENT.—The heading for section 6159(b)(4) is amended by striking “FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION” and inserting “FAILURE TO MAKE PAYMENTS OR DEPOSITS OR FILE RETURNS WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION”.

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

##### SEC. 5533. OFFICE OF CHIEF COUNSEL REVIEW OF OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—Section 7122(b) (relating to record) is amended by striking “Whenever a compromise” and all that follows through “his delegate” and inserting “If the Secretary determines that an opinion of the General Counsel for the Department of the Treasury, or the Counsel’s delegate, is required with respect to a compromise, there shall be placed on file in the office of the Secretary such opinion”.

(b) CONFORMING AMENDMENTS.—Section 7122(b) is amended by striking the second and third sentences.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers-in-compromise submitted or pending on or after the date of the enactment of this Act.

##### SEC. 5534. PARTIAL PAYMENTS REQUIRED WITH SUBMISSION OF OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—Section 7122 (relating to compromises), as amended by this Act, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

“(c) RULES FOR SUBMISSION OF OFFERS-IN-COMPROMISE.—

“(1) PARTIAL PAYMENT REQUIRED WITH SUBMISSION.—

“(A) LUMP-SUM OFFERS.—

“(i) IN GENERAL.—The submission of any lump-sum offer-in-compromise shall be accompanied by the payment of 20 percent of amount of such offer.

“(ii) LUMP-SUM OFFER-IN-COMPROMISE.—For purposes of this section, the term ‘lump-sum offer-in-compromise’ means any offer of payments made in 5 or fewer installments.

“(B) PERIODIC PAYMENT OFFERS.—The submission of any periodic payment offer-in-compromise shall be accompanied by the payment of the amount of the first proposed installment and each proposed installment due during the period such offer is being evaluated for acceptance and has not been rejected by the Secretary. Any failure to make a payment required under the preceding sentence shall be deemed a withdrawal of the offer-in-compromise.

“(2) RULES OF APPLICATION.—

“(A) USE OF PAYMENT.—The application of any payment made under this subsection to the assessed tax or other amounts imposed under this title with respect to such tax may be specified by the taxpayer.

“(B) NO USER FEE IMPOSED.—Any user fee which would otherwise be imposed under this section shall not be imposed on any offer-in-compromise accompanied by a payment required under this subsection.”.

(b) ADDITIONAL RULES RELATING TO TREATMENT OF OFFERS.—

(1) UNPROCESSABLE OFFER IF PAYMENT REQUIREMENTS ARE NOT MET.—Paragraph (3) of section 7122(d) (relating to standards for evaluation of offers), as redesignated by subsection (a), is amended by striking “; and” at the end of subparagraph (A) and inserting a comma, by striking the period at the end of subparagraph (B) and inserting “, and”, and

by adding at the end the following new subparagraph:

“(C) any offer-in-compromise which does not meet the requirements of subsection (c) shall be returned to the taxpayer as unprocessable.”.

(2) DEEMED ACCEPTANCE OF OFFER NOT REJECTED WITHIN CERTAIN PERIOD.—Section 7122, as amended by subsection (a), is amended by adding at the end the following new subsection:

“(g) DEEMED ACCEPTANCE OF OFFER NOT REJECTED WITHIN CERTAIN PERIOD.—Any offer-in-compromise submitted under this section shall be deemed to be accepted by the Secretary if such offer is not rejected by the Secretary before the date which is 24 months after the date of the submission of such offer (12 months for offers-in-compromise submitted after the date which is 5 years after the date of the enactment of this subsection). For purposes of the preceding sentence, any period during which any tax liability which is the subject of such offer-in-compromise is in dispute in any judicial proceeding shall not be taken in to account in determining the expiration of the 24-month period (or 12-month period, if applicable).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act.

#### SEC. 5535. JOINT TASK FORCE ON OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—The Secretary of the Treasury shall establish a joint task force—

(1) to review the Internal Revenue Service's determinations with respect to offers-in-compromise, including offers which raise equitable, public policy, or economic hardship grounds for compromise of a tax liability under section 7122 of the Internal Revenue Code of 1986,

(2) to review the extent to which the Internal Revenue Service has used its authority to resolve longstanding cases by forgoing penalties and interest which have accumulated as a result of delay in determining the taxpayer's liability,

(3) to provide recommendations as to whether the Internal Revenue Service's evaluation of offers-in-compromise should include—

(A) the taxpayer's compliance history,

(B) errors by the Internal Revenue Service with respect to the underlying tax, and

(C) wrongful acts by a third party which gave rise to the liability, and

(4) to annually report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (beginning in 2006) regarding such review and recommendations.

(b) MEMBERS OF JOINT TASK FORCE.—The membership of the joint task force under subsection (a) shall consist of 1 representative each from the Department of the Treasury, the Internal Revenue Service Oversight Board, the Office of the Chief Counsel for the Internal Revenue Service, the Office of the Taxpayer Advocate, the Office of Appeals, and the division of the Internal Revenue Service charged with operating the offer-in-compromise program.

(c) REPORT OF NATIONAL TAXPAYER ADVOCATE.—

(1) IN GENERAL.—Clause (ii) of section 7803(c)(2)(B) (relating to annual reports) is amended by striking “and” at the end of subclause (X), by redesignating subclause (XI) as subclause (XII), and by inserting after subclause (X) the following new subclause:

“(XI) include a list of the factors taxpayers have raised to support their claims for offers-in-compromise relief, the number of such offers submitted, accepted, and rejected, the number of such offers appealed,

the period during which review of such offers have remained pending, and the efforts the Internal Revenue Service has made to correctly identify such offers, including the training of employees in identifying and evaluating such offers.”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to reports in calendar year 2006 and thereafter.

#### Subtitle F—Additional Revenue Provisions PART I—GENERAL PROVISIONS

##### SEC. 5601. SUSPENSION OF TRANSFERS FROM HIGHWAY TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.

(a) IN GENERAL.—Section 9503(c)(2)(A) (relating to transfers from Highway Trust Fund for certain repayments and credits) is amended—

(1) by striking “July 1, 2006” in clause (i) and inserting “July 1, 2012”,

(2) by striking “October 1, 2005” in the matter following clause (i)(III) and inserting “April 1, 2005, or for periods ending after September 30, 2009, and before October 1, 2011”, and

(3) by striking “October 1, 2005” in clause (ii) and inserting “April 1, 2005, or used after September 30, 2009, and before October 1, 2011”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid for which no transfer has been made before April 1, 2005.

##### SEC. 5602. TEMPORARY DEDICATION OF GAS GUZZLER TAX TO HIGHWAY TRUST FUND.

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

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

(b) TEMPORARY PERIOD FOR DEDICATION.—Section 9503(b)(4) (relating to certain taxes not transferred to Highway Trust Fund) is amended by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively, and by inserting after subparagraph (A) the following new subparagraph:

“(B) section 4064 with respect to taxes imposed after September 30, 2009.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxes imposed on and after July 1, 2005.

#### PART II—PROVISIONS TO COMBAT FUEL FRAUD

##### SEC. 5611. 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), as amended by this Act, 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) 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), as amended by this Act, 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)”, and

(iii) 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 other than aviation gasoline”,

(B) by striking “aviation-grade kerosene” in paragraph (2) and inserting “liquid 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 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 to the ultimate vendor of such kerosene, 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 (1) 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(1)(5)(B)” and inserting “section 6427(1)(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 (1)(5)” in the last sentence and inserting “subsections (b)(4), (1)(5), and (1)(6)”.

(E) Paragraph (4) of section 6427(1) 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(1)(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), as amended by this Act, 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 from time to time 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 sections 4041 and 4081 with respect to fuels used in a nontaxable use (as described in section 6427(1)(2)(B)) to the extent such amounts exceed the amounts paid with respect to such use under paragraphs (4) and (5) of section 6427(1).”.

(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) EFFECTIVE DATE.—The amendments made by this section shall apply to fuels or liquids removed, entered, or sold after September 30, 2005.

#### SEC. 5612. REPEAL OF ULTIMATE VENDOR REFUND CLAIMS WITH RESPECT TO FARMING.

(a) IN GENERAL.—Subparagraph (A) of section 6427(1)(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 5611, 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(1), 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. 5613. REFUNDS OF EXCISE TAXES ON EX-EMPT SALES OF FUEL BY CREDIT CARD.

(a) 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 sale 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 assure the ultimate vendor of reimbursement of such tax.”.

(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.”.

(b) DIESEL FUEL OR KEROSENE.—Paragraph (6) of section 6427(1) (relating to nontaxable uses of diesel fuel and kerosene), as redesignated by section 5611, 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 sale 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) or (B)), but only if such person meets the requirements of clauses (i), (ii), and (iii) of section 6416(a)(4)(B).”.

(c) 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 re-

fund 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”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 2005.

#### SEC. 5614. ADDITIONAL REQUIREMENT FOR EX-EMPT PURCHASES.

(a) STATE AND LOCAL GOVERNMENTS.—

(1) Subparagraph (C) of section 6416(b)(2) (relating to specified uses and resales) is amended to read as follows:

“(C) sold to a State or local government for the exclusive use of a State or local government (as defined in section 4221(d)(4) and certified as such by the State) or sold to a qualified volunteer fire department (as defined in section 150(e)(2) and certified as such by the State) for its exclusive use;”.

(2) Section 4041(g)(2) (relating to other exemptions) is amended by striking “or the District of Columbia” and inserting “the District of Columbia, or a qualified volunteer fire department (as defined in section 150(e)(2)) (and certified as such by the State or the District of Columbia)”.

(b) NONPROFIT EDUCATIONAL ORGANIZATIONS.—

(1) Section 6416(b)(2)(D) is amended by inserting “(as defined in section 4221(d)(5) and certified to be in good standing by the State in which such organization is providing educational services)” after “organization”.

(2) Section 4041(g)(4) is amended—

(A) by inserting “(certified to be in good standing by the State in which such organization is providing educational services)” after “organization” the first place it appears, and

(B) by striking “use by a” and inserting “use by such a”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 2005.

#### SEC. 5615. 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) **CLERICAL AMENDMENTS.**—The item relating to section 6719 in the table of sections for part I of subchapter B of chapter 68 and the item relating to section 7232 in the table of sections for part II of subchapter A 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. 5616. 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. 5617. REGISTRATION OF DEEP-DRAFT VESSELS.**

In applying section 4101 of the Internal Revenue Code of 1986 on and after the date of the enactment of this Act, the Secretary of the Treasury shall require the registration under such section of every operator of a vessel described in section 4042(c)(1) of such Code.

**SEC. 5618. TAXATION OF GASOLINE BLENDSTOCKS AND KEROSENE.**

With respect to fuel entered or removed after September 30, 2005, the Secretary of the Treasury shall, in applying section 4083 of the Internal Revenue Code of 1986—

(1) prohibit the nonbulk entry or removal of any gasoline blend stock without the imposition of tax under section 4081 of such Code, and

(2) include mineral spirits in the definition of kerosene.

**SEC. 5619. NONAPPLICATION OF EXPORT EXEMPTION TO DELIVERY OF FUEL TO MOTOR VEHICLES REMOVED FROM UNITED STATES.**

(a) **IN GENERAL.**—Section 4221(d)(2) (defining export) is amended by adding at the end the following new sentence: "Such term does not include the delivery of a taxable fuel (as defined in section 4083(a)(1)) into a fuel tank

of a motor vehicle which is shipped or driven out of the United States."

(b) **CONFORMING AMENDMENTS.**—

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

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

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

**SEC. 5620. 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.

**TITLE VI—PUBLIC TRANSPORTATION**

**SEC. 6001. SHORT TITLE.**

This title may be cited as the "Federal Public Transportation Act of 2005".

**SEC. 6002. 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.**—Except for sections 5301(f), 5302(a)(7), and 5315, chapter 53, including the chapter analysis, is amended by striking "mass transportation" each place it appears and inserting "public transportation".

**SEC. 6003. POLICIES, FINDINGS, AND PURPOSES.**

(a) **DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.**—Section 5301(a) is amended to read as follows:

"(a) **DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.**—It is in the economic interest of the United States

to foster the development and revitalization of public transportation systems, which are coordinated with other modes of transportation, that maximize the efficient, secure, and safe mobility of individuals and minimize environmental impacts."

(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 "improved mass" and inserting "improved public"; and

(B) by striking "public and private mass transportation companies" and inserting "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 "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. 6004. DEFINITIONS.**

Section 5302(a) is amended—

(1) in paragraph (1)—

(A) in subparagraph (G)(i), by inserting "including the intercity bus and intercity rail portions of such facility or mall," after "transportation mall";

(B) in subparagraph (G)(ii), by inserting "except for the intercity bus portion of intermodal facilities or malls," after "commercial revenue-producing facility";

(C) in subparagraph (H)—

(i) by striking "and" after "innovative" and inserting "or"; and

(ii) by striking "or" after the semicolon at the end;

(D) in subparagraph (I), by striking the period at the end and inserting a semicolon; and

(E) by adding at the end the following:

"(J) crime prevention and security, including—

"(i) projects to refine and develop security and emergency response plans; or

"(ii) projects to detect chemical or biological agents in public transportation;

"(K) conducting emergency response drills with public transportation agencies and local first response agencies or security training for public transportation employees, except for expenses relating to operations; or

"(L) 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.";

(2) by redesignating paragraphs (8) through (17) as paragraphs (9) through (18), respectively;

(3) by striking paragraph (7) and inserting the following:

“(7) **MASS TRANSPORTATION.**—The term ‘mass transportation’ means public transportation.

“(8) **MOBILITY MANAGEMENT.**—The term ‘mobility management’ means a short-range planning or management activity or project that does not include operating public transportation services and—

“(A) improves coordination among public transportation providers, including private companies engaged in public transportation;

“(B) addresses customer needs by tailoring public transportation services to specific market niches; or

“(C) manages public transportation demand.”;

(4) by amending paragraph (11), as redesignated, to read as follows:

“(11) **PUBLIC TRANSPORTATION.**—The term ‘public transportation’ means transportation by a conveyance that provides local regular and continuing general or special transportation to the public, but does not include school bus, charter bus, intercity bus or passenger rail, or sightseeing transportation.”;

(5) in subparagraphs (A) and (E) of paragraph (16), as redesignated, by striking “and” each place it appears and inserting “or”; and

(6) by amending paragraph (18), as redesignated, to read as follows:

“(18) **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.”.

#### **SEC. 6005. METROPOLITAN TRANSPORTATION PLANNING.**

Section 5303 is amended to read as follows:

##### **“§ 5303. Metropolitan transportation planning**

“(a) **DEFINITIONS.**—As used in this section and in section 5304, the following definitions shall apply:

“(1) **CONSULTATION.**—A ‘consultation’ occurs when 1 party—

“(A) confers with another identified party in accordance with an established process;

“(B) prior to taking action, considers the views of the other identified party; and

“(C) periodically informs that party about action taken.

“(2) **METROPOLITAN PLANNING AREA.**—The term ‘metropolitan planning area’ means the geographic area determined by agreement between the metropolitan planning organization and the Governor under subsection (d).

“(3) **METROPOLITAN PLANNING ORGANIZATION.**—The term ‘metropolitan planning organization’ means the Policy Board of the organization designated under subsection (c).

“(4) **NONMETROPOLITAN AREA.**—The term ‘nonmetropolitan area’ means any geographic area outside all designated metropolitan planning areas.

“(5) **NONMETROPOLITAN LOCAL OFFICIAL.**—The term ‘nonmetropolitan local official’ means any elected or appointed official of general purpose local government located in a nonmetropolitan area who is responsible for transportation services for such local government.

“(b) **GENERAL REQUIREMENTS.**—

“(1) **DEVELOPMENT OF PLANS AND PROGRAMS.**—To accomplish the objectives described in section 5301(a), each metropolitan planning organization, in cooperation with the State and public transportation operators, shall develop transportation plans and programs for metropolitan planning areas of the State in which it is located.

“(2) **CONTENTS.**—The plans and programs developed under paragraph (1) for each metropolitan planning area shall provide for the development and integrated management

and operation of transportation systems and facilities (including 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 programs 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.

“(4) **PLANNING AND PROJECT DEVELOPMENT.**—The metropolitan planning organization, the State Department of Transportation, and the appropriate public transportation provider shall agree upon the approaches that will be used to evaluate alternatives and identify transportation improvements that address the most complex problems and pressing transportation needs in the metropolitan area.

“(c) **DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.**—

“(1) **IN GENERAL.**—To carry out the transportation planning process under this section, a metropolitan planning organization shall be designated for each urbanized area—

“(A) by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area); or

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

“(2) **STRUCTURE.**—Each metropolitan planning organization designated under paragraph (1) that serves an area identified as a transportation management area shall consist of—

“(A) local elected officials;

“(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; 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—

“(A) to develop plans and programs for adoption by a metropolitan planning organization; and

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

“(4) **CONTINUING DESIGNATION.**—The 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 combined represent not less than 75 percent of the existing planning area population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area) 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 metropoli-

tan planning organization for the area appropriate.

“(d) **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 Office of Management and Budget.

“(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.), the boundaries of the metropolitan planning area in existence as of the date of enactment of the Federal Public Transportation Act of 2005 shall be retained, except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in accordance with paragraph (5).

“(5) **NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.**—If an urbanized area is designated after the date of enactment of this paragraph in a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

“(A) shall be established in accordance with subsection (c)(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 identified under the Clean Air Act (42 U.S.C. 7401 et seq.) for ozone or carbon monoxide.

“(e) **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.**—States are authorized—

“(A) to enter into agreements or compacts with other States, which agreements or compacts are 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 (c), to carry out the transportation planning process required by this section, California and Nevada may designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governor of the State of California, the Governor of the State of Nevada, and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area), 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 under other provisions of title 23 and this chapter, not more than 1 percent of the funds allocated under section 202 of title 23 may 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 title 23.

“(f) COORDINATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

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

“(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE METROPOLITAN PLANNING AREAS.—If a transportation improvement funded from the highway trust fund is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans regarding the transportation improvement.

“(3) INTERREGIONAL AND INTERSTATE PROJECT IMPACTS.—Planning for National Highway System, commuter rail projects, or other projects with substantial impacts outside a single metropolitan planning area or State shall be coordinated directly with the affected, contiguous, metropolitan planning organizations and States.

“(4) COORDINATION WITH OTHER PLANNING PROCESSES.—

“(A) IN GENERAL.—The Secretary shall encourage each metropolitan planning organization to coordinate its planning process, to the maximum extent practicable, with those

officials responsible for other types of planning activities that are affected by transportation, including State and local land use planning, economic development, environmental protection, airport operations, housing, and freight.

“(B) OTHER CONSIDERATIONS.—The metropolitan planning process shall develop transportation plans with due consideration of, and in coordination with, other related planning activities within the metropolitan area. This should include the design and delivery of transportation services within the metropolitan area that are provided by—

“(i) recipients of assistance under this chapter;

“(ii) 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

“(iii) recipients of assistance under section 204 of title 23.

“(g) SCOPE OF PLANNING PROCESS.—

“(1) IN GENERAL.—The goals and objectives developed through the metropolitan planning process for a metropolitan planning area under this section shall address, in relation to the performance of the metropolitan area transportation systems—

“(A) supporting the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency, including through services provided by public and private operators;

“(B) increasing the safety of the transportation system for motorized and non-motorized users;

“(C) increasing the security of the transportation system for motorized and non-motorized users;

“(D) increasing the accessibility and mobility of people and for freight, including through services provided by public and private operators;

“(E) protecting and enhancing the environment (including the protection of habitat, water quality, and agricultural and forest land, while minimizing invasive species), promoting energy conservation, and promoting consistency between transportation improvements and State and local land use planning and economic development patterns (including minimizing adverse health effects from mobile source air pollution and promoting the linkage of the transportation and development goals of the metropolitan area);

“(F) enhancing the integration and connectivity of the transportation system, across and between modes, for people and freight, including through services provided by public and private operators;

“(G) promoting efficient system management and operation; and

“(H) emphasizing the preservation and efficient use of the existing transportation system, including services provided by public and private operators.

“(2) SELECTION OF FACTORS.—After soliciting and considering any relevant public comments, the metropolitan planning organization shall determine which of the factors described in paragraph (1) are most appropriate to consider.

“(3) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under title 23, this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a transportation improvement plan, a project or strategy, or the certification of a planning process.

“(h) DEVELOPMENT OF TRANSPORTATION PLAN.—

“(1) IN GENERAL.—

“(A) REQUIREMENT.—Each metropolitan planning organization shall develop a transportation plan for its metropolitan planning area in accordance with this subsection, and update such plan—

“(i) not less frequently than once every 4 years in areas designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)), and in areas that were nonattainment that have been redesignated as attainment, in accordance with paragraph (3) of such section, with a maintenance plan under section 175A of the Clean Air Act (42 U.S.C. 7505a); or

“(ii) not less frequently than once every 5 years in areas designated as attainment, as defined in section 107(d) of the Clean Air Act.

“(B) COORDINATION FACTORS.—In developing the transportation plan under this section, each metropolitan planning organization shall consider the factors described in subsection (f) over a 20-year forecast period.

“(C) FINANCIAL ESTIMATES.—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.

“(2) MITIGATION ACTIVITIES.—

“(A) IN GENERAL.—A transportation plan under this subsection shall include a discussion of—

“(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetland, and other environmental functions; and

“(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

“(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

“(3) CONTENTS.—A transportation plan under this subsection shall be in a form that the Secretary determines to be appropriate and shall contain—

“(A) an identification of transportation facilities, including major roadways, transit, multimodal and intermodal facilities, intermodal connectors, and other relevant facilities identified by the metropolitan planning organization, which should function as an integrated metropolitan transportation system, emphasizing those facilities that serve important national and regional transportation functions;

“(B) a financial plan that—

“(i) demonstrates how the adopted transportation plan can be implemented;

“(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan;

“(iii) recommends any additional financing strategies for needed projects and programs; and

“(iv) may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if approved by the Secretary and reasonable additional resources beyond those identified in the financial plan were available;

“(C) 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;

“(D) capital investment and other strategies to preserve the existing metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs; and



“(E) proposed transportation and transit enhancement activities.

“(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—

“(i) comparison of transportation plans with State conservation plans or with maps, if available;

“(ii) comparison of transportation plans to inventories of natural or historic resources, if available; or

“(iii) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkage areas.

“(5) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas in non-attainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), 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.

“(6) APPROVAL OF THE TRANSPORTATION PLAN.—Each transportation plan prepared by a metropolitan planning organization shall be—

“(A) approved by the metropolitan planning organization; and

“(B) submitted to the Governor for information purposes at such time and in such manner as the Secretary may reasonably require.

“(i) PARTICIPATION BY INTERESTED PARTIES.—

“(1) DEVELOPMENT OF PARTICIPATION PLAN.—Not less frequently than every 4 years, each metropolitan planning organization shall develop and adopt a plan for participation in the process for developing the metropolitan transportation plan and programs by—

“(A) citizens;

“(B) affected public agencies;

“(C) representatives of public transportation employees;

“(D) freight shippers;

“(E) providers of freight transportation services;

“(F) private providers of transportation;

“(G) representatives of users of public transit;

“(H) representatives of users of pedestrian walkways and bicycle transportation facilities; and

“(I) other interested parties.

“(2) CONTENTS OF PARTICIPATION PLAN.—The participation plan—

“(A) shall be developed in a manner the Secretary determines to be appropriate;

“(B) shall be developed in consultation with all interested parties; and

“(C) shall provide that all interested parties have reasonable opportunities to comment on—

“(i) the process for developing the transportation plan; and

“(ii) the contents of the transportation plan.

“(3) METHODS.—The participation plan shall provide that the metropolitan planning organization shall, to the maximum extent practicable—

“(A) hold any public meetings at convenient and accessible locations and times;

“(B) employ visualization techniques to describe plans; and

“(C) make public information available in electronically accessible format and means, such as the World Wide Web.

“(4) CERTIFICATION.—Before the metropolitan planning organizations approve a transportation plan or program, each metropolitan planning organization shall certify that it has complied with the requirements of the participation plan it has adopted.

“(j) TRANSPORTATION IMPROVEMENT PROGRAM.—

“(1) DEVELOPMENT AND UPDATE.—

“(A) IN GENERAL.—In cooperation with the State and affected operators of public transportation, a metropolitan planning organization designated for a metropolitan planning area shall develop a transportation improvement program for the area.

“(B) PARTICIPATION.—In developing the transportation improvement program, the metropolitan planning organization, in cooperation with the Governor and any affected operator of public transportation, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i).

“(C) UPDATES.—The transportation improvement program shall be updated not less than once every 4 years and shall be approved by the metropolitan planning organization and the Governor.

“(D) FUNDING ESTIMATE.—In developing the transportation improvement program, the metropolitan planning organization, operators of public transportation, and the State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

“(E) PROJECT ADVANCEMENT.—Projects listed in the transportation improvement program may be selected for advancement consistent with the project selection requirements.

“(F) MAJOR AMENDMENTS.—Major amendments to the list described in subparagraph (E), including the addition, deletion, or concept and scope change of a regionally significant project, may not be advanced without—

“(i) appropriate public involvement;

“(ii) financial planning;

“(iii) transportation conformity analyses; and

“(iv) a finding by the Federal Highway Administration and Federal Transit Administration that the amended plan was produced in a manner consistent with this section.

“(2) INCLUDED PROJECTS.—

“(A) PROJECTS UNDER CHAPTER 1 OF TITLE 23 AND THIS CHAPTER.—A transportation improvement program developed under this section for a metropolitan area shall include the projects and strategies within the metropolitan area that are proposed for funding under chapter 1 of title 23 and this chapter.

“(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 metropolitan transportation improvement program.

“(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not regionally significant shall be grouped in 1 line item or identified individually in the metropolitan transportation improvement program.

“(3) SELECTION OF PROJECTS.—

“(A) IN GENERAL.—Except as otherwise provided under subsection (k)(4), the selection of federally funded projects in metropolitan planning areas shall be carried out, from the approved transportation plan—

“(i) by the State, in the case of projects under chapter 1 of title 23 or section 5308, 5310, 5311, or 5317 of this title;

“(ii) by the designated recipient, in the case of projects under section 5307; and

“(iii) in cooperation with the metropolitan planning organization.

“(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, a project may be advanced from the transportation improvement program in place of another project in the same transportation improvement program without the approval of the Secretary.

“(4) PUBLICATION REQUIREMENTS.—

“(A) PUBLICATION OF TRANSPORTATION IMPROVEMENT PROGRAM.—A transportation improvement program 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.

“(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 4 years shall be published or otherwise made available for public review by the cooperative effort of the State, transit operator, and the metropolitan planning organization. This listing shall be consistent with the funding categories identified in the transportation improvement program.

“(C) RULEMAKING.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall issue regulations specifying—

“(i) the types of data to be included in the list described in subparagraph (B), including—

“(I) the name, type, purpose, and geocoded location of each project;

“(II) the Federal, State, and local identification numbers assigned to each project;

“(III) amounts obligated and expended on each project, sorted by funding source and transportation mode, and the date on which each obligation was made; and

“(IV) the status of each project; and

“(ii) the media through which the list described in subparagraph (B) will be made available to the public, including written and visual components for each of the projects listed.

“(k) TRANSPORTATION MANAGEMENT AREAS.—

“(1) REQUIRED IDENTIFICATION.—The Secretary shall identify each urbanized area with a population of more than 200,000 individuals as a transportation management area.

“(2) TRANSPORTATION PLANS AND PROGRAMS.—Transportation plans and programs for a metropolitan planning area serving a transportation management area shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and transit operators.

“(3) CONGESTION MANAGEMENT SYSTEM.—

“(A) IN GENERAL.—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 title 23 and this chapter through the use of travel demand reduction and operational management strategies.

“(B) PHASE-IN SCHEDULE.—The Secretary shall establish a phase-in schedule that provides for full compliance with the requirements of this section not later than 1 year after the identification of transportation management areas under paragraph (1).

“(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 (except for 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 transportation improvement program by the metropolitan planning organization designated for the area in consultation with the State and any affected public transit operator.

“(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects on the National Highway System carried out within the boundaries of a metropolitan planning area serving a transportation management area 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 transportation improvement program 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 Federal law; and

“(ii) subject to subparagraph (B), certify, not less frequently than once every 4 years in nonattainment and maintenance areas (as defined under the Clean Air Act) and not less frequently than once every 5 years in attainment areas (as defined under such Act), 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 all other applicable Federal law; and

“(ii) a transportation plan and a transportation improvement program for the metropolitan planning area have been approved by the metropolitan planning organization and the Governor.

“(C) PENALTY FOR FAILING TO CERTIFY.—

“(i) WITHHOLDING PROJECT FUNDS.—If the metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold any funds otherwise available to the metropolitan planning area for projects funded under title 23 and this chapter.

“(ii) RESTORATION OF WITHHELD FUNDS.—Any funds withheld under clause (i) shall be restored to the metropolitan planning area when the metropolitan planning process is certified by the Secretary.

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

“(I) 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 transportation improvement program for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, after considering the

complexity of transportation problems in the area.

“(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

“(M) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

“(1) IN GENERAL.—Notwithstanding any other provisions of title 23 or this chapter, Federal funds may not be advanced for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) for any highway project that will result in a significant increase in carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management program.

“(2) APPLICABILITY.—This subsection applies to any nonattainment area within the metropolitan planning area boundaries determined under subsection (d).

“(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 that is not eligible under title 23 or this chapter.

“(o) AVAILABILITY OF FUNDS.—Funds set aside under section 104(f) of title 23 or section 5308 of this title shall be available to carry out this section.

“(p) CONTINUATION OF CURRENT REVIEW PRACTICE.—Any decision by the Secretary concerning a plan or program described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”

**SEC. 6006. STATEWIDE TRANSPORTATION PLANNING.**

Section 5304 is amended to read as follows:

**“§ 5304. Statewide transportation planning**

“(a) GENERAL REQUIREMENTS.—

“(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To support the policies described in section 5301(a), each State shall develop a statewide transportation plan (referred to in this section as a “Plan”) and a statewide transportation improvement program (referred to in this section as a “Program”) for all areas of the State subject to section 5303.

“(2) CONTENTS.—The Plan and the Program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including 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 Plan and the Program shall—

“(A) provide for the consideration of all modes of transportation and the policies described in section 5301(a); and

“(B) 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.—Each State shall—

“(1) coordinate planning under this section with—

“(A) the transportation planning activities under section 5303 for metropolitan areas of the State; and

“(B) other related statewide planning activities, including trade and economic development 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.—States may enter into agreements or compacts with other 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.

“(d) SCOPE OF PLANNING PROCESS.—

“(1) IN GENERAL.—Each State shall carry out a statewide transportation planning process that provides for the consideration of projects, strategies, and implementing projects 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 (including the protection of habitat, water quality, and agricultural and forest land, while minimizing invasive species), promote energy conservation, promote consistency between transportation improvements and State and local land use planning and economic development patterns, and improve the quality of life (including minimizing adverse health effects from mobile source air pollution and promoting the linkage of the transportation and development goals of the State);

“(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 and efficient use of the existing transportation system.

“(2) SELECTION OF PROJECTS AND STRATEGIES.—After soliciting and considering any relevant public comments, the State shall determine which of the projects and strategies described in paragraph (1) are most appropriate.

“(3) MITIGATION ACTIVITIES.—

“(A) IN GENERAL.—A transportation plan under this subsection shall include a discussion of—

“(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetland, and other environmental functions; and

“(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

“(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

“(4) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor described in paragraph (1) shall not be reviewable by any court under title 23, this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a Plan, a 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—

“(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 Plans, Programs, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

“(f) STATEWIDE TRANSPORTATION PLAN.—

“(1) DEVELOPMENT.—Each State shall develop a 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 PLANNING AREAS.—The Plan shall be developed for each metropolitan planning area in the State in cooperation with the metropolitan planning organization designated for the metropolitan planning 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 consultation process shall not require the review or approval of the Secretary.

“(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the 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 Plan shall be developed, as appropriate, in consultation with State and local agencies responsible for—

“(I) land use management;

“(II) natural resources;

“(III) environmental protection;

“(IV) conservation; and

“(V) historic preservation.

“(ii) COMPARISON AND CONSIDERATION.—Consultation under clause (i) shall involve—

“(I) comparison of transportation plans to State conservation plans or maps, if available;

“(II) comparison of transportation plans to inventories of natural or historic resources, if available; or

“(III) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkage areas.

“(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the Plan, the State shall—

“(A) 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, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed Plan; and

“(B) 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.

“(4) MITIGATION ACTIVITIES.—

“(A) IN GENERAL.—A Plan shall include a discussion of—

“(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetlands, and other environmental functions; and

“(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

“(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

“(5) TRANSPORTATION STRATEGIES.—A Plan shall identify transportation strategies necessary to efficiently serve the mobility needs of people.

“(6) FINANCIAL PLAN.—The Plan may include a financial plan that—

“(A) demonstrates how the adopted Plan can be implemented;

“(B) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Plan;

“(C) recommends any additional financing strategies for needed projects and programs; and

“(D) may include, for illustrative purposes, additional projects that would be included in the adopted Plan if reasonable additional resources beyond those identified in the financial plan were available.

“(7) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects described in paragraph (6)(D).

“(8) EXISTING SYSTEM.—The 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.

“(9) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each 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 Program for all areas of the State.

“(2) CONSULTATION WITH GOVERNMENTS.—

“(A) METROPOLITAN PLANNING AREAS.—With respect to each metropolitan planning area in the State, the Program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan planning 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 consultation process shall not require the review or approval of the Secretary.

“(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 transit, representatives of users of pedestrian walkways and bicycle transportation facilities, and other interested parties with a reasonable opportunity to comment on the proposed Program.

“(4) INCLUDED PROJECTS.—

“(A) IN GENERAL.—A 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.—

“(i) IN GENERAL.—The Program shall cover a minimum of 4 years, identify projects by year, be fiscally constrained by year, and be updated not less than once every 4 years.

“(ii) PUBLICATION.—An annual listing of projects for which funds have been obligated in the preceding 4 years 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) INDIVIDUAL IDENTIFICATION.—

“(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.

“(D) CONSISTENCY WITH STATEWIDE TRANSPORTATION PLAN.—Each project included in the list described in subparagraph (B) shall be—

“(i) consistent with the Plan developed under this section for the State;

“(ii) identical to the project or phase of the project as described in each year of the approved metropolitan transportation improvement program; and

“(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act (42 U.S.C. 7401 et seq.), if the project is carried out in an area designated as nonattainment for ozone or carbon monoxide under that Act.

“(E) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The Program shall not include a project, or an identified phase of a project, unless 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 Program may include a financial plan that—

“(i) demonstrates how the approved Program can be implemented;

“(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Program;

“(iii) recommends any additional financing strategies for needed projects and programs; and

“(iv) 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 described in subparagraph (F)(iv).

“(ii) REQUIRED APPROVAL BY THE SECRETARY.—A State shall not include any

project from the illustrative list of additional projects described in subparagraph (F)(iv) in an approved Program without the approval of the Secretary.

“(H) PRIORITIES.—The Program shall reflect the priorities for programming and expenditures of funds, including transportation and transit enhancement activities, required by title 23 and this chapter, and transportation control measures included in the State’s air quality implementation plan.

“(5) PROJECT SELECTION FOR AREAS WITH FEWER THAN 50,000 INDIVIDUALS.—

“(A) IN GENERAL.—Each State, in cooperation with the affected nonmetropolitan local officials with responsibility for transportation, shall select projects to be carried out in areas with fewer than 50,000 individuals from the approved Program (excluding projects carried out under the National Highway System, the bridge program, or the interstate maintenance program under title 23 or sections 5310 and 5311 of this title).

“(B) CERTAIN PROGRAMS.—Each State, in consultation with the affected nonmetropolitan local officials with responsibility for transportation, shall select, from the approved Program, projects to be carried out in areas with fewer than 50,000 individuals under the National Highway System, the bridge program, or the Interstate maintenance program under title 23 or under sections 5310 and 5311 of this title.

“(6) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL.—A Program developed under this subsection shall be reviewed and based on a current planning finding approved by the Secretary not less frequently than once every 4 years.

“(7) PLANNING FINDING.—Not less frequently than once every 4 years, the Secretary shall determine whether the transportation planning process through which Plans and Programs are developed are consistent with this section and section 5303.

“(8) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, a project included in the approved Program may be advanced in place of another project in the program without the approval of the Secretary.

“(h) FUNDING.—Funds set aside pursuant to section 104(i) of title 23 and section 5308 of this title shall be available to carry out this section.

“(i) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT SYSTEMS.—For purposes of this section and section 5303, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management system under section 5303(i)(3) if the Secretary determines that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of section 5303.

“(j) CONTINUATION OF CURRENT REVIEW PRACTICE.—Any decision by the Secretary under this section, regarding a metropolitan or statewide transportation plan or the Program, shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”

#### SEC. 6007. TRANSPORTATION MANAGEMENT AREAS.

Section 5305 is repealed.

#### SEC. 6008. PRIVATE ENTERPRISE PARTICIPATION.

Section 5306 is amended—

(1) in subsection (a)—

(A) by striking “5305 of this title” and inserting “5308”; and

(B) by inserting “, as determined by local policies, criteria, and decision making,” after “feasible”;

(2) in subsection (b) by striking “5303–5305 of this title” and inserting “5303, 5304, and 5308”; and

(3) by adding at the end the following:

“(c) REGULATIONS.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall issue regulations describing how the requirements under this chapter relating to subsection (a) shall be enforced.”.

#### SEC. 6009. 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.—Section 5307(a) is amended—

(1) by amending paragraph (2)(A) 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 designated under section 5303; or”;

(2) by adding at the end the following:

“(3) SUBRECIPIENT.—The term ‘sub-recipient’ means a State or local governmental authority, a nonprofit organization, or a private operator of public transportation service that may receive a Federal transit program grant indirectly through a recipient, rather than directly from the Federal Government.”.

(c) GENERAL AUTHORITY.—Section 5307(b) is amended—

(1) by amending paragraph (1) to read as follows:

“(1) IN GENERAL.—The Secretary of Transportation may award grants under this section for—

“(A) capital projects, including associated capital maintenance items;

“(B) planning, including mobility management;

“(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; and

“(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 1 State;

“(ii) the portion of the urbanized area includes only 1 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.”;

(2) by amending paragraph (2) to read as follows:

“(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 than 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), by striking “section” and all that follows and inserting “section, the recipient 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 “subsections (a) and (d) of section 5301 and sections 5303 through 5306”;

(4) in subparagraph (I) by striking “and” at the end;

(5) in subparagraph (J), by striking the period at the end and inserting “; and”; and

(6) by adding at the end the following:

“(K) if located in an urbanized area with a population of at least 200,000, will expend not less than 1 percent of the amount the recipient receives each fiscal year under this section for transit enhancement activities described in section 5302(a)(15).”

(e) GOVERNMENT'S SHARE OF COSTS.—Section 5307(e) is amended—

(1) by striking the first sentence and inserting the following:

“(1) CAPITAL PROJECTS.—A grant for a capital project under this section shall cover 80 percent of the net project cost.”;

(2) by striking “A grant for operating expenses” and inserting the following:

“(2) OPERATING EXPENSES.—A grant for operating expenses”;

(3) by striking the fourth sentence and inserting the following:

“(3) REMAINING COSTS.—The remainder of the net project cost shall be provided in cash from non-Federal sources or revenues derived from the sale of advertising and concessions and amounts received under a service agreement with a State or local social service agency or a private social service organization.”; and

(4) by adding at the end the following: “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, 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 under 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.”.

#### SEC. 6010. PLANNING PROGRAMS.

(a) IN GENERAL.—Section 5308 is amended to read as follows:

##### “§ 5308. Planning programs

“(a) GRANTS AUTHORIZED.—Under criteria established by the Secretary, the Secretary may award grants to States, authorities of the States, metropolitan planning organizations, and local governmental authorities, make agreements with other departments, agencies, or instrumentalities of the Government, or enter into contracts with private nonprofit or for-profit entities to—

“(1) develop transportation plans and programs;

“(2) plan, engineer, design, and evaluate a public transportation project; or

“(3) conduct technical studies relating to public transportation, including—

“(A) studies related to management, planning, operations, capital requirements, and economic feasibility;

“(B) evaluations of 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; and

“(D) other similar and related activities preliminary to, and in preparation for, constructing, acquiring, or improving the operation of facilities and equipment.

“(b) PURPOSE.—To the extent practicable, the Secretary shall ensure that amounts appropriated pursuant to 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.

“(c) METROPOLITAN PLANNING PROGRAM.—

“(1) ALLOCATIONS TO STATES.—

“(A) IN GENERAL.—The Secretary shall allocate 80 percent of the amount made available under subsection (g)(3)(A) to States to carry out sections 5303 and 5306 in a ratio equal to the population in urbanized areas in each State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census of population.

“(B) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the total amount allocated under this paragraph.

“(2) AVAILABILITY OF FUNDS.—A State receiving an allocation under paragraph (1) shall promptly distribute such funds to metropolitan planning organizations in the State under a formula—

“(A) developed by the State in cooperation with the metropolitan planning organizations;

“(B) approved by the Secretary of Transportation;

“(C) that considers population in urbanized areas; and

“(D) that provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section.

“(3) SUPPLEMENTAL ALLOCATIONS.—

“(A) IN GENERAL.—The Secretary shall allocate 20 percent of the amount made available under subsection (g)(3)(A) to States to supplement allocations made under paragraph (1) for metropolitan planning organizations.

“(B) ALLOCATION FORMULA.—Amounts under this paragraph shall be allocated under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities in complex metropolitan planning areas under sections 5303, 5304, and 5306.

“(d) STATE PLANNING AND RESEARCH PROGRAM.—

“(1) IN GENERAL.—The Secretary shall allocate amounts made available pursuant to subsection (g)(3)(B) to States for grants and contracts to carry out sections 5304, 5306, 5315, and 5322 so that each State receives an amount equal to the ratio of the population in urbanized areas in that State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census.

“(2) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the amount allocated under this subsection.

“(3) REALLOCATION.—A State may authorize part of the amount made available under this subsection to be used to supplement amounts available under subsection (c).

“(e) PLANNING CAPACITY BUILDING PROGRAM.—

“(1) ESTABLISHMENT.—The Secretary shall establish a Planning Capacity Building Program (referred to in this subsection as the “Program”) to support and fund innovative practices and enhancements in transportation planning.

“(2) PURPOSE.—The purpose of the Program shall be to promote activities that support and strengthen the planning processes required under this section and sections 5303 and 5304.

“(3) ADMINISTRATION.—The Program shall be administered by the Federal Transit Administration in cooperation with the Federal Highway Administration.

“(4) USE OF FUNDS.—

“(A) IN GENERAL.—Appropriations authorized under subsection (g)(1) to carry out this subsection may be used—

“(i) to provide incentive grants to States, metropolitan planning organizations, and public transportation operators; and

“(ii) to conduct research, disseminate information, and provide technical assistance.

“(B) GRANTS, CONTRACTS, COOPERATIVE AGREEMENTS.—In carrying out the activities described in subparagraph (A), the Secretary may—

“(i) expend appropriated funds directly; or

“(ii) award grants to, or enter into contracts, cooperative agreements, and other transactions with, a Federal agency, State agency, local governmental authority, association, nonprofit or for-profit entity, or institution of higher education.

“(f) GOVERNMENT'S SHARE OF COSTS.—Amounts made available to carry out subsections (c), (d), and (e) may not exceed 80 percent of the costs of the activity unless the Secretary of Transportation determines that it is in the interest of the Government not to require State or local matching funds.

“(g) ALLOCATION OF FUNDS.—Of the amounts made available under section 5338(b)(2)(B) for fiscal year 2006 and each fiscal year thereafter to carry out this section—

“(1) \$5,000,000 shall be allocated for the Planning Capacity Building Program established under subsection (e);

“(2) \$20,000,000 shall be allocated for grants under subsection (a)(2) for alternatives analyses required by section 5309(e)(2)(A); and

“(3) of the remaining amount—

“(A) 82.72 percent shall be allocated for the metropolitan planning program described in subsection (d); and

“(B) 17.28 percent shall be allocated to carry out subsection (b).

“(h) REALLOCATIONS.—Any amount allocated under this section that has not been used 3 years after the end of the fiscal year in which the amount was allocated shall be reallocated among the States.”.

(b) CONFORMING AMENDMENT.—The item relating to section 5308 in the table of sections for chapter 53 is amended to read as follows: “5308. Planning programs.”.

#### SEC. 6011. CAPITAL INVESTMENT PROGRAM.

(a) SECTION HEADING.—The section heading of section 5309 is amended to read as follows: “§ 5309. Capital investment grants”.

(b) GENERAL AUTHORITY.—Section 5309(a) is amended—

(1) in paragraph (1)—

(A) by striking “(1) The Secretary of Transportation may make grants and loans” and inserting the following:

“(1) GRANTS AUTHORIZED.—The Secretary may award grants”;

(B) in subparagraph (A), by striking “alternatives analysis related to the development of systems.”;

(C) by striking subparagraphs (B), (C), (D), and (G);

(D) by redesignating subparagraphs (E), (F), and (H) as subparagraphs (B), (C), and (D), respectively;

(E) in subparagraph (C), as redesignated, by striking the semicolon at the end and inserting “, including programs of bus and bus-related projects for assistance to subrecipients which are public agencies, private companies engaged in public transportation, or private nonprofit organizations; and”;

(F) in subparagraph (D), as redesignated—

(i) by striking “to support fixed guideway systems”;

(ii) by striking “dedicated bus and high occupancy vehicle”;

(2) by amending paragraph (2) to read as follows:

“(2) GRANTEE REQUIREMENTS.—

“(A) GRANTEE IN URBANIZED AREA.—The Secretary shall require that any grants awarded under this section to a recipient or subrecipient located in an urbanized area shall 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.

“(B) GRANTEE NOT IN URBANIZED AREA.—The Secretary shall require that any grants awarded under this section to a recipient or subrecipient not located in an urbanized area shall be subject to the same terms, conditions, requirements, and provisions as a recipient or subrecipient of assistance under section 5311.

“(C) SUBRECIPIENT.—The Secretary shall require that any private, nonprofit organization that is a subrecipient of a grant awarded under this section shall be subject to the same terms, conditions, requirements, and provisions as a subrecipient of assistance under section 5310.

“(D) STATEWIDE TRANSIT PROVIDER GRANTEES.—A statewide transit provider that receives a grant under this section shall be subject to the terms, conditions, requirements, and provisions of this section or section 5311, consistent with the scope and purpose of the grant and the location of the project.”; and

(3) by adding at the end the following:

“(3) 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 findings required under this subsection.”.

(c) DEFINED TERM.—Section 5309(b) is amended to read as follows:

“(b) DEFINED TERM.—As used in this section, the term ‘alternatives analysis’ means a study conducted as part of the transportation planning process required under sections 5303 and 5304, which includes—

“(1) an assessment of a wide range of public transportation alternatives designed to address a transportation problem in a corridor or subarea;

“(2) sufficient information to enable the Secretary to make the findings of project justification and local financial commitment required under this section;

“(3) the selection of a locally preferred alternative; and

“(4) the adoption of the locally preferred alternative as part of the long-range transportation plan required under section 5303.”.

(d) GRANT REQUIREMENTS.—Section 5309(d) is amended to read as follows:

“(d) GRANT REQUIREMENTS.—The Secretary may not approve a grant for a project under this section unless the Secretary determines that—

“(1) the project is part of an approved transportation plan and program of projects required under sections 5303, 5304, and 5306; and

“(2) the applicant has, or will have—

“(A) the legal, financial, and technical capacity to carry out the project, including safety and security aspects of the project;

“(B) satisfactory continuing control over the use of the equipment or facilities; and

“(C) the capability and willingness to maintain the equipment or facilities.”.

(e) MAJOR CAPITAL INVESTMENT PROJECTS OF \$75,000,000 OR MORE.—Section 5309(e) is amended to read as follows:

“(e) MAJOR CAPITAL INVESTMENT PROJECTS OF \$75,000,000 OR MORE.—

“(1) FULL FUNDING GRANT AGREEMENT.—The Secretary shall enter into a full funding grant agreement, based on the evaluations and ratings required under this subsection, with each grantee receiving not less than \$75,000,000 under this subsection for a new fixed guideway capital project that—

“(A) is authorized for final design and construction; and

“(B) has been rated as medium, medium-high, or high, in accordance with paragraph (5)(B).

“(2) DETERMINATIONS.—The Secretary may not award a grant under this subsection for a new fixed guideway capital project unless the Secretary determines that the proposed 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 patterns and policies; and

“(C) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct the project, and maintain and operate the entire public transportation system, while ensuring that the extent and quality of existing public transportation services are not degraded.

“(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 forecasts of 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 achieved through compact land use development and 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 chapter.

“(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, while ensuring that the extent and quality of existing public transportation services are not degraded.

“(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 forecasts of 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, provided that if the Secretary gives priority to financing projects 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) APPLICABILITY.—This subsection shall 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.

“(7) RULEMAKING.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall issue regulations on the manner



by which the Secretary shall evaluate and rate projects based on the results of alternatives analysis, project justification, and local financial commitment, in accordance with this subsection.

“(8) POLICY GUIDANCE.—

“(A) PUBLICATION.—The Secretary shall publish policy guidance regarding the new starts project review and evaluation process—

“(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 new starts project review and evaluation 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).”.

(f) MAJOR CAPITAL INVESTMENT PROJECTS OF LESS THAN \$75,000,000.—Section 5309(f) is amended to read as follows:

“(f) MAJOR CAPITAL INVESTMENT PROJECTS OF LESS THAN \$75,000,000.—

“(1) PROJECT CONSTRUCTION GRANT AGREEMENT.—

“(A) IN GENERAL.—The Secretary shall enter into a project construction grant agreement, based on evaluations and ratings required under this subsection, with each grantee receiving less than \$75,000,000 under this subsection for a new fixed guideway or corridor improvement capital project that—

“(i) is authorized by law; and

“(ii) has been rated as medium, medium-high, or high, in accordance with paragraph (3)(B).

“(B) CONTENTS.—

“(i) IN GENERAL.—An agreement under this paragraph shall specify—

“(I) the scope of the project to be constructed;

“(II) the estimated net cost of the project;

“(III) the schedule under which the project shall be constructed;

“(IV) the maximum amount of funding to be obtained under this subsection;

“(V) the proposed schedule for obligation of future Federal grants; and

“(VI) the sources of non-Federal funding.

“(ii) ADDITIONAL FUNDING.—The agreement may include a commitment on the part of the Secretary to provide funding for the project in future fiscal years.

“(C) FULL FUNDING GRANT AGREEMENT.—An agreement under this paragraph shall be considered a full funding grant agreement for the purposes of subsection (g).

“(2) SELECTION PROCESS.—

“(A) SELECTION CRITERIA.—The Secretary may not award a grant under this subsection for a proposed project unless the Secretary determines that the project is—

“(i) based on the results of planning and alternatives analysis;

“(ii) justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development; and

“(iii) supported by an acceptable degree of local financial commitment.

“(B) PLANNING AND ALTERNATIVES.—In evaluating a project under subparagraph (A)(i), the Secretary shall analyze and consider the results of planning and alternatives analysis for the project.

“(C) PROJECT JUSTIFICATION.—In making the determinations under subparagraph (A)(ii), the Secretary shall—

“(i) determine the degree to which local land use policies are supportive of the public transportation project and the degree to

which the project is likely to achieve local developmental goals;

“(ii) determine the cost effectiveness of the project at the time of the initiation of revenue service;

“(iii) determine the degree to which the project will have a positive effect on local economic development;

“(iv) consider the reliability of the forecasts of costs and ridership associated with the project; and

“(v) consider other factors that the Secretary determines to be appropriate to carry out this subsection.

“(D) LOCAL FINANCIAL COMMITMENT.—For purposes of subparagraph (A)(iii), the Secretary shall require that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable.

“(3) ADVANCEMENT OF PROJECT TO DEVELOPMENT AND CONSTRUCTION.—

“(A) IN GENERAL.—A proposed project under this subsection may not advance from the planning and alternatives analysis stage to project development and construction unless—

“(i) 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; and

“(ii) the metropolitan planning organization has adopted the locally preferred alternative for the project into the long-range transportation plan.

“(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 under this subsection.

“(4) IMPACT REPORT.—

“(A) IN GENERAL.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2005, the Federal Transit Administration shall submit 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 to—

“(i) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

“(ii) the Committee on Transportation and Infrastructure of the House of Representatives.

“(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.

“(5) REGULATIONS.—Not later than 120 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.”.

(g) FULL FUNDING GRANT AGREEMENTS.—Section 5309(g)(2) is amended by adding at the end the following:

“(C) BEFORE AND AFTER STUDY.—

“(i) IN GENERAL.—Each full funding grant agreement shall require the applicant to conduct a study that—

“(I) describes and analyzes the impacts of the new start 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 a full funding grant agreement shall submit a complete plan for the collection and analysis of information to identify the impacts of the new start 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 start project, including analogous information on transit service levels and ridership patterns and information on the as-built scope and capital costs of the new start 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, 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.

“(E) PUBLIC PRIVATE PARTNERSHIP PILOT PROGRAM.—

“(i) AUTHORIZATION.—The Secretary may establish a pilot program to demonstrate the advantages of public-private partnerships for certain fixed guideway systems development projects.

“(ii) IDENTIFICATION OF QUALIFIED PROJECTS.—The Secretary shall identify qualified public-private partnership projects as permitted by applicable State and local enabling laws and work with project sponsors to enhance project delivery and reduce overall costs.”.

(h) GOVERNMENT SHARE OF NET PROJECT COST.—Section 5309(h) is amended to read as follows:

“(h) GOVERNMENT SHARE OF ADJUSTED NET PROJECT COST.—

“(1) IN GENERAL.—The Secretary shall estimate the net project cost based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities.

“(2) ADJUSTMENT FOR COMPLETION UNDER BUDGET.—The Secretary may adjust the final net project cost of a major capital investment project evaluated under subsections (e) and (f) 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.—

“(A) IN GENERAL.—A grant for the project shall be for 80 percent of the net project cost, or the net project cost as adjusted under paragraph (2), unless the grant recipient requests a lower grant percentage.

“(B) EXCEPTIONS.—The Secretary may provide a higher grant percentage than requested by the grant recipient if—

“(i) 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

“(ii) 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) OTHER SOURCES.—The costs not funded by a grant under this section may be funded from—

“(A) an undistributed cash surplus;

“(B) a replacement or depreciation cash fund or reserve; or

“(C) new capital, including any Federal funds that are eligible to be expended for transportation.

“(5) PLANNED EXTENSION TO FIXED GUIDEWAY SYSTEM.—In addition to amounts allowed under paragraph (1), a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the Secretary determines that only non-Federal funds were used and that the purchase was made for use on the extension. A refund or reduction of the costs not funded by a grant under this section may be made only if a refund of a proportional amount of the grant is made at the same time.

“(6) EXCEPTION.—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 amounts allowed under paragraph (4).”.

(i) LOAN PROVISIONS AND FISCAL CAPACITY CONSIDERATIONS.—Section 5309 is amended—

(1) by striking subsections (i), (j), (k), and (l);

(2) by redesignating subsections (m) and (n) as subsections (i) and (j), respectively;

(3) by striking subsection (o) (as added by section 3009(i) of the Federal Transit Act of 1998); and

(4) by redesignating subsections (o) and (p) as subsections (k) and (l), respectively.

(j) ALLOCATING AMOUNTS.—Section 5309(i), as redesignated, is amended to read as follows:

“(i) 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 projects of not less than \$75,000,000 for major capital projects for new fixed guideway systems and extensions of such systems under subsection (e) and projects for new fixed guideway or corridor improvement capital projects under subsection (f);

“(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) IN GENERAL.—Of the amounts made available or appropriated for fiscal year 2006 and each fiscal year thereafter for grants under this section pursuant to subsections (b)(4) and (c) of section 5338—

“(A) the amounts appropriated under section 5338(c) shall be allocated for major capital projects for—

“(i) new fixed guideway systems and extensions of not less than \$75,000,000, in accordance with subsection (e); and

“(ii) projects for new fixed guideway or corridor improvement capital projects, in accordance with subsection (f); and

“(B) the amounts made available under section 5338(b)(4) 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)(K) for fiscal year 2006 and each fiscal year there-

after shall be allocated in accordance with section 5337.

“(4) PRELIMINARY ENGINEERING.—Not more than 8 percent of the allocation described in paragraphs (1)(A) and (2)(A) may be expended on preliminary engineering.

“(5) FUNDING FOR FERRY BOATS.—Of the amounts described in paragraphs (1)(A) and (2)(A), \$10,400,000 shall be available in each of the fiscal years 2005 through 2009 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.

“(6) BUS AND BUS FACILITY GRANTS.—

“(A) CONSIDERATIONS.—In making grants under paragraphs (1)(C) and (2)(B), the Secretary shall consider the age and condition of buses, bus fleets, related equipment, and bus-related facilities.

“(B) PROJECTS NOT IN URBANIZED AREAS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than 5.5 percent shall be available in each fiscal year for projects that are not in urbanized areas.

“(C) INTERMODAL TERMINALS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than \$75,000,000 shall be available in each fiscal year for intermodal terminal projects, including the intercity bus portion of such projects.”.

(k) REPORTS.—Section 5309 is amended by inserting at the end the following:

“(m) REPORTS.—

“(1) ANNUAL REPORT ON FUNDING RECOMMENDATIONS.—

“(A) IN GENERAL.—Not later than the first Monday of February of each year, the Secretary shall submit a report on funding recommendations to—

“(i) the Committee on Transportation and Infrastructure of the House of Representatives;

“(ii) the Committee on Banking, Housing, and Urban Affairs of the Senate;

“(iii) the Subcommittee on the Departments of Transportation, Treasury, Housing and Urban Development, The Judiciary, District of Columbia, and Independent Agencies of the Committee on Appropriations of the House of Representatives; and

“(iv) the Subcommittee on Transportation, Treasury, and General Government of the Committee on Appropriations of the Senate.

“(B) CONTENTS.—The report submitted under subparagraph (A) shall contain—

“(i) a proposal on the allocation of amounts to finance grants for capital investment projects among grant applicants;

“(ii) a recommendation of projects to be funded based on—

“(I) the evaluations and ratings determined under subsection (e) and (f); and

“(II) existing commitments and anticipated funding levels for the subsequent 3 fiscal years; and

“(iii) detailed ratings and evaluations on each project recommended for funding.

“(2) TRIANNUAL REPORTS ON PROJECT RATINGS.—

“(A) IN GENERAL.—Not later than the first Monday of February, the first Monday of June, and the first Monday of October of each year, the Secretary shall submit a report on project ratings to—

“(i) the Committee on Transportation and Infrastructure of the House of Representatives;

“(ii) the Committee on Banking, Housing, and Urban Affairs of the Senate;

“(iii) the Subcommittee on the Departments of Transportation, Treasury, Housing and Urban Development, The Judiciary, District of Columbia, and Independent Agencies of the Committee on Appropriations of the House of Representatives; and

“(iv) the Subcommittee on Transportation, Treasury, and General Government of the Committee on Appropriations of the Senate.

“(B) CONTENTS.—Each report submitted under subparagraph (A) shall contain—

“(i) a summary of the ratings of all capital investment projects for which funding was requested under this section;

“(ii) detailed ratings and evaluations on the project of each applicant that had significant changes to the finance or project proposal or has completed alternatives analysis or preliminary engineering since the date of the latest report; and

“(iii) all relevant information supporting the evaluation and rating of each updated project, including a summary of the financial plan of each updated project.

“(3) BEFORE AND AFTER STUDY REPORTS.—Not later than the first Monday of August of each year, the Secretary shall submit a report containing a summary of the results of the studies conducted under subsection (g)(2) to—

“(A) the Committee on Transportation and Infrastructure of the House of Representatives;

“(B) the Committee on Banking, Housing, and Urban Affairs of the Senate;

“(C) the Subcommittee on the Departments of Transportation, Treasury, Housing and Urban Development, The Judiciary, District of Columbia, and Independent Agencies of the Committee on Appropriations of the House of Representatives; and

“(D) the Subcommittee on Transportation, Treasury, and General Government of the Committee on Appropriations of the Senate.

“(4) 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 a report analyzing the consistency and accuracy of cost and ridership estimates made by each contractor to public transportation agencies developing major investment projects to the committees and subcommittees listed under paragraph (3).

“(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.

“(5) ANNUAL GOVERNMENT ACCOUNTABILITY OFFICE REVIEW.—

“(A) REVIEW.—The Comptroller General of the United States shall conduct an annual review of the processes and procedures for evaluating and rating projects and recommending projects and the Secretary's implementation of such processes and procedures.

“(B) REPORT.—Not later than 90 days after the submission of each report required under paragraph (1), the Comptroller General shall submit a report to Congress that summarizes the results of the review conducted under subparagraph (A).

“(6) CONTRACTOR PERFORMANCE INCENTIVE REPORT.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2005, the Secretary shall submit a report to the committees and subcommittees listed under paragraph (3) on the suitability of allowing contractors to public transportation agencies that undertake major capital investments under this section to receive performance incentive awards if a project is completed for less than the original estimated cost.”.

(I) 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 fixed guideway projects under this section.

**SEC. 6012. NEW FREEDOM FOR ELDERLY PERSONS AND PERSONS WITH DISABILITIES.**

(a) IN GENERAL.—Section 5310 is amended to read as follows:

**“§ 5310. New freedom for elderly persons and persons with disabilities**

“(a) GENERAL AUTHORITY.—

“(1) AUTHORIZATION.—The Secretary may award grants to a State for capital public transportation projects that are planned, designed, and carried out to meet the needs of elderly individuals and individuals with disabilities, with priority given to the needs of these individuals to access necessary health care.

“(2) ACQUISITION OF PUBLIC TRANSPORTATION SERVICES.—A capital public transportation project under this section may include acquiring public transportation services as an eligible capital expense.

“(3) ADMINISTRATIVE COSTS.—A State may use not more than 15 percent of the amounts received under this section to administer, plan, and provide technical assistance for a project funded under this section.

“(b) ALLOTMENTS AMONG STATES.—

“(1) IN GENERAL.—From amounts made available or appropriated in each fiscal year under subsections (a)(1)(C)(iv) and (b)(2)(D) of section 5338 for grants under this section, the Secretary shall allot amounts to each State under a formula based on the number of elderly individuals and individuals with disabilities in each State.

“(2) TRANSFER OF FUNDS.—Any funds allotted 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.

“(3) REALLOCATION OF FUNDS.—A State receiving a grant under this section may reallocate such grant funds to—

“(A) a private nonprofit organization;

“(B) a public transportation agency or authority; or

“(C) a governmental authority that—

“(i) has been approved by the State to coordinate services for elderly individuals and individuals with disabilities;

“(ii) certifies that nonprofit organizations are not readily available in the area that can provide the services described under this subsection; or

“(iii) will provide services to persons with disabilities that exceed those services required by the Americans with Disabilities Act.

“(c) GOVERNMENT SHARE.—

“(1) MAXIMUM.—

“(A) IN GENERAL.—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.

“(B) EXCEPTION.—A State described in section 120(d) of title 23 shall receive an increased Government share in accordance with the formula under that section.

“(2) REMAINING COSTS.—The costs of a capital project under this section that are not funded through a grant under this section—

“(A) may be funded 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 any Federal agency (other than the Department of Transportation, except for Federal Lands Highway funds) that are eligible to be expended for transportation.

“(3) EXCEPTION.—For purposes of paragraph (2), 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 recipient under this section shall be subject to the requirements of a grant recipient under section 5307 to the extent the Secretary determines to be 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.—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) SUBMISSION TO SECRETARY.—Each State shall annually submit a program of transportation projects to the Secretary for approval with an assurance that the program provides for maximum feasible coordination between transportation services funded under this section and transportation services assisted by other Federal sources.

“(2) USE OF FUNDS.—Each State may use amounts made available to carry out this section to provide transportation services for elderly individuals and individuals with disabilities if such services are included in an approved State program of projects.

“(f) LEASING VEHICLES.—Vehicles acquired under this section may be leased to local governmental authorities to improve transportation services designed to meet the 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.

“(i) FARES NOT REQUIRED.—This section does not require that elderly individuals and individuals with disabilities be charged a fare.”.

(b) CONFORMING AMENDMENT.—The item relating to section 5310 in the table of sections for chapter 53 is amended to read as follows: “5310. New freedom for elderly persons and persons with disabilities.”.

**SEC. 6013. 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 a private 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—

(1) by amending paragraph (1) to read as follows:

“(1) GRANTS AUTHORIZED.—Except as provided under 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.”;

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following:

“(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 annually submit the program described in subparagraph (A) to the Secretary.

“(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; 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.”;

(4) in paragraph (3), as redesignated—

(A) by striking “(3) The Secretary of Transportation” and inserting the following:

“(3) RURAL TRANSPORTATION ASSISTANCE PROGRAM.—

“(A) ESTABLISHMENT.—The Secretary”;

(B) by striking “make” and inserting “use not more than 2 percent of the amount made available to carry out this section to award”; and

(C) by adding at the end the following:

“(B) DATA COLLECTION.—

“(i) REPORT.—Each grantee 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—

“(I) total annual revenue;

“(II) sources of revenue;

“(III) total annual operating costs;

“(IV) total annual capital costs;

“(V) fleet size and type, and related facilities;

“(VI) revenue vehicle miles; and

“(VII) ridership.”; and

(5) by adding after paragraph (3) the following:

“(4) Of the amount made available to carry out paragraph (3)—

“(A) not more than 15 percent may be used to carry out projects of a national scope; and

“(B) any amounts not used under subparagraph (A) shall be allocated to the States.”.

(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)(F) 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)(F) 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 ADMINISTRATIVE, PLANNING, AND TECHNICAL ASSISTANCE.—Section 5311(e) is amended—

(1) by striking “AND TECHNICAL ASSISTANCE.—(1) The Secretary of Transportation” and inserting “, PLANNING, AND TECHNICAL ASSISTANCE.—The Secretary”;

(2) by striking “to a recipient”; and

(3) by striking paragraph (2).

(e) INTERCITY BUS TRANSPORTATION.—Section 5311(f) is amended—

(1) in paragraph (1)—

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

“(1) IN GENERAL.—”; and

(B) by striking “after September 30, 1993,”; and

(2) in paragraph (2)—

(A) by striking “A State” and inserting “After consultation with affected intercity bus service providers, a State”; and

(B) by striking “of Transportation”.

(f) GOVERNMENT SHARE OF COSTS.—Section 5311(g) is amended to read as follows:

“(g) GOVERNMENT SHARE OF COSTS.—

“(1) MAXIMUM GOVERNMENT SHARE.—

“(A) CAPITAL PROJECTS.—

“(i) IN GENERAL.—Except as provided under clause (ii), a grant awarded under this section for any purpose other than operating assistance may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

“(ii) EXCEPTION.—A State described in section 120(d) of title 23 shall receive a Government share of the net capital costs in accordance with the formula under that section.

“(B) OPERATING ASSISTANCE.—

“(i) IN GENERAL.—Except as provided under clause (ii), 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.

“(ii) EXCEPTION.—A State described in section 120(d) 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 subparagraph (A)(ii).

“(2) OTHER FUNDING SOURCES.—Funds for a project under this section that are not provided for by a grant under this section—

“(A) may be provided from—

“(i) an undistributed cash surplus;

“(ii) a replacement or depreciation cash fund or reserve;

“(iii) a service agreement with a State or local social service agency or a private social service organization; or

“(iv) new capital; and

“(B) may be derived from amounts appropriated to or made available to a Government agency (other than the Department of Transportation, except for Federal Land Highway funds) that are eligible to be expended for transportation.

“(3) USE OF GOVERNMENT GRANT.—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.

“(4) EXCEPTION.—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.”.

(g) 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”.

#### SEC. 6014. RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.

(a) IN GENERAL.—Section 5312 is amended—

(1) by amending subsection (a) to read as follows:

“(a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS.—

“(1) IN GENERAL.—The Secretary may make grants, contracts, cooperative agreements, or other transactions (including agreements with departments, agencies, and instrumentalities of the United States Government) for research, development, demonstration or deployment projects, or 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.”;

(2) by striking subsections (b) and (c);

(3) by redesignating subsections (d) and (e) as (b) and (c), respectively.

(4) in subsection (b)(2), as redesignated, by striking “other agreements” and inserting “other transactions”; and

(5) in subsection (c)(2), as redesignated, by striking “public and private” and inserting “public or private”.

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 5312 is amended to read as follows:

“§5312. Research, development, demonstration, and deployment projects”.

(2) TABLE OF SECTIONS.—The item relating to section 5312 in the table of sections for chapter 53 is amended to read as follows:

“5312. Research, development, demonstration, and deployment projects.”.

#### SEC. 6015. 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 (b)(2)(G)(i) of section 5338”; and

(B) in paragraph (2), by striking “(2)” and inserting the following:

“(b) GOVERNMENT ASSISTANCE.—”; and

(3) by amending subsection (c) to read as follows:

“(c) GOVERNMENT 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 such benefit.”.

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 5313 is amended to read as follows:

“§5313. Transit cooperative research program”.

(2) TABLE OF SECTIONS.—The item relating to section 5313 in the table of sections for chapter 53 is amended to read as follows:

“5313. Transit cooperative research program.”.

#### SEC. 6016. NATIONAL RESEARCH PROGRAMS.

(a) IN GENERAL.—Section 5314 is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

“(1) AVAILABILITY OF FUNDS.—The Secretary may use amounts made available under subsections (a)(5)(C)(iv) and (b)(2)(G)(iv) of section 5338 for grants, contracts, cooperative agreements, or other transactions for the purposes described in sections 5312, 5315, and 5322.”;

(B) in paragraph (2), by striking “(2) Of” and inserting the following:

“(2) ADA COMPLIANCE.—From”; and

(C) by amending paragraph (3) to read as follows:

“(3) SPECIAL DEMONSTRATION INITIATIVES.—The Secretary may use not more than 25 percent of the amounts made available under paragraph (1) for special demonstration initiatives, subject to terms that the Secretary determines to be consistent with this chapter. For a nonrenewable grant of not more than \$100,000, the Secretary shall provide expedited procedures for complying with the requirements of this chapter.”;

(D) in paragraph (4)—

(i) by striking subparagraph (B); and

(ii) by redesignating subparagraph (C) as subparagraph (B); and

(E) by adding at the end 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.”; and

(2) by amending subsection (b) to read as follows:

“(b) GOVERNMENT SHARE.—If there would be a clear and direct financial benefit to an entity under a grant, contract, cooperative agreement, or other transaction financed under subsection (a) or section 5312, 5313, 5315, or 5322, the Secretary shall establish a Government share consistent with such benefit.”.

(C) NATIONAL TECHNICAL ASSISTANCE CENTER FOR SENIOR TRANSPORTATION; ALTERNATIVE FUELS STUDY.—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 the 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 country and provide such practices to local communities that are implementing senior transportation programs;

“(B) work with teams from local communities to identify how they are successfully meeting the transportation needs of senior 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 subsection based on a fair representation of various geographical locations throughout the United States.

“(5) ALLOCATIONS.—From the funds made available for each fiscal year under subsections (a)(5)(C)(iv) and (b)(2)(G)(iv) of section 5338, \$3,000,000 shall be allocated to carry out this subsection.

“(d) 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. 1321)) 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 the Federal Public Transportation Act of 2005, the Secretary shall submit the study completed under this subsection to the Committee on Banking, Housing, and Urban Affairs of the Senate and

the Committee on Transportation and Infrastructure of the House of Representatives”.

(c) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading for section 5314 is amended to read as follows:

“§ 5314. National research programs”.

(2) TABLE OF SECTIONS.—The item relating to section 5314 in the table of sections for chapter 53 is amended to read as follows:

“5314. National research programs.”.

SEC. 6017. NATIONAL TRANSIT INSTITUTE.

(a) Section 5315 is amended—

(1) 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 pursuant to subsection (a) shall develop and conduct training 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 PROGRAMS.—The training 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.”; and

(2) in subsection (d), by striking “mass” each place it appears.

SEC. 6018. BUS TESTING FACILITY.

Section 5318 is amended—

(1) in subsection (a)—

(A) by striking “ESTABLISHMENT.—The Secretary of Transportation shall establish one facility” and inserting “IN GENERAL.—The Secretary shall maintain 1 facility”; and

(B) by striking “established by renovating” and inserting “maintained at”; and

(2) in subsection (d), by striking “section 5309(m)(1)(C) of this title” and inserting “paragraphs (1)(C) and (2)(B) of section 5309(i)”.

SEC. 6019. BICYCLE FACILITIES.

Section 5319 is amended by striking “5307(k)” and inserting “5307(d)(1)(K)”.

SEC. 6020. SUSPENDED LIGHT RAIL TECHNOLOGY PILOT PROJECT.

Section 5320 is repealed.

SEC. 6021. CRIME PREVENTION AND SECURITY.

Section 5321 is repealed.

SEC. 6022. GENERAL PROVISIONS ON ASSISTANCE.

Section 5323 is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

“(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

(B) in paragraph (2), by striking “(2)” and inserting the following:

“(2) LIMITATION.—”;

(2) by amending subsection (b) to read as follows:

“(b) NOTICE AND PUBLIC HEARING.—

“(1) IN GENERAL.—An application for a grant under this chapter for a capital project that will substantially affect a community, or the public transportation service of a community, shall include, in the environmental record for the project, evidence that the applicant has—

“(A) provided an adequate opportunity for public review and comment on the project;

“(B) held a public hearing on the project if the project affects significant economic, social, or environmental interests;

“(C) considered the economic, social, and environmental effects of the project; and

“(D) found that the project is consistent with official plans for developing the urban area.

“(2) CONTENTS OF 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) by amending subsection (e) to read as follows:

“(e) NEW TECHNOLOGY.—A grant for financial assistance under this chapter for new technology, including innovative or improved products, techniques, or methods, shall be subject to the requirements of section 5309 to the extent the Secretary determines to be appropriate.”;

(4) in subsection (f)—

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

“(1) IN GENERAL.—”;

(B) by striking paragraph (2);

(C) by striking “This subsection” and inserting the following:

“(2) EXCEPTIONS.—This subsection; and

(D) by adding at the end the following:

“(3) PENALTY.—If the Secretary determines that an applicant, governmental authority, or publicly owned operator has violated the agreement required under paragraph (1), the Secretary shall bar the applicant, authority, or operator from receiving Federal transit assistance in an amount the Secretary determines to be appropriate.”;

(5) in subsection (g), by striking “103(e)(4) and 142 (a) or (c)” each place it appears and inserting “133 and 142”;

(6) by amending subsection (h) to read as follows:

“(h) TRANSFER OF LANDS OR INTERESTS IN LANDS OWNED BY THE UNITED STATES.—

“(1) REQUEST BY SECRETARY.—If the Secretary determines that any part of the lands or interests in lands owned by the United

States and made available as a result of a military base closure is necessary for transit purposes eligible under this chapter, including corridor preservation, the Secretary shall submit a request to the head of the Federal agency supervising the administration of such lands or interests in lands. Such request shall include a map showing the portion of such lands or interests in lands, which is desired to be transferred for public transportation purposes.

“(2) TRANSFER OF LAND.—If 4 months after submitting a request under paragraph (1), the Secretary does not receive a response from the Federal agency described in paragraph (1) that certifies that the proposed appropriation of land is contrary to the public interest or inconsistent with the purposes for which such land has been reserved, or if the head of such agency agrees to the utilization or transfer under conditions necessary for the adequate protection and utilization of the reserve, such land or interests in land may be utilized or transferred to a State, local governmental authority, or public transportation operator for such purposes and subject to the conditions specified by such agency.

“(3) REVERSION.—If at any time the lands or interests in land utilized or transferred under paragraph (2) are no longer needed for public transportation purposes, the State, local governmental authority, or public transportation operator that received the land shall notify to the Secretary, and such lands shall immediately revert to the control of the head of the Federal agency from which the land was originally transferred.”;

(7) in subsection (j)(5), by striking “Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240, 105 Stat. 1914)” and inserting “Federal Public Transportation Act of 2005”;

(8) by amending subsection (I) to read as follows:

“(I) 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.”;

(9) in subsection (m), by adding at the end the following: “Requirements to perform preaward and postdelivery reviews of rolling stock purchases to ensure compliance with subsection (j) shall not apply to private nonprofit organizations or to grantees serving urbanized areas with a population of fewer than 1,000,000.”;

(10) in subsection (o), by striking “the Transportation Infrastructure Finance and Innovation Act of 1998” and inserting “subchapter II of chapter 1 of title 23”; and

(11) by adding at the end the following:

“(p) BOND PROCEEDS ELIGIBLE FOR LOCAL SHARE.—

“(1) IN GENERAL.—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) REIMBURSEMENT BY SECRETARY.—The Secretary may reimburse an eligible recipient for deposits of bond proceeds in a debt service reserve that the recipient established pursuant to section 5302(a)(1)(K) from amounts made available to the recipient under section 5307 or 5309.”;

“(q) PROHIBITED USE OF FUNDS.—Grant funds received under this chapter may not be used to pay ordinary governmental or non-project operating expenses.”.

## SEC. 6023. SPECIAL PROVISIONS FOR CAPITAL PROJECTS.

(a) IN GENERAL.—Section 5324 is amended to read as follows:

### “§ 5324. Special provisions for capital projects

“(a) REAL PROPERTY AND RELOCATION SERVICES.—Whenever real property is acquired or furnished as a required contribution incident to a project, the Secretary shall not approve the application for financial assistance unless the applicant has made all payments and provided all assistance and assurances that are required of a State agency under sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630 and 4655). The Secretary must be advised of specific references to any State law that are believed to be an exception to section 301 or 302 of such Act (42 U.S.C. 4651 and 4652).

“(b) ADVANCE REAL PROPERTY ACQUISITIONS.—

(1) IN GENERAL.—The Secretary may participate in the acquisition of real property for any project that may use the property if the Secretary determines that external market forces are jeopardizing the potential use of the property for the project and if—

“(A) there are offers on the open real estate market to convey that property for a use that is incompatible with the project under study;

“(B) there is an imminent threat of development or redevelopment of the property for a use that is incompatible with the project under study;

“(C) recent appraisals reflect a rapid increase in the fair market value of the property;

“(D) the property, because it is located near an existing transportation facility, is likely to be developed and to be needed for a future transportation improvement; or

“(E) the property owner can demonstrate that, for health, safety, or financial reasons, retaining ownership of the property poses an undue hardship on the owner in comparison to other affected property owners and requests the acquisition to alleviate that hardship.

“(2) ENVIRONMENTAL REVIEWS.—Property acquired in accordance with this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

“(3) LIMITATION.—The Secretary shall limit the size and number of properties acquired under this subsection as necessary to avoid any prejudice to the Secretary’s objective evaluation of project alternatives.

“(4) EXEMPTION.—An acquisition under this section shall be considered an exempt project under section 176 of the Clean Air Act (42 U.S.C. 7506).

“(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.

“(d) CONSIDERATION OF ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—

(1) IN GENERAL.—The Secretary may not approve an application for financial assistance for a capital project under this chapter unless the Secretary determines that the project has been developed in accordance with the National Environmental Policy Act

of 1969 (42 U.S.C. 4321 et seq.). The Secretary's findings under this paragraph shall be made a matter of public record.

“(2) COOPERATION AND CONSULTATION.—In carrying out 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.”

(b) CONFORMING AMENDMENT.—The item relating to section 5324 in the table of sections for chapter 53 is amended to read as follows: “5324. Special provisions for capital projects.”

#### SEC. 6024. 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) IN GENERAL.—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 manner 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. This subsection does not apply to the extent a State has adopted or adopts by law a formal procedure for procuring those services.

“(2) ADDITIONAL REQUIREMENTS.—When awarding a contract described in paragraph (1), recipients of assistance under this chapter shall comply with the following requirements:

“(A) 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) 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) 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) 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) DEFINED TERM.—As used 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 an operable segment of a public transportation 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) ROLLING STOCK.—

“(1) ACQUISITION.—A recipient of financial assistance under this chapter may enter into a contract to expend that assistance to acquire rolling stock—

“(A) with a party selected through a competitive procurement process; or

“(B) based on—

“(i) initial capital costs; or

“(ii) performance, standardization, life cycle costs, and other factors.

“(2) MULTIYEAR CONTRACTS.—A recipient procuring rolling stock with Federal financial assistance under this chapter may make a multiyear contract, including options, to buy not more than 5 years of requirements for rolling stock and replacement parts. The Secretary shall allow a recipient to act on a cooperative basis to procure rolling stock under this paragraph and in accordance with other Federal procurement requirements.

“(f) 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.

“(g) GRANT PROHIBITION.—A grant awarded under this chapter may not be used to support a procurement that uses an exclusionary or discriminatory specification.

“(h) 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.

“(i) 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(m)(4); and

“(D) the contractor's financial and technical resources.”

(b) CONFORMING AMENDMENTS.—Chapter 53 is amended by striking section 5326.

#### SEC. 6025. 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 ON USE OF AVAILABLE AMOUNTS.—Section 5327(c) is amended—

(1) by amending paragraph (1) to read as follows:

“(1) IN GENERAL.—The Secretary may not use more than 1 percent of amounts made available for a fiscal year to carry out any of sections 5307 through 5311, 5316, or 5317, or a project under the National Capital Transportation Act of 1969 (Public Law 91-143) to make a contract to oversee the construction of major projects under any of sections 5307 through 5311, 5316, or 5317 or under that Act.”; and

(2) in paragraph (2)—

(A) by striking “(2)” and inserting the following:

“(2) OTHER ALLOWABLE USES.—”; and

(B) by inserting “and security” after “safety”.

#### SEC. 6026. PROJECT REVIEW.

Section 5328 is amended—

(1) in subsection (a)—

(A) 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” and inserting the following:

“(1) ALTERNATIVES ANALYSIS.—The Secretary shall cooperate with an applicant undertaking an alternatives analysis under subsections (e) and (f) of section 5309”; and

(B) in paragraph (2)—

(i) by striking “(2)” and inserting the following:

“(2) ADVANCEMENT TO PRELIMINARY ENGINEERING STAGE.—”; and

(ii) by striking “is consistent with” and inserting “meets the requirements of”; and

(C) in paragraph (3)—

(i) by striking “(3)” and inserting the following:

“(3) RECORD OF DECISION.—”; and

(ii) by striking “of construction”; and

(iii) by adding before the period at the end the following: “If the Secretary determines that the project meets the requirements of subsection (e) or (f) of section 5309”; and

(D) by striking paragraph (4); and

(2) by striking subsection (c).

#### SEC. 6027. INVESTIGATIONS OF SAFETY AND SECURITY RISK.

(a) IN GENERAL.—Section 5329 is amended to read as follows:

##### “§ 5329. Investigation 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 OF FUNDS.—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.

“(d) PUBLIC TRANSPORTATION SECURITY.—

“(1) IN GENERAL.—Not later than 90 days after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall enter into a memorandum of understanding with the Secretary of Homeland Security 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 memorandum of understanding described in paragraph (1) shall—



“(A) establish national security standards for public transportation agencies;

“(B) establish funding priorities for grants from the Department of Homeland Security to public transportation agencies;

“(C) create a method of coordination with public transportation agencies on security matters; and

“(D) address any other issues determined to be appropriate by the Secretary and the Secretary of Homeland Security.”

(b) CONFORMING AMENDMENT.—The item relating to section 5329 in the table of sections for chapter 53 is amended to read as follows:

“5329. Investigation of safety hazards and security risks.”

#### SEC. 6028. STATE SAFETY OVERSIGHT.

(a) IN GENERAL.—Section 5330 is amended—

(1) by amending the heading to read as follows:

“§ 5330. Withholding amounts for noncompliance with State safety oversight requirements”;

(2) by amending subsection (a) to read as follows:

“(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 subjected to regulation by the Federal Railroad Administration.”;

(3) in subsection (d), by striking “affected States” and inserting the following: “affected States—

“(1) shall ensure uniform safety standards and enforcement; or

“(2)”;

(4) in subsection (f), by striking “Not later than December 18, 1992, the” and inserting “The”.

(b) CONFORMING AMENDMENT.—The item relating to section 5330 in the table of sections for chapter 53 is amended to read as follows: “5330. Withholding amounts for noncompliance with State safety oversight requirements.”

#### SEC. 6029. 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) by striking “mass” each place it appears and inserting “public”;

(2) in subsection (a)(5), by inserting “controlling,” after “operating”; and

(3) in subsection (c)(5), by striking “5302(a)(7) of title 49, United States Code,” and inserting “5302(a) of title 49.”

(b) CONFORMING AMENDMENT.—The table of contents for chapter 97 of title 18, United States Code is amended by amending the item related to section 1993 to read as follows:

“1993. Terrorist attacks and other acts of violence against public transportation systems.”

#### SEC. 6030. CONTROLLED SUBSTANCES AND ALCOHOL MISUSE TESTING.

Section 5331 is amended—

(1) in subsection (a)(3), by inserting before the period at the end the following: “or sections 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 other Federal agency”; and

(2) in subsection (f), by striking paragraph (3).

#### SEC. 6031. EMPLOYEE PROTECTIVE ARRANGEMENTS.

Section 5333(b) is amended—

(1) in paragraph (3), by striking the period at the end and inserting “: *Provided*, That—

“(A) the protective period shall not exceed 4 years; and

“(B) the separation allowance shall not exceed 12 months.”; and

(2) by adding at the end the following:

“(4) An arrangement under this subsection shall not guarantee continuation of employment as a result of a change in private contractors through competitive bidding unless such continuation is otherwise required under subparagraph (A), (B), or (D) of paragraph (2).

“(5) 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 amendments to existing assistance agreements, shall be certified without referral.

“(6) Nothing in this subsection shall affect the level of protection provided to freight railroad employees.”

#### SEC. 6032. ADMINISTRATIVE PROCEDURES.

Section 5334 is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking “5309–5311 of this title” and all that follows and inserting “5309 through 5311”;;

(B) in paragraph (9), by striking “and” at the end;

(C) in paragraph (10), by striking the period at the end and inserting “; and”; and

(D) by inserting at the end the following:

“(11) issue regulations as necessary to carry out the purposes of this chapter.”;

(2) by redesignating subsections (b), (c), (d), (e), (f), (g), (h), (i), and (j) as subsections (c), (d), (e), (f), (g), (h), (i), (j), and (k), respectively;

(3) by adding after subsection (a) the following:

“(b) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—

“(1) IN GENERAL.—Except as directed by the President for purposes of national defense or in the event of a national or regional emergency, the Secretary may not regulate—

“(A) the operation, routes, or schedules of a public transportation system for which a grant is made under this chapter; or

“(B) the rates, fares, tolls, rentals, or other charges prescribed by any public or private transportation provider.

“(2) COMPLIANCE WITH AGREEMENT.—Nothing in this subsection shall 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

(4) in subsection (j)(1), as redesignated, by striking “carry out section 5312(a) and (b)(1) of this title” and inserting “advise and assist the Secretary in carrying out section 5312(a)”.

#### SEC. 6033. REPORTS AND AUDITS.

Section 5335 is amended—

(1) by striking subsection (b); and

(2) in subsection (a)—

(A) in paragraph (1), by striking “(1)”;

(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”.

#### SEC. 6034. APPORTIONMENTS OF APPROPRIATIONS FOR FORMULA GRANTS.

Section 5336 is amended—

(1) by striking subsections (d), (h), and (k);

(2) by redesignating subsections (a) through (c) as subsections (b) through (d), respectively;

(3) by redesignating subsection (i) and (j) as subsection (h) and (i) respectively;

(4) by adding before subsection (b), as redesignated, the following:

“(a) APPORTIONMENTS.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(vi) and (b)(2)(L) of section 5338—

“(1) there shall be apportioned, in fiscal year 2006 and each fiscal year thereafter, \$35,000,000 to certain urbanized areas with populations of less than 200,000 in accordance with subsection (k); and

“(2) any amount not apportioned under paragraph (1) shall be apportioned to urbanized areas in accordance with subsections (b) through (d).”;

(5) in subsection (b), as redesignated—

(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 (a)(3)”;

(B) in paragraph (2), by striking “subsections (b) and (c) of this section” and inserting “subsections (c) and (d)”;

(6) in subsection (c)(2), as redesignated, by striking “subsection (a)(2) of this section” and inserting “subsection (b)(2)”;

(7) in subsection (d), as redesignated, by striking “subsection (a)(2) of this section” and inserting “subsection (b)(2)”;

(8) in subsection (e)(1), by striking “subsections (a) and (h)(2) of section 5338 of this title” and inserting “subsections (a) and (b) of section 5338”;

(9) in subsection (g), by striking “subsection (a)(1) of this section” each place it appears and inserting “subsection (b)(1)”;

and

(10) by adding at the end the following: “(j) SMALL TRANSIT INTENSIVE CITIES FACTORS.—The amount apportioned under subsection (a)(1) shall be apportioned to urbanized areas as follows:

“(1) The Secretary shall calculate a factor equal to the sum of revenue vehicle hours operated within urbanized areas with a population of between 200,000 and 1,000,000 divided by the sum of the population of all such urbanized areas.

“(2) The Secretary shall designate as eligible for an apportionment under this subsection all urbanized areas with a population of under 200,000 for which the number of revenue vehicle hours operated within the urbanized area divided by the population of the urbanized area exceeds the factor calculated under paragraph (1).

“(3) For each urbanized area qualifying for an apportionment under paragraph (2), the Secretary shall calculate an amount equal to the product of the population of that urbanized area and the factor calculated under paragraph (1).

“(4) For each urbanized area qualifying for an apportionment under paragraph (2), the Secretary shall calculate an amount equal to the difference between the number of revenue vehicle hours within that urbanized area less the amount calculated in paragraph (3).

“(5) Each urbanized area qualifying for an apportionment under paragraph (2) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for that urbanized area under paragraph (4) divided by the sum of the amounts calculated under paragraph (4) for all urbanized areas qualifying for an apportionment under paragraph (2).

“(k) 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 1 year 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.”.

**SEC. 6035. APPOINTMENTS FOR FIXED GUIDEWAY MODERNIZATION.**

Section 5337 is amended—

(1) in subsection (a), by striking “for each of fiscal years 1998 through 2003”; and

(2) by striking “section 5336(b)(2)(A)” each place it appears and inserting “section 5336(c)(2)(A)”.

**SEC. 6036. 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, 5309, 5310, and 5311 of this chapter 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 are authorized to be appropriated \$499,989,824 for fiscal year 2005 to carry out sections 5307, 5309, 5310, and 5311 of this chapter 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) \$6,894,400 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);

“(iii) \$94,526,689 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310;

“(iv) \$173,040,330 shall be available to provide financial assistance for other than urbanized areas under section 5311;

“(v) \$3,325,048,327 shall be available to provide financial assistance for urbanized areas under section 5307;

“(vi) \$49,600,000 shall be available to provide financial assistance for buses and bus facilities under section 5309; and

“(vii) \$345,996,704 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.”.

“(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 paragraph (A), there are 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 are authorized to be appropriated \$414,014,176 for fiscal year 2005 to carry out section 5309.

“(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 section 5308.

“(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated \$9,052,000 for fiscal year 2005 to carry out section 5308.

“(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 5308(c); and

“(ii) 17.28 percent shall be allocated for State planning under section 5308(d).

“(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), 5312, 5313, 5314, 5315, and 5322.

“(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated \$6,820,000 for fiscal year 2005 to carry out sections 5311(b), 5312, 5313, 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 of the National Transit Institute under section 5315;

“(ii) not less than \$5,208,000 shall be available to carry out section 5311(b)(2);

“(iii) not less than \$8,184,000 shall be available to carry out section 5313; and

“(iv) 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 and 5506.

“(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated \$744,000 for fiscal year 2005 to carry out sections 5505 and 5506.

“(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

“(i) \$1,984,000 shall be available for grants under 5506(f)(5) to the institution identified in section 5505(j)(3)(E), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2005;

“(ii) \$1,984,000 shall be available for grants under section 5505(d) to the institution identified in section 5505(j)(4)(A), as in effect on the date specified in clause (i); and

“(iii) \$1,984,000 shall be available for grants under section 5505(d) to the institution identified in section 5505(j)(4)(F), as in effect on the date specified in subclause (i).

“(C) 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 are authorized to be appropriated \$9,672,000 for fiscal year 2005 to carry out section 5334.

“(8) GRANTS AS CONTRACTUAL OBLIGATIONS.—

“(A) GRANTS FINANCED FROM HIGHWAY TRUST FUND.—A grant or contract that is approved by the Secretary and financed with amounts made available under paragraph (1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), or (7)(A) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project.

“(B) GRANTS FINANCED FROM GENERAL FUND.—A grant or contract that is approved by the Secretary and financed with amounts appropriated in advance under paragraph (1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), or (7)(B) is a contractual obligation of the United States 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.

“(9) AVAILABILITY OF AMOUNTS.—Amounts made available or appropriated under paragraphs (1) through (6) shall remain available until expended.”.

“(b) FORMULA GRANTS AND RESEARCH.—

“(1) IN GENERAL.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5308, 5309, 5310 through 5316, 5322, 5335, 5340, and 5505 of this title, and sections 3037 and 3038 of the Federal Transit Act of 1998 (112 Stat. 387 et seq.)—

“(A) \$6,443,600,000 for fiscal year 2006;

“(B) \$6,709,644,000 for fiscal year 2007;

“(C) \$7,276,707,000 for fiscal year 2008; and

“(D) \$7,737,026,000 for fiscal year 2009.

“(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1) for each fiscal year—

“(A) 0.092 percent shall be available for grants to the Alaska Railroad under section 5307 for improvements to its passenger operations;

“(B) 1.75 percent shall be available to carry out section 5308;

“(C) 2.05 percent shall be available to provide financial assistance for job access and reverse commute projects under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note);

“(D) 3.00 percent shall be available to provide financial assistance for services for elderly persons and persons with disabilities under section 5310;

“(E) 0.125 percent shall be available to carry out section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note);

“(F) 6.25 percent shall be available to provide financial assistance for other than urbanized areas under section 5311;

“(G) 0.89 percent shall be available to carry out transit cooperative research programs under section 5313, the National Transit Institute under section 5315, university research centers under section 5505, and national research programs under sections 5312, 5313, 5314, and 5322, of which—

“(i) 17.0 percent shall be allocated to carry out transit cooperative research programs under section 5313;

“(ii) 7.5 percent shall be allocated to carry out programs under the National Transit Institute under section 5315, including not more than \$1,000,000 to carry out section 5315(a)(16);

“(iii) 11.0 percent shall be allocated to carry out the university centers program under section 5305; and

“(iv) any funds made available under this subparagraph that are not allocated under clauses (i) through (iii) shall be allocated to carry out national research programs under sections 5312, 5313, 5314, and 5322;

“(H) \$25,000,000 shall be available for each of the fiscal years 2006 through 2009 to carry out section 5316;

“(I) there shall be available to carry out section 5335—

“(i) \$3,900,000 in fiscal year 2006;

“(ii) \$4,200,000 in fiscal year 2007;

“(iii) \$4,600,000 in fiscal year 2008; and

“(iv) \$5,000,000 in fiscal year 2009;

“(J) 6.25 percent 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

“(K) 22.0 percent shall be allocated in accordance with section 5337 to provide financial assistance under section 5309(i)(3); and

“(L) any amounts not made available under subparagraphs (A) through (K) shall be allocated in accordance with section 5336 to provide financial assistance for urbanized areas under section 5307.

“(3) UNIVERSITY CENTERS PROGRAM.—

“(A) ALLOCATION.—Of the amounts allocated under paragraph (2)(G)(iii), \$1,000,000 shall be available in each of the fiscal years 2006 through 2009 for Morgan State University to provide transportation research, training, and curriculum development.

“(B) REQUIREMENTS.—The university specified under subparagraph (A) shall be considered a University Transportation Center under section 510 of title 23, and shall be subject to the requirements under subsections (c), (d), (e), and (f) of such section.

“(C) REPORT.—In addition to the report required under section 510(e)(3) of title 23, the university specified under subparagraph (A) shall annually submit a report to the Secretary that describes the university's contribution to public transportation.

“(4) BUS GRANTS.—In addition to the amounts made available under paragraph (1), there shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309(i)(2)(B)—

“(A) \$864,101,000 for fiscal year 2006;

“(B) \$899,778,000 for fiscal year 2007;

“(C) \$975,823,000 for fiscal year 2008; and

“(D) \$1,037,552,000 for fiscal year 2009.

“(5) MAJOR CAPITAL INVESTMENT GRANTS.—There are authorized to be appropriated to carry out section 5309(i)(2)(A)—

“(1) \$1,503,299,000 for fiscal year 2006;

“(2) \$1,565,367,000 for fiscal year 2007;

“(3) \$1,097,663,000 for fiscal year 2008; and

“(4) \$1,805,057,000 for fiscal year 2009.

“(d) ADMINISTRATION.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334—

“(1) \$89,000,000 for fiscal year 2006;

“(2) \$92,675,000 for fiscal year 2007;

“(3) \$100,507,000 for fiscal year 2008; and

“(4) \$106,865,000 for fiscal year 2009.

“(e) GRANTS AS CONTRACTUAL OBLIGATIONS.—

“(1) MASS TRANSIT ACCOUNT FUNDS.—A grant or contract approved by the Secretary that is financed with amounts made available under subsection (b)(1), (b)(4), or (d) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project.

“(2) APPROPRIATED FUNDS.—A grant or contract approved by the Secretary that is financed with amounts made available under subsection (c) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project only

to the extent that amounts are appropriated in advance for such purpose by an Act of Congress.

“(f) AVAILABILITY OF AMOUNTS.—Amounts made available by or appropriated under subsections (b) and (c) shall remain available until expended.”.

#### SEC. 6037. 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 State 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)(J), 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 BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.—

“(A) IN GENERAL.—The Secretary shall apportion amounts apportioned to each State under paragraph (4) 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 population of all urbanized areas in that State divided by the total population of that State.

“(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.

“(6) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to urbanized areas in each State under paragraph (5)(A) so that each urbanized area receives an amount equal to the amount apportioned under paragraph (5)(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.”.

(b) CONFORMING AMENDMENT.—The table of sections 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. 6038. JOB ACCESS AND REVERSE COMMUTE GRANTS.

Section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by striking “means an individual” and inserting the following: “means—

“(A) an individual”; and

(ii) by striking the period at the end and inserting “; or

“(B) an individual who is eligible for assistance under the State program of Temporary Assistance to Needy Families funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et. seq.) in the State in which the recipient of a grant under this section is located.”; and

(B) in paragraph (2), by striking “development of” each place it appears and inserting “development and provision of”;

(2) in subsection (i), by amending paragraph (2) to read as follows:

“(2) COORDINATION.—

“(A) IN GENERAL.—The Secretary shall coordinate activities under this section with related activities under programs of other Federal departments and agencies.

“(B) CERTIFICATION.—A recipient of funds under this section shall certify that—

“(i) the project has been 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.”;

(3) by amending subsection (j) to read as follows:

“(j) GRANT REQUIREMENTS.—

“(1) IN GENERAL.—

“(A) URBANIZED AREAS.—A grant awarded under this section to a public agency or private company engaged in public transportation in an urbanized area shall be subject to the all of the terms and conditions to which a grant awarded under section 5307 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

“(B) OTHER THAN URBANIZED AREAS.—A grant awarded under this section to a public agency or a private company engaged in public transportation in an area other than urbanized areas shall be subject to all of the terms and conditions to which a grant awarded under section 5311 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

“(C) NONPROFIT ORGANIZATIONS.—A grant awarded under this section to a private nonprofit organization shall be subject to all of the terms and conditions to which a grant made under section 5310 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

“(2) SPECIAL WARRANTY.—

“(A) IN GENERAL.—Section 5333(b) of title 49, United States Code, shall apply to grants under this section if the Secretary of Labor utilizes a Special Warranty that provides a fair and equitable arrangement to protect the interests of employees.

“(B) WAIVER.—The Secretary may waive the applicability of the Special Warranty under subparagraph (A) for private non-profit recipients on a case-by-case basis as the Secretary considers appropriate.”; and

(4) by striking subsections (k) and (l).

#### **SEC. 6039. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.**

(a) SECTION HEADING.—The section heading for section 3038 of the Federal Transit Act of 1998 (49 U.S.C. 5310 note), is amended to read as follows:

#### **“SEC. 3038. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.”.**

(b) FUNDING.—Section 3038(g) of the Federal Transit Act of 1998 (49 U.S.C. 5310 note) is amended to read as follows:

“(g) FUNDING.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(iii) and (b)(2)(E) of section 5338 of title 49, United States Code—

“(1) 75 percent shall be available, and shall remain available until expended, 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; and

“(2) 25 percent shall be available, and shall remain available until expended, for operators of over-the-road bus service not described in paragraph (1), to finance the incremental capital and training costs of the Department of Transportation’s final rule regarding accessibility of over-the-road buses.”.

(b) CONFORMING AMENDMENT.—The item relating to section 3038 in the table of contents for the Transportation Equity Act for the

21st Century (Public Law 105-178) is amended to read as follows:

“Sec. 3038. Over-the-road bus accessibility program.”.

#### **SEC. 6040. ALTERNATIVE TRANSPORTATION IN PARKS AND PUBLIC LANDS.**

(a) IN GENERAL.—Chapter 53 is amended by inserting after section 5315 the following:

#### **“§ 5316. 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 transaction to carry out a qualified project under this section to enhance the protection of America’s National Parks and public lands and increase the enjoyment of those visiting the parks and public lands by ensuring access to all, including persons with disabilities, improving conservation and park and public land opportunities in urban areas through partnering with state and local governments, and 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 transaction 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.

“(b) DEFINITIONS.—In this section, the following definitions shall 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; and

“(D) a recreation area managed by the Bureau of Reclamation.

“(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.

“(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, 5303, 5304, 5308, or 5309(a)(1)(A);

“(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 this section 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)(H) 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 title or any other provision of law.

“(3) MAXIMUM AMOUNT.—No qualified project shall receive more than 12 percent of the total amount made available to carry out this section under section 5338(b)(2)(H) 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 of this title;

“(ii) the statewide planning provisions under section 5304 of this title; and

“(iii) the public participation requirements under section 5307(e); 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 of this title;

“(B) comply with the statewide planning provisions under section 5304 of this title;

“(C) comply with the public participation requirements under section 5307(e) of this title; and

“(D) consult with the appropriate Federal land management agency during the planning process.

“(f) COST SHARING.—

“(1) The Secretary, in cooperation with the Secretary of the Interior, shall establish the agency share of net project cost to be provided under this section to a qualified participant.

“(2) In establishing the agency share of 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) Notwithstanding any other provision of law, Federal funds appropriated to any Federal land management agency may be counted toward the non-agency share of the net project cost of a qualified project.

“(g) SELECTION OF QUALIFIED PROJECTS.—

“(1) 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) 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 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) 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)(A) 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) 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) 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 is subject to any other terms, conditions, requirements, and provisions 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).

“(i) 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.

“(j) COORDINATION OF RESEARCH AND DEPLOYMENT OF NEW TECHNOLOGIES.—

“(1) 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 transactions 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) The Secretary may request and receive appropriate information from any source.

“(3) Grants, cooperative agreements, contracts or other transactions under paragraph (1) shall be awarded from amounts allocated under subsection (c)(1).

“(k) 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.

“(1) 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; and

“(B) the Committee on Transportation and Infrastructure of the House of Representatives.

“(2) ANNUAL AND SUPPLEMENTAL REPORTS.—The report required under paragraph (1) shall be included in the report submitted under section 5309(m).”

(b) CONFORMING AMENDMENTS.—The table of sections for chapter 53 is amended by inserting after the item relating to section 5315 the following:

“5316. Alternative transportation in parks and public lands.”

#### SEC. 6041. 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 (c) of section 5338 of title 49, United States Code, shall not exceed—

(1) \$7,646,336,000 for fiscal year 2005;

(2) \$8,900,000,000 for fiscal year 2006;

(3) \$9,267,464,000 for fiscal year 2007;

(4) \$10,050,700,000 for fiscal year 2008; and

(5) \$10,686,500,000 for fiscal year 2009.

#### SEC. 6042. ADJUSTMENTS FOR THE SURFACE TRANSPORTATION EXTENSION ACT OF 2004.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall reduce the total apportionments and allocations made for fiscal year 2005 to each grant recipient under section 5338 of title 49, United States Code, by the amount apportioned to that recipient pursuant to section 8 of the Surface Transportation Extension Act of 2004 part V (118 Stat. 1154).

(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 5337(a) of title 49, United States Code.

#### SEC. 6043. DISADVANTAGED BUSINESS ENTERPRISE.

Section 1821(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 shall apply to all funds authorized or otherwise made available under this title.

## TITLE VII—SURFACE TRANSPORTATION SAFETY IMPROVEMENT

### SEC. 7001. SHORT TITLE.

This title may be cited as the “Surface Transportation Safety Improvement Act of 2005”.

### SEC. 7002. AMENDMENT OF UNITED STATES CODE.

(a) AMENDMENT OF TITLE 49.—Except as otherwise specifically provided, whenever in this title (other than in chapter 1 of subtitle B) an amendment is expressed in terms of an amendment to 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) AMENDMENT OF TITLE 23.—Except as otherwise expressly provided, whenever in chapter 1 of subtitle B of 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 23, United States Code.

#### Subtitle A—Motor Carrier Safety CHAPTER 1—MOTOR CARRIERS

### SEC. 7101. SHORT TITLE.

This chapter may be cited as the “Motor Carrier Safety Reauthorization Act of 2005”.

### SEC. 7102. CONTRACT AUTHORITY.

Authorizations from the Highway Trust Fund (other than the Mass Transit Account) to carry out this chapter 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. Approval by the Secretary of a grant with funds made available under this chapter imposes upon the United States Government a contractual obligation for payment of the Government's share of costs incurred in carrying out the objectives of the grant.

### SEC. 7103. AUTHORIZATION OF APPROPRIATIONS.

(a) ADMINISTRATIVE EXPENSES.—Section 31104 is amended by adding at the end the following:

“(i) ADMINISTRATIVE EXPENSES.—

“(1) 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) \$211,400,000 for fiscal year 2006,

“(B) \$217,500,000 for fiscal year 2007,

“(C) \$222,600,000 for fiscal year 2008, and

“(D) \$228,500,000 for fiscal year 2009,

of which \$6,800,000 shall be available for each fiscal year to make grants to, or execute contracts with, States, local governments, or other persons for the commercial vehicle analysis reporting system, with the Federal share payable under any such grant to be 100 percent.

“(2) 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 (including a medical review board and rules for medical examiners), performance and registration information system management, and outreach and education; other operating expenses and similar matters; and such other expenses as may from time to time become necessary to implement statutory mandates not funded from other sources.

“(3) The amounts made available under this section shall remain available until expended.”.

(b) GRANT PROGRAMS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for the following Federal Motor Carrier Safety Administration programs:

(1) Border enforcement grants under section 31107 of title 49, United States Code—

(A) \$33,000,000 for fiscal year 2006;

(B) \$34,000,000 for fiscal year 2007;

(C) \$35,000,000 for fiscal year 2008; and

(D) \$36,000,000 for fiscal year 2009.

(2) Performance and registration information system management grant program under 31109 of title 49, United States Code, \$4,000,000 for each of fiscal years 2006 through 2009.

(3) Commercial driver's license and driver improvement program grants under section 31318 of title 49, United States Code—

(A) \$23,000,000 for fiscal year 2006;

(B) \$23,000,000 for fiscal year 2007;

(C) \$24,000,000 for fiscal year 2008; and

(D) \$25,000,000 for fiscal year 2009.

(4) For carrying out the commercial vehicle information systems and networks deployment program established under section 31151 of title 49, United States Code, \$25,000,000 for each of fiscal years 2006 through 2009.

(c) MOTOR CARRIER SAFETY ACCOUNT.—Funds made available under subsection (a) shall be administered in the account established in the Treasury entitled “Motor Carrier Safety Operations and Program 69-8159-0-7-401” and the funds made available under subsection (b) shall be administered in the account established in the Treasury entitled “Motor Carrier Safety Grants 69-8158-0-7-401”.

(d) PERIOD OF AVAILABILITY.—The amounts made available under subsection (b) of this section shall remain available until expended.

### SEC. 7104. HIGH RISK CARRIER COMPLIANCE REVIEWS.

From the funds authorized by section 31104(i)(1) of title 49, United States Code, the Secretary of Transportation 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, compliance reviews shall be conducted whenever a motor carrier is rated as category A or B for 2 consecutive months.

### SEC. 7105. OVERDUE REPORTS, STUDIES, AND RULEMAKINGS.

(a) REQUIREMENT FOR COMPLETION.—Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a schedule for the completion of the following reports, studies, and rulemaking proceedings:

(1) Motor Carrier Replacement Information and Registration System, section 103, ICC Termination Act of 1995.

(2) General Jurisdiction Over Freight Forwarder Service, section 13531, ICC Termination Act of 1995.

(3) Performance-based CDL Testing, section 4019, Transportation Equity Act for the Twenty-First Century.

(4) Improved Flow of Driver History Pilot Program, section 4022, Transportation Equity Act for the Twenty-First Century.

(5) Employee Protections, section 4023, Transportation Equity Act for the Twenty-First Century.

(6) Federal Motor Carrier Safety Administration 2010 Strategy, section 104, Motor Carrier Safety Improvement Act of 1999.

(7) New Motor Carrier Entrant Requirements, section 210, Motor Carrier Safety Improvement Act of 1999.

(8) Certified Motor Carrier Safety Auditors, section 211, Motor Carrier Safety Improvement Act of 1999.

(9) Medical Certificate, section 215, Motor Carrier Safety Improvement Act of 1999.

(10) Truck Crash Causation Study, section 224, Motor Carrier Safety Improvement Act of 1999.

(b) FINAL RULE REQUIRED.—Unless specifically otherwise permitted by law, rulemaking proceedings shall be considered completed for purposes of this section only when the Secretary has issued a final rule and the docket for the rulemaking proceeding is closed or the rulemaking proceeding is withdrawn or terminated and the docket closed without further action.

(c) SCHEDULE FOR COMPLETION.—The Secretary shall transmit a revised schedule, indicating progress made in completing the reports, studies, and rulemaking proceedings reported under subsection (a) every 6 months after the first such report under subsection (a) until they are completed. The Inspector General of the Department of Transportation shall monitor whether the schedule is being met and report periodically to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure on progress made in completing the reports, studies, and rulemaking proceedings.

(e) COMPLETION OF NEW RULEMAKING PROCEEDINGS.—Nothing in this section delays or changes the deadlines specified for new reports, studies, or rulemaking mandates contained in this chapter.

(f) REPORT OF OTHER AGENCY ACTIONS.—Within 12 months after the date of enactment of this Act, the Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure a report on the status of the following projects:

(1) Rescinding the current regulation which prohibits truck and bus drivers from viewing television and monitor screens while operating commercial vehicles.

(2) Consolidating Out-Of-Service Criteria regulations enforced by the Federal Motor Carrier Safety Administration.

(3) Revision of the safety fitness rating system of motor carriers.

(4) Amendment of Federal Motor Carrier Safety Administration rules of practice for conducting motor carrier administrative proceedings, investigations, disqualifications, and for issuing penalties.

(5) Requiring commercial drivers to have a sufficient functional speaking and reading comprehension of the English language.

### SEC. 7106. AMENDMENTS TO THE LISTED REPORTS, STUDIES, AND RULEMAKING PROCEEDINGS.

In addition to completing the reports, studies, and rulemaking proceedings listed in section 7105(a), the Secretary of Transportation shall—

(1) cause the Interim Final Rule addressing New Motor Carrier Entrant Requirements to be amended so as to require that a safety audit be immediately converted to a compliance review and appropriate enforcement actions be taken if the safety audit discloses acute safety violations by the new entrant; and

(2) ensure that 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) apply to all interstate operations of such carries regardless of the distance traveled.

### SEC. 7107. MOTOR CARRIER SAFETY GRANTS.

(a) MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.—

(1) Section 31102 is amended—

(A) by striking “activities by fiscal year 2000;” in subsection (b)(1)(A) and inserting “activities for commercial motor vehicles of passengers and freight;”;



(B) by striking “years before December 18, 1991,” in subsection (b)(1)(E) and inserting “years;”;

(C) by striking “and” after the semicolon in subsection (b)(1)(S);

(D) by striking “personnel.” in subsection (b)(1)(T) and inserting “personnel;”;

(E) adding at the end of subsection (b)(1) the following:

“(U) ensures that inspections of motor carriers of passengers are conducted at stations, terminals, border crossings, or maintenance facilities, except in the case of an imminent or obvious safety hazard;

“(V) provides that the State will include in the training manual for the licensing examination to drive a non-commercial motor vehicle and a commercial motor vehicle, information on best practices for driving safely in the vicinity of commercial motor vehicles and in the vicinity of non-commercial vehicles, respectively; and

“(W) provides that the State will enforce the registration requirements of section 13902 by suspending the operation of any vehicle discovered to be operating without registration or beyond the scope of its registration.”; and

(F) 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) of this section for the following activities:

“(1) 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.

“(2) 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 against non-commercial motor vehicles when necessary to promote the safe operation of commercial motor vehicles.”.

(2) Section 31103(b) is amended—

(A) by inserting “(1)” after “ACTIVITIES.—”; and

(B) by adding at the end the following:

“(2) NEW ENTRANT MOTOR CARRIER AUDIT FUNDS.—From the amounts designated under section 31104(f)(4), 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.”.

(3) Section 31104(a) is amended to read as follows:

“(a) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out section 31102:

“(1) Not more than \$193,620,000 for fiscal year 2006.

“(2) Not more than \$197,490,000 for fiscal year 2007.

“(3) Not more than \$201,440,000 for fiscal year 2008.

“(4) Not more than \$205,470,000 for fiscal year 2009.”.

(4) Section 31104(f) is amended by striking paragraph (2) and inserting the following:

“(2) HIGH-PRIORITY ACTIVITIES.—The Secretary may designate up to \$15,000,000 for each of fiscal years 2006 through 2009 from amounts available for allocation under paragraph (1) for States, local governments, and organizations representing government agencies or officials 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, or demonstrate new technologies, and will reduce the number and rate of accidents involving commercial motor vehicles. The amounts designated under this paragraph shall be allocated by the Secretary 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. The Secretary shall establish safety performance criteria to be used to distribute high priority program funds. At least 80 percent of the amounts designated under this paragraph shall be awarded to State agencies and local government agencies.

“(3) NEW ENTRANT AUDITS.—The Secretary shall designate up to \$29,000,000 of the amounts available for allocation under paragraph (1) for audits of new entrant motor carriers conducted pursuant to 31144(f). The Secretary may withhold such funds from a State or local government that is unable to use government employees to conduct new entrant motor carrier audits, and may instead utilize the funds to conduct audits in those jurisdictions.

“(4) CDLIS MODERNIZATION.—The Secretary may designate up to \$2,000,000 for fiscal year 2006 and up to \$6,000,000 for fiscal years 2007 through 2009 from amounts available for allocation under paragraph (1) for commercial driver's license information system modernization under section 31309(f).”.

(b) GRANTS TO STATES FOR BORDER ENFORCEMENT.—Section 31107 is amended to read as follows:

#### “§ 31107. Border enforcement grants

“(a) GENERAL AUTHORITY.—From the funds authorized by section 7103(b)(1) of the Motor Carrier Safety Reauthorization Act of 2005, the Secretary may make a grant in a fiscal year to a State that shares a 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 United States Government amounts, 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 State or Federal fiscal years before October 1, 2005.”.

(c) NONCOMPLIANCE WITH CDL REQUIREMENTS.—Section 31314 is amended by inserting “up to” after “withhold” in subsections (a) and (b).

(d) CONFORMING AMENDMENTS.—(1) The chapter analysis for chapter 311 is amended—

(A) by striking the item relating to Subchapter I, and inserting the following:

“SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS”;

and

(B) by striking the item relating to section 31107, and inserting the following:

“31107. Border enforcement grants.”.

(2) Subchapter I of chapter 311 is amended by striking the subchapter heading and inserting the following:

“SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS”

#### SEC. 7108. TECHNICAL CORRECTIONS.

(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 striking “subtitle IV” and inserting “subtitle IV, subchapter III of chapter 311, chapter 313, or chapter 315”.

(b) JUDICIAL REVIEW.—Section 351(a) is amended to read as follows:

“(a) JUDICIAL REVIEW.—An action of the Secretary of Transportation in carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89-670; 80 Stat. 931), or an action of the Administrator of the Federal Railroad Administration, Federal Motor Carrier Safety Administration, or the Federal Aviation Administration in carrying out a duty or power specifically assigned to the Administrator by that Act, may be reviewed judicially to the same extent and in the same way as if the action had been an action by the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer or assignment.”.

(c) AUTHORITY TO CARRY OUT CERTAIN TRANSFERRED DUTIES AND POWERS.—Section 352 is amended to read as follows:

#### “§ 352. Authority to carry out certain transferred duties and powers

“In carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89-670; 80 Stat. 931), the Secretary of Transportation and the Administrators of the Federal Railroad Administration, the Federal Motor Carrier Safety Administration, and the Federal Aviation Administration have the same authority that was vested in the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer. An action of the Secretary or Administrator in carrying out the duty or power has the same effect as when carried out by the department, agency, or instrumentality.”.

(d) TRANSFER OF PROVISION.—

(1) Section 345 of Public Law 104-59 is transferred to subchapter III of chapter 311 of title 49, United States Code, redesignated as section 31149, and inserted after section 31148 as section 31149. Section 31149, as transferred by the preceding sentence, is amended—

(A) by conforming the section heading to the style and format of the section headings in chapter 311 of title 49, United States Code;

(B) by striking “of title 49, United States Code,” in subsection (a)(1), subsection (a)(5), and subsection (e)(4); and

(C) by striking subsection (f).

(2) The chapter analysis for chapter 311 is amended by inserting after the item relating to section 31148 the following:

“31149. Exemptions from requirements relating to commercial motor vehicles and their operators.”.

(e) ELIMINATION OF COMMODITY AND SERVICE EXEMPTIONS.—

(1) Section 13506(a) is amended—

(A) by striking paragraphs (6), (11), (12), (13), and (15);

(B) by redesignating paragraphs (7), (8), (9), (10), and (14) as paragraphs (6), (7), (8), (9) and (10), respectively;

(C) by inserting “or” after the semicolon in paragraph (9), as redesignated; and

(D) striking “13904(d); or” in paragraph (10), as redesignated, and inserting “14904(d).”.

(2) Section 13507 is amended by striking “(6), (8), (11), (12), or (13)” and inserting “(6)”.

#### SEC. 7109. PENALTY FOR DENIAL OF ACCESS TO RECORDS.

Section 521(b)(2) is amended by adding at the end the following:

“(E) COPYING OF RECORDS AND ACCESS TO EQUIPMENT, LANDS, AND BUILDINGS.—A motor carrier subject to chapter 51 of subtitle III, a motor carrier, broker, or freight forwarder subject to part B of subtitle IV, or the owner or operator of a commercial motor vehicle subject to part B of subtitle VI of this title who fails to allow the Secretary, or an employee designated by the Secretary, promptly upon demand 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) of this title shall be liable to the United States for a civil penalty not to exceed \$500 for each offense, and 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 \$5,000. 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 herein amends or supersedes any remedy available to the Secretary under sections 502(d), 507(c), or other provision of this title.”.

#### SEC. 7110. MEDICAL PROGRAM.

(a) IN GENERAL.—Subchapter III of chapter 311, as amended by section 7108(d) of this chapter, is amended by adding at the end the following:

##### “§ 31150. 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 driver qualification medical standards and guidelines, 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 specialties relevant to the functions 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 according to the SL schedule.

“(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 applicants for and holders of commercial driver’s licenses 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 successfully completed training in physical and medical

examination standards and are listed on a national registry maintained by the Department of Transportation; and

“(B) issue certificates to such holders and applicants that have been found, upon examination, to be physically qualified to operate a commercial motor vehicle and to meet applicable medical standards unless the authority to issue certificates has been delegated to medical examiners under subparagraph (d)(2) of this section;

“(C) require each holder of a commercial driver’s license or learner’s permit who operates a commercial vehicle in interstate commerce to have a current valid medical certificate;

“(D) conduct periodic reviews of a select number of medical examiners on the national registry to ensure that proper examinations of applicants and holders are being conducted;

“(E) 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 complete specific training, including refresher courses, to be listed in the registry;

“(F) require medical examiners to transmit the name of the applicant and numerical identifier, as determined by the Administrator, 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

“(G) periodically review a representative sample of the medical examination reports associated with the name and numerical identifiers of applicants transmitted under subparagraph (F) 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 applicant or holder who fails to meet the applicable standards at the time of the examination, such a medical examiner may be removed from the registry and the medical certificate of the applicant or holder may be deemed void.

“(d) NATIONAL REGISTRY OF MEDICAL EXAMINERS.—The Secretary, 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 delegate to those examiners the authority to issue such certificates upon successfully completing the required training;

“(3) 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 there under; and

“(4) shall accept as valid only medical certificates issued by persons on the national registry of medical examiners.

“(e) REGULATIONS.—The Secretary is authorized to promulgate such regulations as may be necessary to carry out this section.”.

(b) MEDICAL EXAMINERS.—Section 31136(a)(3) 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 are listed on a national registry maintained by the Department of Transportation; and”.

(c) DEFINITION OF MEDICAL EXAMINER.—Section 31132 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)(1) of title 49, United States Code, shall be used by the Secretary to carry out section 31150 of title 49, United States Code.

(e) CONFORMING AMENDMENT.—The chapter analysis for chapter 311, as amended by section 7108(d) of this chapter, is amended by inserting after the item relating to section 31149 the following:

“31150. Medical program”.

(f) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 1 year after the date of enactment of this Act.

#### SEC. 7111. 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 revise the final rule 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 rule-making process in the Federal Motor Carrier Safety Administration docket relating to qualifications of drivers with diabetes.

(b) NO HISTORY OF DRIVING WHILE USING INSULIN REQUIRED FOR QUALIFICATION.—The Secretary may not require individuals to have experience operating commercial motor vehicles while using insulin in order to qualify to operate a commercial motor vehicle in interstate commerce.

(c) HISTORY OF DIABETES CONTROL.—The Secretary may require an individual to have used insulin for a minimum period of time and demonstrated stable control of diabetes in order to qualify to operate a commercial motor vehicle in interstate commerce. Any such requirement, including any requirement with respect to the duration of such insulin use, shall be consistent with the findings of the expert medical panel reported in July 2000 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”.

(d) APPLICABLE STANDARD.—The Secretary shall ensure that individuals who use insulin to treat their diabetes are not held to a higher standard than other qualified commercial drivers, except to the extent that limited operating, monitoring, or medical requirements are deemed medically necessary by experts in the field of diabetes medicine.

#### SEC. 7112. FINANCIAL RESPONSIBILITY FOR PRIVATE MOTOR CARRIERS.

(a) TRANSPORTATION OF PASSENGERS.—

(1) Section 31138(a) is amended to read as follows:

“(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability and property damage for the transportation of passengers by motor vehicle in the United States between a place in a State and—

“(1) a place in another State;

“(2) another place in the same State through a place outside of that State; or

“(3) a place outside the United States.”.

(2) Section 31138(c) is amended by adding at the end the following:

“(4) The Secretary may require a person, other than a motor carrier as defined in section 13102(12) of this title, transporting passengers by motor vehicle to file with the Secretary the evidence of financial responsibility specified in subsection (c)(1) of this section in an amount not less than that required by this section, and the laws of the State or States in which the person is operating, to the extent applicable. The extent 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 motor vehicles, or for loss or damage to property, or both.”.

(b) TRANSPORTATION OF PROPERTY.—Section 31139 is amended—

(1) by striking so much of subsection (b) as precedes paragraph (2) and inserting the following:

“(b) GENERAL REQUIREMENTS AND MINIMUM AMOUNT.—

“(1) The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and environmental restoration for the transportation of property by motor vehicle in the United States between a place in a State and—

“(A) a place in another State;

“(B) another place in the same State through a place outside of that State; or

“(C) a place outside the United States.”;

(2) by aligning the left margin of paragraph (2) of subsection (b) with the left margin of paragraph (1) of that subsection (as amended by paragraph (1) of this subsection); and

(3) by redesignating subsection (c) through (g) as subsections (d) through (h), respectively, and 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 of this title, to file with the Secretary the evidence of financial responsibility specified in subsection (b) of this section in an amount not less than that required by this section, and the laws of the State or States in which the motor private carrier is operating, to the extent applicable. 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 motor vehicles, or for loss or damage to property, or both.”.

#### SEC. 7113. INCREASED PENALTIES FOR OUT-OF-SERVICE VIOLATIONS AND FALSE RECORDS.

(a) Section 521(b)(2)(B) is amended to read as follows:

“(B) RECORDKEEPING AND REPORTING VIOLATIONS.—A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under

section 504 of this title or under any regulation issued by the Secretary pursuant to subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title about transportation by motor carrier, motor carrier of migrant workers, or motor private carrier, or an officer, agent, or employee of that person—

“(i) who does not make that report, does not specifically, completely, and truthfully answer that question in 30 days from the date the Secretary requires the question to be answered, or does not make, prepare, or preserve that record in the form and manner prescribed by the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed \$1,000 for each offense, and each day of the violation shall constitute a separate offense, except that the total of all civil penalties assessed against any violator for all offenses related to any single violation shall not exceed \$10,000; or

“(ii) who knowingly falsifies, destroys, mutilates, or changes a required report or record, knowingly files a false report with the Secretary, knowingly makes or causes or permits to be made a false or incomplete entry in that record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation or order of the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each violation, if any such action can be shown to have misrepresented a fact that constitutes a violation other than a reporting or recordkeeping violation.”.

(b) Section 31310(i)(2) is amended to read as follows:

“(2) The Secretary shall prescribe regulations establishing sanctions and penalties related to violations of out-of-service orders by individuals operating commercial motor vehicles. The regulations shall require at least that—

“(A) an operator of a commercial motor vehicle found to have committed a first violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 180 days and liable for a civil penalty of at least \$2,500;

“(B) an operator of a commercial motor vehicle found to have committed a second violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 2 years and not more than 5 years and liable for a civil penalty of at least \$5,000;

“(C) an employer that knowingly allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall be liable for a civil penalty of not more than \$25,000; and

“(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 1 year or a fine under title 18, United States Code, or both.”.

#### SEC. 7114. INTRASTATE OPERATIONS OF INTERSTATE MOTOR CARRIERS.

(a) Subsection (a) of section 31144 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 in operations that affect interstate commerce within the United States, and 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) Subsection (c) of section 31144 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) Section 31144 is amended by redesignating subsections (d), (e), and the second subsection (c) as subsections (e), (f), and (g), respectively, and inserting after subsection (c) the following:

“(d) DETERMINATION OF UNFITNESS BY A STATE.—If a State that receives Motor Carrier Safety Assistance Program funds pursuant to section 31102 of this title determines, by applying the standards prescribed by the Secretary under subsection (b) of this section, that an owner or operator of commercial motor vehicles 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 vehicles in the State, the Secretary shall prohibit the owner or operator from operating such vehicles in interstate commerce until the State determines that the owner or operator is fit.”.

#### SEC. 7115. 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 3132(1) 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, 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 Federal Motor Carrier Safety 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 title 18, United States Code, 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 49 U.S.C. 3132(1), to stop for inspection of the vehicle, driver, cargo, and required records at or in the vicinity of an inspection site.”.

(c) CONFORMING AMENDMENTS.—

(1) The chapter analysis for chapter 2 of title 18, United States Code, is amended by inserting after the item relating to section 38 the following:

“39. Commercial motor vehicles required to stop for inspections.”.

(2) The chapter analysis for chapter 203 of title 18, United States Code, is amended by inserting after the item relating to section 3063 the following:

“3064. Powers of Federal Motor Carrier Safety Administration.”.

**SEC. 7116. REVOCATION OF OPERATING AUTHORITY.**

Section 13905(e) 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 of this title, 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 of this title.”;

(2) by striking “may suspend a registration” in paragraph (2) 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. 7117. PATTERN OF SAFETY VIOLATIONS BY MOTOR CARRIER MANAGEMENT.**

(a) **IN GENERAL.**—Section 31135 is amended—

(1) by inserting “(a) **IN GENERAL.**—” before “Each”; and

(2) by adding at the end the following:

“(b) **PATTERN OF NON-COMPLIANCE.**—If an officer of a motor carrier engages in a pattern or practice of avoiding compliance, or masking or otherwise concealing non-compliance, with regulations on commercial motor vehicle safety prescribed under this subchapter, the Secretary may suspend, amend, or revoke any part of the motor carrier’s registration under section 13905 of this title.

“(c) **REGULATIONS.**—Within 1 year after the date of enactment of the Motor Carrier Safety Reauthorization Act of 2005, the Secretary shall by regulation establish standards to implement subsection (b).

“(d) **DEFINITIONS.**—In this section:

“(1) **MOTOR CARRIER.**—The term ‘motor carrier’ has the meaning given the term in section 13102(12) of this title.

“(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 the motor carrier.”.

(b) **CROSS-REFERENCE.**—Section 13902(a)(1)(B) is amended to read as follows:

“(B) any safety regulations imposed by the Secretary, the duties of employers and employees established by the Secretary under section 31135, and the safety fitness requirements established by the Secretary under section 31144; and”.

**SEC. 7118. MOTOR CARRIER RESEARCH AND TECHNOLOGY PROGRAM.**

(a) **IN GENERAL.**—Section 31108 is amended to read as follows:

**“§31108. Motor carrier research and technology program**

“(a) **RESEARCH, TECHNOLOGY, AND TECHNOLOGY TRANSFER ACTIVITIES.**—

“(1) The Secretary of Transportation shall establish and carry out a motor carrier and motor coach research and technology program. The Secretary may carry out research, development, technology, and technology transfer activities with respect to—

“(A) the causes of accidents, injuries and fatalities involving commercial motor vehicles; and

“(B) means of reducing the number and severity of accidents, injuries and fatalities involving commercial motor vehicles.

“(2) 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.

“(3) The Secretary may use the funds appropriated to carry out this section for training or education of commercial motor vehicle safety personnel, including, but not limited to, training in accident reconstruction and detection of controlled substances or other contraband, and stolen cargo or vehicles.

“(4) 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, cooperative agreements, and other transactions with, any Federal laboratory, State agency, authority, association, institution, for-profit or non-profit corporation, organization, foreign country, or person.

“(5) 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) 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) 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)(A) 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, the Secretary may approve a greater Federal share.

“(B) 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) 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.).

“(c) **AVAILABILITY OF AMOUNTS.**—The amounts made available under section 7103(a) of the Motor Carrier Safety Reauthorization Act of 2005 to carry out this section shall remain available until expended.

“(d) **CONTRACT AUTHORITY.**—Approval by the Secretary of a grant with funds made available under section 7103(a) of the Motor Carrier Safety Reauthorization Act of 2005 to carry out this section imposes upon the United States Government a contractual obligation for payment of the Government’s share of costs incurred in carrying out the objectives of the grant.”.

(b) **CONFORMING AMENDMENT.**—The chapter analysis for chapter 311 is amended by striking the item relating to section 31108, and inserting the following:

“31108. Motor carrier research and technology program.”.

**SEC. 7119. INTERNATIONAL COOPERATION.**

(a) **IN GENERAL.**—Chapter 311 is amended by inserting at the end the following:

**“Subchapter IV—Miscellaneous**

**“§31161. International cooperation**

“The Secretary is authorized to use funds appropriated under section 31104(i) of this title 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 chapter analysis for chapter 311 is amended by adding at the end the following:

**“SUBCHAPTER IV—MISCELLANEOUS**

“31161. International cooperation.”.

**SEC. 7120. PERFORMANCE AND REGISTRATION INFORMATION SYSTEM MANAGEMENT.**

(a) **IN GENERAL.**—Section 31106(b) is amended—

(1) by striking paragraphs (2) and (3) 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 the authority to impose sanctions relating to commercial motor vehicle registration on the basis of a Federal safety fitness determination; and

“(C) cancel the motor vehicle registration and seize the registration plates of an employer found liable under section 31310(i)(2)(C) of this title for knowingly allowing or requiring an employee to operate a commercial motor vehicle in violation of an out-of-service order.”; and

(2) by striking paragraph (4).

(b) **PERFORMANCE AND REGISTRATION INFORMATION SYSTEM MANAGEMENT GRANTS.**—

(1) Subchapter I of chapter 311, as amended by section 7118 of this chapter, is further amended by adding at the end the following:

**“§ 31109. Performance and Registration Information System Management**

“(a) IN GENERAL.—From the funds authorized by section 7103(b)(2) of the Motor Carrier Safety Reauthorization Act of 2005, the Secretary may make a grant in a fiscal year to a State to implement the performance and registration information system management requirements of section 31106(b).

“(b) AVAILABILITY OF AMOUNTS.—Amounts made available to a State under section 7103(b)(2) of the Motor Carrier Safety Reauthorization Act of 2005 to carry out this section shall remain available until expended.

“(c) SECRETARY'S APPROVAL.—Approval by the Secretary of a grant to a State under section 7103(b)(2) of the Motor Carrier Safety Reauthorization Act of 2005 to carry out this section is a contractual obligation of the Government for payment of the amount of the grant.”.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 311 is amended by inserting after the item relating to section 31108 the following:

“31109. Performance and Registration Information System Management.”.

**SEC. 7121. COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS DEPLOYMENT.**

(a) IN GENERAL.—Subchapter III of chapter 311, as amended by section 7110, is amended by adding at the end the following:

**“§ 31151. Commercial vehicle information systems and networks**

“(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

“(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) ELIGIBILITY.—To be eligible for a core deployment grant under this section, a State—

“(A) shall have a commercial vehicle information systems and networks program plan and a system design approved by the Secretary;

“(B) 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, are consistent with the national intelligent transportation systems and commercial vehicle information systems and networks architectures and available standards, and promote interoperability and efficiency to the extent practicable; and

“(C) 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.

“(3) AMOUNT OF GRANTS.—The maximum aggregate amount a State may receive under

this section for the core deployment of commercial vehicle information systems and networks may not exceed \$2,500,000.

“(4) 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. Eligible States that have either completed the core deployment of commercial vehicle information systems and networks or completed such deployment before core deployment grant funds are expended may use the remaining core deployment grant funds for the expanded deployment of commercial vehicle information systems and networks in their State.

“(d) EXPANDED DEPLOYMENT GRANTS.—

“(1) IN GENERAL.—For each fiscal year, from the funds remaining after the Secretary has made core deployment grants under subsection (c) of this section, 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 is eligible for an expanded deployment grant.

“(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) 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 sources shall not exceed 80 percent.

“(f) AVAILABILITY OF FUNDS.—Funds authorized to be appropriated under section 7103(b)(4) of the Motor Carrier Safety Reauthorization Act of 2005 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.

“(g) DEFINITIONS.—In this section:

“(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 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 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 VEHICLE OPERATIONS.—The term ‘commercial vehicle operations’—

“(A) means motor carrier operations and motor vehicle regulatory activities associated with the commercial 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.—Safety information exchange to—

“(i) electronically collect and transmit commercial vehicle and driver inspection data at a majority of inspection sites;

“(ii) connect to the Safety and Fitness Electronic Records system for access to interstate carrier and commercial vehicle data, summaries of past safety performance, and commercial vehicle credentials information; and

“(iii) exchange carrier data and commercial vehicle safety and credentials information within the State and connect to Safety and Fitness Electronic Records for access to interstate carrier and commercial vehicle data.

“(B) INTERSTATE CREDENTIALS ADMINISTRATION.—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 subsequently extend this processing to other credentials, including intrastate, titling, oversize/overweight, carrier registration, and hazardous materials;

“(ii) connect to the International Registration Plan and International Fuel Tax Agreement clearinghouses; and

“(iii) have at least 10 percent of the transaction volume handled electronically, and have the capability to add more carriers and to extend to branch offices where applicable.

“(C) ROADSIDE SCREENING.—Roadside electronic screening to electronically screen transponder-equipped commercial vehicles at a minimum of 1 fixed or mobile inspection sites and to replicate this screening at other sites.

“(4) EXPANDED DEPLOYMENT.—The term ‘expanded deployment’ means the deployment of systems in a State that exceed the requirements of an core deployment of commercial vehicle information systems and networks, improve safety and the productivity of commercial vehicle operations, and enhance transportation security.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 311 is amended by inserting after the item relating to section 31150 the following:

“31151. Commercial vehicle information systems and networks”.

**SEC. 7122. OUTREACH AND EDUCATION.**

(a) IN GENERAL.—The Secretary of Transportation, through the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration, may undertake outreach and education initiatives, including the “Share the Road Safely” program, that will reduce the number of highway accidents, injuries, and fatalities involving commercial motor vehicles.

(b) 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.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary for each of fiscal years 2006 through 2009 to carry out this section—

(1) \$1,000,000 for the Federal Motor Carrier Safety Administration; and

(2) \$3,000,000 for the National Highway Traffic Safety Administration.

**SEC. 7123. FOREIGN COMMERCIAL MOTOR VEHICLES.**

(a) **OPERATING AUTHORITY ENFORCEMENT ASSISTANCE FOR STATES.**—Within 180 days after the date of enactment of this Act, 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 Administration safety regulations to ensure their awareness of the process to be used for verification of the operating authority of motor carriers, including buses, and to ensure proper enforcement when motor carriers are found to be in violation of operating authority requirements. 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.**—Within 1 year after the date of enactment of this Act, the Federal Motor Carrier Safety Administration shall conduct a review to determine the degree to which Canadian and Mexican commercial motor vehicles, including buses, currently operating or expected to operate, in the United States comply with the Federal Motor Vehicle Safety Standards.

(2) **REPORTS.**—Within 1 year after the date of enactment of this Act, the Administrator shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure containing the findings and conclusions of the review. Within 4 months after the report is transmitted to the Committees, the Inspector General of the Department of Transportation shall provide comments and observations to the Committees on the scope and methodology of the review.

**SEC. 7124. PRE-EMPLOYMENT SAFETY SCREENING.**

(a) **IN GENERAL.**—Subchapter III of chapter 311, as amended by section 7121, is amended by adding at the end the following:

**“§ 31152. Pre-employment safety screening**

“(a) **IN GENERAL.**—The Secretary of Transportation shall provide companies conducting pre-employment screening services for the motor carrier industry electronic access to—

“(1) commercial motor vehicle accident report information contained in the Motor Carrier Management Information System; and

“(2) all driver safety violations contained in the Motor Carrier Management Information System.

“(b) **ESTABLISHMENT.**—Prior to making information available to such companies under subsection (a), the Secretary shall—

“(1) ensure that any information released is done in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and all applicable Federal laws;

“(2) require the driver applicant's written consent as a condition of releasing the information;

“(3) ensure that the information made available to companies providing pre-employment screening services is not released to any other unauthorized company or individual, unless expressly authorized or required by law; and

“(4) provide a procedure for drivers to remedy incorrect information in a timely manner.

“(c) **DESIGN.**—To be eligible to have access to information under subsection (a), a company conducting pre-employment screening services for the motor carrier industry shall utilize a screening process—

“(1) that is designed to assist the motor carrier industry in assessing an individual driver's crash and safety violation history as a pre-employment condition;

“(2) the use of which is not mandatory; and

“(3) which is used only during the pre-employment assessment of a driver-applicant.”.

(b) **CONFORMING AMENDMENT.**—The chapter analysis for chapter 311, as amended by section 7121, is amended by inserting after the item relating to section 31151 the following: “31152. Pre-employment safety screening.”.

**SEC. 7125. CLASS OR CATEGORY EXEMPTIONS.**

(a) **IN GENERAL.**—The Secretary of Transportation may grant exemptions for categories or classes of drivers of commercial motor vehicles not required to hold a commercial driver's license under section 31301(4) of title 49, United States Code, from compliance in whole or in part with a regulation issued under chapter 315 of title 49, United States Code, or with regulations issued under section 31502 of that title governing hours of service if the Secretary determines that it is in the public interest to grant the exemption and that the exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption subject to such conditions as the Secretary may impose. An exemption may be granted for no longer than 2 years from its initial approval date and may be renewed upon application to the Secretary.

(b) **AUTHORITY TO REVOKE EXEMPTION.**—The Secretary shall immediately revoke an exemption if—

(1) the exemption has resulted in a lower level of safety than was maintained before the exemption was granted; or

(2) continuation of the exemption would not be consistent with the goals and objectives of that chapter or section 31136, as the case may be.

(c) **REQUESTS FOR EXEMPTION.**—

(1) **INTERIM FINAL RULE.**—Not later than 180 days after the date of enactment of this Act, the Secretary shall specify by interim final rule the procedures by which an exemption for a category or class of drivers may be requested under this section. The rule shall, at a minimum, require the motor carrier or other entity requesting the exemption to provide the following information:

(A) The provisions from which the motor carrier or other entity requests exemption.

(B) The reason for which the exemption is requested.

(C) The time period during which the requested exemption would apply.

(D) An analysis of the safety impacts the requested exemption may cause.

(E) The specific countermeasures the motor carrier or other entity will undertake to ensure an equivalent or greater level of safety than would be achieved absent the requested exemption.

(F) The benefits to be derived from the exemption.

(2) **FINAL RULE.**—Not later than 2 years after the date of enactment of this Act, and after notice and an opportunity for comment, the Secretary shall promulgate a final rule specifying the procedures by which an exemption for a category or class of drivers may be requested under this section.

(d) **NOTICE AND COMMENT.**—

(1) **UPON RECEIPT OF A REQUEST.**—Upon receipt of an exemption request, the Secretary

shall publish in the Federal Register a notice explaining the request that has been filed and shall give the public an opportunity to inspect the safety analysis and any other relevant information known to the Secretary and to comment on the request. This subparagraph does not require the release of information protected by law from public disclosure.

(2) **UPON GRANTING A REQUEST.**—Upon granting a request for exemption, the Secretary shall publish in the Federal Register the name of the motor carrier or other entity granted the exemption, the provisions from which the category or class of vehicles will be exempt, the effective period, and all terms and conditions of the exemption.

(3) **AFTER DENYING A REQUEST.**—After denying a request for exemption, the Secretary shall publish in the Federal Register the name of the motor carrier or other entity denied the exemption, the category or class of vehicles for which the exemption was requested, and the reasons for such denial. The Secretary may meet the requirement of this subparagraph by periodically publishing in the Federal Register the names of motor carriers or other entities denied exemptions, the categories or classes of vehicles for which the exemption was requested, and the reasons for such denials.

(e) **APPLICATIONS TO BE DEALT WITH PROMPTLY.**—The Secretary shall grant or deny an exemption request after a thorough review of its safety implications, but in no case later than 90 days after the filing date of such request.

(f) **TERMS AND CONDITIONS.**—The Secretary shall establish terms and conditions for each exemption to ensure that it will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The Secretary shall monitor the implementation of the exemption to ensure compliance with its terms and conditions.

(g) **NOTIFICATION OF STATE COMPLIANCE AND ENFORCEMENT PERSONNEL.**—Before granting a request for exemption, the Secretary shall notify State safety compliance and enforcement personnel, including roadside inspectors, and the public that a motor carrier or other entity will be operating pursuant to an exemption and any terms and conditions that will apply to the exemption.

(h) **PREEMPTION OF STATE RULES.**—During the time period that an exemption is in effect under this section, no State shall enforce any law or regulation that conflicts with or is inconsistent with the exemption with respect to the category or class of vehicles to which the exemption applies.

**SEC. 7126. 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. 7127. ROADABILITY.**

(a) **INSPECTION, REPAIR AND MAINTENANCE OF INTERMODAL EQUIPMENT.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Secretary, 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 promulgate regulations under this section as a subpart of the regulations of the Federal Motor Carrier Safety Administration of the Department of Transportation.



(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 the requirement of 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 the requirement of 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 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 components are in good working order before operating the equipment over the road;

(F) a requirement that a facility at which an intermodal equipment provider regularly makes 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 provision that establishes a program for the evaluation and audit of compliance by intermodal equipment providers with applicable Federal Motor Carrier Safety Administration regulations;

(H) a provision that—

(i) establishes 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 regulations; and

(ii) prohibits 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;

(I) a provision that establishes a process by which motor carriers and agents of motor carriers may request the Federal Motor Carrier Safety Administration to undertake an investigation of an intermodal equipment provider identified under the requirement of subparagraph (A) that is alleged to be not in compliance with the regulations established pursuant to this section;

(J) a provision that establishes a process by which equipment providers and agents of equipment providers may request the Federal Motor Carrier Safety Administration to undertake an investigation of a motor carrier that is alleged to be not in compliance with applicable Federal motor carrier safety regulations;

(K) a provision that establishes a process by which drivers or motor carriers are required to report 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 equipment provider;

(L) a requirement that any actual damage or defect identified in the process established under subparagraph (K) 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 subparagraph (K) process be documented in the maintenance records for such equipment; and

(M) a procedure under which motor carriers, drivers and intermodal equipment providers may seek correction of their 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.—Within 120 days after the date of enactment of this Act, the Secretary shall initiate a rulemaking proceeding for regulations under this section.

(b) JURISDICTION OF DEPARTMENT OF TRANSPORTATION.—Section 31136 is amended by adding at the end the following:

“(g) 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.

“(h) OUT-OF-SERVICE UNTIL REPAIR.—Any intermodal equipment that is determined under this section to fail to comply with applicable safety regulations may be placed out of service 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.”.

(c) PREEMPTION OF STATE LAWS.—

(1) IN GENERAL.—Section 31141 is amended by adding at the end the following:

“(h) PREEMPTION GENERALLY.—Except as otherwise authorized by law and as provided in subsection (i), a law, regulation, order, or other requirement of a State, a political subdivision of a State, or a tribal organization, is preempted if such law, regulation, order, or other requirement exceeds or is inconsistent with a requirement imposed under or pursuant to this chapter.

“(i) 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 section 7127 of the Surface Transportation Safety Improvement Act of 2005 take effect.

“(2) NON-PREEMPTION DETERMINATIONS.—

“(A) IN GENERAL.—A State requirement described in paragraph (1) is not preempted by a Federal requirement prescribed under section 7127 of that Act 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 requirements prescribed under section 7127 of that Act 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.

(2) CONFORMING AMENDMENT.—Section 31141(c)(1) is amended by striking “The Secretary” the first place it appears and inserting “Except as provided by subsection (h), the Secretary”.

(d) DEFINITIONS.—In this section:

(1) INTERMODAL EQUIPMENT.—The term “intermodal equipment” means trailing equipment that is used in the intermodal transportation of freight over public highways in interstate commerce (as defined in section 31132 of title 49, United States Code), 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.

## SEC. 7128. MOTOR CARRIER REGULATIONS.

(a) IN GENERAL.—Section 31149, as amended by section 7108(d), is further amended—

(1) by striking paragraph (1) of subsection (a) and inserting the following:

“(1) TRANSPORTATION OF AGRICULTURAL COMMODITIES AND FARM SUPPLIES.—Regulations prescribed by the Secretary under sections 31136 and 31502 of this title 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.”;

(2) by adding at the end of subsection (e) 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.”.

(b) **REGULATIONS FOR 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 those sections on April 27, 2003.

(c) **UTILITY SERVICE VEHICLES.**—Section 31149(a)(4) (as so transferred) is amended to read as follows:

“(4) **OPERATORS OF UTILITY SERVICE VEHICLES.**—

“(A) **INAPPLICABILITY OF FEDERAL REGULATIONS.**—Such regulations may 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.”;

(2) by striking “Nothing” in subsection (b) and inserting “Except as provided in subsection (a)(4), nothing”; and

(3) by striking “paragraph (2)” in the first sentence of subsection (c) and inserting “an exemption under paragraph (1), (2), or (4)”.

#### **SEC. 7129. VEHICLE TOWING.**

(a) **STATE LAWS RELATING TO VEHICLE TOWING.**—Section 14501(c) is amended by adding at the end the following:

“(5) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to prevent a State from requiring that, in the case of vehicles towed from private property without the consent of the owner or operator of the vehicle, towing companies 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.**—Within 1 year after the date of enactment of this Act, the Secretary of Transportation, in conjunction with other appropriate Federal agencies, shall—

(1) conduct a review of Federal, State and local regulation of the tow truck industry before the date of enactment of the ICC Termination Act of 1995; and

(2) conduct a study to identify issues related to the protection of the rights of consumers who are towed, to establish the scope and geographic reach of any such issues identified, and to identify potential remedies for those issues.

### **CHAPTER 2—UNIFIED CARRIER REGISTRATION**

#### **SEC. 7131. SHORT TITLE.**

This chapter may be cited as the “Unified Carrier Registration Act of 2005”.

#### **SEC. 7132. 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 chapter, this chapter 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. 7133. 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 is amended by—

(1) redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e), and (f), respectively; and

(2) 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) of this title, shall be deemed, for purposes of this part, to be registered to provide such transportation or service for purposes of sections 13908 and 14504a of this title.

“(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) is amended by—

(1) redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) inserting 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) of this title 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 of this title.”.

(c) **TERMINATION OF TRANSITION RULE.**—Section 13902 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) of this title) and transportation under terms and conditions meeting the requirements of section 13710(a)(1) of this title. The Secretary may not, pursuant to any regulation or form issued before or after the transition termi-

nation 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 subsection (d) and this subsection, 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) **CONFORMING AMENDMENTS.**—

(1) **CAPTION OF SECTION 13906.**—The section caption for section 13906 is amended by inserting “**motor private carriers,**” after “**motor carriers,**”.

(2) **CHAPTER ANALYSIS.**—The chapter analysis for chapter 139 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. 7134. UNIFIED CARRIER REGISTRATION SYSTEM.**

(a) Section 13908 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 of this title;

“(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 of this title.

“(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, and freight forwarders, and others required to register with the Department, 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 of this title. 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 and conducting the safety audit or examination, if required, 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—

“(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 of this title) 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. 7135. REGISTRATION OF MOTOR CARRIERS BY STATES.

(a) TERMINATION OF REGISTRATION PROVISIONS.—Section 14504 is amended by adding at the end the following:

“(d) TERMINATION OF PROVISIONS.—Subsections (b) and (c) shall cease to be effective on the first January 1st occurring more than 12 months after the date of enactment of the Unified Carrier Registration Act of 2005.”

(b) UNIFIED CARRIER REGISTRATION SYSTEM PLAN AND AGREEMENT.—Chapter 145 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 of this title:

“(1) COMMERCIAL MOTOR VEHICLE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘commercial motor vehicle’ has the meaning given the term in section 31101 of this title.

“(B) EXCEPTION.—With respect to motor carriers 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 term ‘commercial motor vehicle’ means 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.—The term ‘Base-State’ means, with respect to the 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 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 as 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’ has the meaning given the term in section 13102(12) of this title, but shall include all carriers that are otherwise exempt from the provisions of part B of this title pursuant to the provisions of chapter 135 of this title 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) of this section.

“(7) SSRS.—The term ‘SSRS’ means the Single State Registration System in effect on the date of enactment of the Unified Carrier Registration Act of 2005.

“(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 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) of this title shall be subject to the provisions of this section as if a motor carrier.

“(c) UNREASONABLE BURDEN.—For purposes of this section, it shall be considered an un-

reasonable 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, or levy any fee or charge on any interstate motor carrier or interstate motor private carrier in connection with—

“(A) the registration with the State of the interstate operations of a motor carrier or motor private carrier;

“(B) the filing with the State of information relating to the financial responsibility of a motor carrier or motor private carrier pursuant to sections 31138 or 31139 of this title;

“(C) the filing with the State of the name of the local agent for service of process of a motor carrier or motor private carrier pursuant to sections 503 or 13304 of this title; or

“(D) the annual renewal of the intrastate authority, or the insurance filings, of a 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 in compliance with section 13902 or section 13905(b) of this title; and

“(ii) in compliance with the laws and regulations of the State authorizing the carrier to operate in the State pursuant to section 14501(c)(2)(A) of this title except with respect to—

“(I) intrastate service provided by motor carriers of passengers that is not subject to the preemptive provisions of section 14501(a) of this title,

“(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) and section 14506(c)(3) or permitted pursuant to section 14506(b) of this title, and

“(III) the intrastate transportation of waste or recyclable materials by any carrier; or

“(2) to require any interstate motor carrier or motor private carrier to pay any fee or tax, not proscribed by paragraph (1)(D) of this subsection, that a motor carrier or motor private carrier that pays a fee which is proscribed by that paragraph is not required to pay.

“(d) UNIFIED CARRIER REGISTRATION PLAN.—

“(1) BOARD OF DIRECTORS.—

“(A) GOVERNANCE OF PLAN.—The Unified Carrier Registration Plan shall be governed by a Board of Directors consisting of representatives of the Department of Transportation, Participating States, and the motor carrier industry.

“(B) NUMBER.—The Board shall consist of 15 directors.

“(C) COMPOSITION.—The Board shall be composed of directors appointed as follows:

“(i) FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION.—The Secretary shall appoint 1 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.—The Secretary shall appoint 5 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.—The Secretary shall appoint 5 directors from the motor carrier industry. At least 1 of the appointees shall be an employee of the national trade association representing the general motor carrier of property industry.

“(iv) DEPARTMENT OF TRANSPORTATION.—The Secretary shall appoint the Deputy Administrator of the Federal Motor Carrier Safety Administration, or such other presidential appointee from the United States Department of Transportation, as the Secretary may designate, to serve as a director.

“(D) 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.

“(E) TERM.—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. Thereafter, 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 (C)(iv) shall be at the discretion of the Secretary. A director may be appointed to succeed himself or herself. 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) of this paragraph;

“(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 that provide due process for all involved parties; and

“(D) designate a depository.

“(3) COMPENSATION AND EXPENSES.—Except for the representative of the Department of Transportation appointed pursuant to paragraph (1)(D), 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. All Directors shall be reimbursed for expenses they incur attending duly called meetings of the Board. In addition, the Board may approve the reimbursement of expenses incurred by members of any subcommittee or task force appointed pursuant to paragraph (5). The reimbursement of expenses to directors and sub-

committee and task force members shall be based on the then applicable rules of the General Service Administration 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 pursuant to paragraph (5) of this section 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 non-directors.

“(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) of this section), 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 private commercial or non-profit entity 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 pursuant to 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 parameters for fees set forth 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 direc-

tor 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 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.

“(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 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 Unified Carrier Registration Agreement in accordance with the rules and regulations promulgated by the Board of Directors of the Unified Carrier Registration Plan; and

“(B) containing assurances 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, and financial responsibility, or the administration of the UCR Plan and UCR Agreement.

“(2) AMENDED PLANS.—A State may change the agency designated in the plan submitted under this subsection by filing an amended plan with the Secretary and the Chairperson of the Unified Carrier Registration Plan.

“(3) WITHDRAWAL OF PLAN.—If a State withdraws, or notifies the Secretary that it is withdrawing, the plan submitted under this subsection, then 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.

“(4) TERMINATION OF ELIGIBILITY.—If a State fails to submit a plan to the Secretary as required by paragraph (1) or withdraws its plan under paragraph (3), the State shall be prohibited from subsequently submitting or resubmitting a plan or participating in the Agreement.

“(5) PROVISION OF PLAN TO CHAIRPERSON.—The Secretary shall provide a copy of each plan submitted under this subsection to the initial Chairperson of the Board of Directors of the Unified Carrier Registration Plan not later than 90 days of appointing the Chairperson.

“(f) CONTENTS OF UNIFIED CARRIER REGISTRATION AGREEMENT.—The Unified Carrier Registration Agreement shall provide the following:

“(1) DETERMINATION OF FEES.—

“(A) Fees charged motor carriers, motor private carriers, or freight forwarders 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. Brokers and leasing companies shall pay the same fees as the small-est bracket of motor carriers, motor private carriers, and freight forwarders.

“(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 no more than 6 and no less than 4 brackets of carriers by size of fleet.

“(D) The fee scale shall be progressive and use different vehicle ratios for each bracket of carrier fleet size.

“(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.—Commercial motor vehicles owned or operated by a motor carrier, motor private carrier, or freight forwarder shall mean those commercial motor vehicles registered in the name of the motor carrier, motor private carrier, or freight forwarder or 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) of this subsection 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 each registration year of the Unified Carrier Registration System. Commercial motor vehicles used exclusively in the intrastate transportation of property, waste, or recyclable material may not be included in determining the number of commercial motor vehicles owned or operated by a motor carrier or motor private carrier for purposes of paragraph (1) of this subsection.

“(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 Single State Registration System in the last SSRS registration year ending before the date of enactment of the Unified Carrier Registration Act of 2005 and complies with the requirements of subsection (e) of this section is entitled to receive a portion of the UCR Agreement revenues generated under the Agreement equivalent to the revenues it received under the SSRS in the last SSRS registration year ending before the date of enactment of the Unified Carrier Registration Act of 2005, as long as the State continues to comply with the provisions of 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 the requirements of subsection (e) of this section is entitled to receive an additional portion of the UCR Agreement revenues generated under the Agreement equivalent to the revenues it received from such interstate 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 the provisions of subsection (e).

“(3) States that comply with the requirements of subsection (e) of this section but did not participate in SSRS during the last SSRS registration year ending before the date of enactment of the Unified Carrier Registration Act of 2005 shall be entitled to an annual allotment not to exceed \$500,000 from the UCR Agreement revenues generated under the Agreement as long as the State continues to comply with the provisions of subsection (e).

“(4) The amount of UCR Agreement revenues 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 the provisions of subsection (e) shall be entitled 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 the provisions of 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 collected in the depository shall be distributed as follows:

“(A) Excess funds shall be distributed 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 UCR Agreement revenues collected 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) Any excess funds held by the depository after all distributions under subparagraph (A) have been made shall be used to pay the administrative costs of the UCR Plan and the UCR Agreement.

“(C) Any excess funds held by the depository after distributions and payments under subparagraphs (A) and (B) shall be retained in the depository, and the UCR Agreement fees for motor carriers, motor private carriers, leasing companies, freight forwarders, and brokers for the next fee year shall be reduced by the Secretary accordingly.

“(1) ENFORCEMENT.—

“(1) CIVIL ACTIONS.—Upon request by the Secretary of Transportation, the Attorney General may bring a civil action in a court of competent jurisdiction to enforce compliance with this section and with the terms of the Unified Carrier Registration Agreement.

“(2) VENUE.—An action under this section may be brought only in the Federal court sitting in the State in which an order is required to enforce such compliance.

“(3) RELIEF.—Subject to section 1341 of title 28, the court, on a proper showing—

“(A) shall issue a temporary restraining order or a preliminary or permanent injunction; and

“(B) may issue an 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 applicable

State laws and regulations on any motor carrier, motor private carrier, freight forwarder, broker, or leasing company for failure to—

“(i) submit 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 of this title 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 subject to its jurisdiction that operate solely in intrastate commerce within the borders of the State.”.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 145 is amended by inserting after the item relating to section 14504 the following:

“14504a. Unified carrier registration system plan and agreement”.

#### SEC. 7136. IDENTIFICATION OF VEHICLES.

(a) IN GENERAL.—Chapter 145 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, 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 paragraph (a), a State may continue to require display of credentials that are required—

“(1) under the International Registration Plan under section 31704 of this title;

“(2) under the International Fuel Tax Agreement under section 31705 of this title;

“(3) in connection with Federal requirements for hazardous materials transportation under section 5103 of this title; or

“(4) in connection with the Federal vehicle inspection standards under section 31136 of this title.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 145 is amended by inserting after the item relating to section 14505 the following:

“14506. Identification of vehicles”.

#### SEC. 7137. USE OF UCR AGREEMENT REVENUES AS MATCHING FUNDS.

Section 31103(a) is amended by inserting “Amounts generated by the Unified Carrier Registration Agreement, under section 14504a of this title 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.”.

#### SEC. 7138. FACILITATION OF INTERNATIONAL REGISTRATION PLANS AND INTERNATIONAL FUEL TAX AGREEMENTS.

(a) IN GENERAL.—Chapter 317 is amended by adding at the end the following:

##### “§ 31708. Facilitation of international registration plans and international fuel tax agreements

“The Secretary may provide assistance to any State that is participating in the International Registration Plan and International Fuel Tax Agreement, as provided in sections 31704 and 31705, respectively, and that serves

as a base jurisdiction for motor carriers that are domiciled in Mexico, to assist the State with administrative costs resulting from serving as a base jurisdiction for motor carriers from Mexico.”.

(b) CONFORMING AMENDMENT.—The analysis for chapter 317 of title 49, United States Code, is amended by adding at the end the following:

“31708. Facilitation of international registration plans and international fuel tax agreements.”.

#### SEC. 7139. IDENTITY AUTHENTICATION STANDARDS.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1824(a)), is amended by adding at the end the following:

##### “§ 179. Identity authentication standards

“(a) DEFINITION OF INFORMATION-BASED IDENTITY AUTHENTICATION.—In this section, the term ‘information-based identity authentication’ means the determination of the identity of an individual, through the comparison of information provided by a person, with other information pertaining to that individual with a system using scoring models and algorithms.

“(b) STANDARDS.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Homeland Security and the Federal Motor Carrier Safety Administration, shall promulgate regulations establishing minimum standards for State departments of motor vehicles regarding the use of information-based identity authentication to determine the identity of an applicant for a commercial driver’s license, or the renewal, transfer or upgrading, of a commercial driver’s license.

“(c) MINIMUM STANDARDS.—The regulations shall, at a minimum, require State departments of motor vehicles to implement, and applicants for commercial driver’s licenses, (or the renewal, transfer, or upgrading of commercial driver’s licenses), to comply with, reasonable procedures for operating an information-based identity authentication program before issuing, renewing, transferring, or upgrading a commercial driver’s license.

“(d) KEY FACTORS.—In promulgating regulations under this section, the Secretary shall require that an information-based identity authentication program carried out under this section establish processes that—

“(1) use multiple sources of matching information;

“(2) enable the measurement of the accuracy of the determination of an applicant’s identity;

“(3) support continuous auditing of compliance with applicable laws, policies, and practices governing the collection, use, and distribution of information in the operation of the program; and

“(4) incorporate industry best practices to protect significant privacy interests in the information used in the program and the appropriate safeguarding of the storage of the information.”.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1824(b)), is amended by adding at the end the following:

“179. Identity authentication standards.”.

#### SEC. 7140. OFF-DUTY TIME FOR DRIVERS OF COMMERCIAL VEHICLES.

Paragraph (2) of section 31149(a), as transferred by section 7108, is amended by adding at the end the following: “No additional off-duty time for a driver of such a vehicle shall be required in order for the driver to operate the vehicle.”.

### CHAPTER 3—COMMERCIAL DRIVER’S LICENSES

#### SEC. 7151. CDL TASK FORCE.

(a) IN GENERAL.—The Secretary of Transportation 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. The task force shall address such issues as State enforcement practices, operational procedures to detect and deter fraud, needed improvements for seamless information sharing between States, effective methods for accurately sharing electronic data between States, adequate proof of citizenship, updated technology, and timely notification from judicial bodies concerning traffic and criminal convictions of commercial driver’s 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.—Within 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 force’s findings and recommendations for legislative, regulatory, and enforcement changes to improve the commercial driver’s license program. The Secretary shall promptly transmit the report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(d) FUNDING.—From the funds authorized by section 7103(b)(3) of this subtitle, \$200,000 shall be made available for each of fiscal years 2006 and 2007 to carry out this section.

#### SEC. 7152. CDL LEARNER’S PERMIT PROGRAM.

Chapter 313 is amended—

(1) by striking “time.” in section 31302 and inserting “license, and may have only 1 learner’s permit at any time.”;

(2) by inserting “and learners’ permits” after “licenses” the first place it appears in section 31308;

(3) by striking “licenses.” in section 31308 and inserting “licenses and permits.”;

(4) by redesignating paragraphs (2) and (3) of section 31308 as paragraphs (3) and (4), respectively, and inserting after paragraph (1) the following:

“(2) before a commercial driver’s license learner’s permit can be issued to an individual, the individual must pass a written test on the operation of a commercial motor vehicle that complies with the minimum standards prescribed by the Secretary under section 31305(a) of this title.”;

(5) by inserting “or learner’s permit” after “license” each place it appears in paragraphs (3) and (4), as redesignated, of section 31308; and

(6) by inserting “or learner’s permit” after “license” each place it appears in section 31309(b).

#### SEC. 7153. GRANTS TO STATES FOR COMMERCIAL DRIVER’S LICENSE IMPROVEMENTS.

(a) IN GENERAL.—Chapter 313 is amended by adding at the end the following:

##### “§ 31318. Grants for commercial driver’s license program improvements

“(a) GENERAL AUTHORITY.—From the funds authorized by section 7103(b)(3) of the Motor Carrier Safety Reauthorization Act of 2005, the Secretary may make a grant to a State, except as otherwise provided in subsection (e), in a fiscal year to improve its implementation of the commercial driver’s license

program, providing the State is making a good faith effort toward substantial compliance with the requirements of section 31311 and this section. The Secretary shall establish criteria for the distribution of grants and notify the States annually of such criteria.

“(b) CONDITIONS.—Except as otherwise provided in subsection (e), a State may use a grant under this section only for expenses related to its commercial driver’s license program, including, but not limited to, 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. The Secretary shall give priority to grants that will be used to achieve compliance with the requirements of the Motor Carrier Safety Improvement Act of 1999. The Secretary may allocate the funds appropriated for such grants in a fiscal year among the eligible States whose applications for grants have been approved, under criteria established by the Secretary.

“(c) MAINTENANCE OF EXPENDITURES.—Except as otherwise provided in subsection (e), 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 United States Government amounts, for the operation of the 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 before October 1, 2005.

“(d) GOVERNMENT SHARE.—Except as otherwise provided in subsection (e), the Secretary shall reimburse a State, from a grant made under this section, an amount that is not more than 80 percent of the costs incurred by the State in a fiscal year in implementing the commercial driver’s license improvements described in subsection (b). In determining those costs, the Secretary shall include in-kind contributions by the State.

“(e) HIGH-PRIORITY ACTIVITIES.—

“(1) The Secretary may make a grant to a State agency, local government, or organization representing government agencies or officials for the full cost of research, development, demonstration projects, public education, or other special activities and projects relating to commercial driver licensing and motor vehicle safety that are of benefit to all jurisdictions or designed to address national safety concerns and circumstances.

“(2) The Secretary may designate up to 10 percent of the amounts made available under section 7103(b)(3) of the Motor Carrier Safety Reauthorization Act of 2005 in a fiscal year for high-priority activities under subsection (e)(1).

“(f) EMERGING ISSUES.—The Secretary may designate up to 10 percent of the amounts made available under section 7103(b)(3) of the Motor Carrier Safety Reauthorization Act of 2005 in 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.

“(g) APPORTIONMENT.—Except as otherwise provided in subsections (e) and (f), all amounts available in a fiscal year to carry out this section shall be apportioned to States according to a formula prescribed by the Secretary.

“(h) DEDUCTION FOR ADMINISTRATIVE EXPENSES.—On October 1 of each fiscal year or as soon after that date as practicable, the Secretary may deduct, from amounts made available under section 7103(b)(3) of the Motor Carrier Safety Reauthorization Act of 2005 for that fiscal year, up to 0.75 percent of



those amounts for administrative expenses incurred in carrying out this section in that fiscal year.”.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 313 is amended by inserting the following after the item relating to section 31317:

“31318. Grants for commercial driver’s license program improvements.”.

#### SEC. 7154. MODERNIZATION OF CDL INFORMATION SYSTEM.

(a) INFORMATION SYSTEM MODERNIZATION ACCOUNT.—Section 31309 of title 49, United States Code, is amended—

(1) by striking “The Secretary” in the last sentence and inserting “Except as provided in subsection (e), the Secretary”; and

(2) by adding at the end the following:

“(e) INFORMATION SYSTEM MODERNIZATION ACCOUNT.—

“(1) ESTABLISHMENT.—The Secretary of Transportation shall establish an account to be known as the Information System Modernization Account within the Department of Transportation.

“(2) CREDITS.—Fees collected for any fiscal year beginning after fiscal year 2006 under subsection (d) by the Secretary of Transportation, or an organization that represents the interests of the States, in excess of the costs of operating the information system in that fiscal year shall be and credited to the Information System Modernization Account.

“(3) USE OF FUNDS.—Amounts credited to the Information System Modernization Account shall be available exclusively for the purpose of modernizing the information system under subsection (f). At the end of fiscal year 2008, the Inspector General of the Department of Transportation shall complete an assessment of whether the fees collected in excess of the costs of operating the information system are properly credited to the Information System Modernization Account.”.

(b) MODERNIZATION PLAN.—Section 31309 of title 49, United States Code, is further amended by adding at the end the following:

“(f) MODERNIZATION PLAN.—

“(1) IN GENERAL.—The Secretary shall develop a comprehensive plan for modernization of the information system 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) COMPETITIVE CONTRACTING.—The Secretary may use non-Federal entities selected by an open, merit-based, competitive process to develop and implement the modernization plan.

“(3) STATE PARTICIPATION.—

“(A) DEADLINE.—The Secretary shall establish a date by which each State must convert to the new information system.

“(B) FUNDING.—A State may use funds made available under section 31318 of this title to develop or modify its system to be compatible with the modernized information system developed by the Secretary under this subsection.”.

(c) BASELINE AUDIT.—Within 1 year after the date of enactment of this Act, the Secretary of Transportation, 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 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

(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.

#### Subtitle B—Highway and Vehicular Safety

##### SEC. 7201. SHORT TITLE.

This subtitle may be cited as the “Highway and Vehicular Safety Reauthorization Act of 2005”.

#### CHAPTER 1—HIGHWAY SAFETY GRANT PROGRAM

##### SEC. 7211. SHORT TITLE.

This chapter may be cited as the “Highway Safety Grant Program Reauthorization Act of 2005”.

##### SEC. 7212. AUTHORIZATION OF APPROPRIATIONS.

(a) AMOUNTS FOR FISCAL YEARS 2006 THROUGH 2009.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to the Secretary of Transportation for the National Highway Traffic Safety Administration the following:

(1) To carry out the Highway Safety Programs under section 402 of title 23, United States Code, \$209,217,985 in fiscal year 2006, \$210,224,035 in fiscal year 2007, \$221,906,185 in fiscal year 2008, and \$226,969,685 in fiscal year 2009.

(2) To carry out the Highway Safety Research and Outreach Programs under section 403 of title 23, United States Code, \$141,852,000 in fiscal year 2006, \$142,323,000 in fiscal year 2007, \$141,560,000 in fiscal year 2008, and \$141,952,000 in fiscal year 2009.

(3) To carry out the Occupant Protection Programs under section 405 of title 23, United States Code, \$149,667,110 in fiscal year 2006, \$149,787,000 in fiscal year 2007, \$149,509,185 in fiscal year 2008, and \$149,006,000 in fiscal year 2009.

(4) To carry out the Demonstration Programs related to older drivers, law enforcement, and motorcycle training under section 406 of title 23, United States Code, \$7,400,000 in each of fiscal years 2006 through 2009.

(5) To carry out the Emergency Medical Services Program under section 407A of title 23, United States Code, \$5,000,000 in each of fiscal years 2006 through 2009.

(6) To carry out the Impaired Driving Program under section 410 of title 23, United States Code, \$115,721,000 in fiscal year 2006, \$129,065,000 in fiscal year 2007, \$134,819,000 in fiscal year 2008, and \$147,615,000 in fiscal year 2009.

(7) To carry out the State Traffic Safety Information System Improvements under section 412 of title 23, United States Code, \$45,000,000 in each of fiscal years 2006 through 2009.

(8) To carry out chapter 303 of title 49, United States Code, \$4,000,000 for each of fiscal years 2006 through 2009, to be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code.

(9) To pay administrative and related operating expenses under section 402, section 405, section 406, section 407A, section 410, section 412, section 413, and section 414 of title 23, United States Code, and section 223 of the Highway Safety Grant Program Reauthor-

ization Act of 2005, \$17,868,000 for fiscal year 2006, \$18,150,000 for fiscal year 2007, \$18,837,000 for fiscal year 2008, and \$19,350,000 for fiscal year 2009.

(b) PROHIBITION ON OTHER USES.—Except as otherwise provided in this chapter, the amounts allocated from the Highway Trust Fund for programs provided for in chapter 4 of title 23, United States Code, shall only be used for such programs and may not be used by States or local governments for construction purposes.

(c) PROPORTIONAL INCREASES.—For each fiscal year from 2006 through 2009, if revenue to the Highway Trust Fund increases above the amounts for each such fiscal year assumed in the fiscal year 2006 joint budget resolution, then the amounts made available in such year for the programs in sections 402, 403, 405, and 410 shall increase by the same percentage. If revenue to the Highway Trust Fund for a fiscal year is lower than the amounts for such fiscal year assumed in the fiscal year 2006 joint budget resolution, then the amounts authorized to be made available in such year for those programs shall not decrease.

##### SEC. 7213. HIGHWAY SAFETY PROGRAMS.

(a) PROGRAMS TO BE INCLUDED.—

(1) MOTOR VEHICLE AIRBAGS PUBLIC AWARENESS.—Section 402(a)(2) is amended by striking “vehicles and to increase public awareness of the benefit of motor vehicles equipped with airbags” and inserting “vehicles.”.

(2) AGGRESSIVE DRIVING.—Section 402(a) is further amended—

(A) by redesignating clause (6) as clause (8);

(B) by inserting after “involving school buses,” at the end of clause (5) the following: “(6) to reduce aggressive driving and to educate drivers about defensive driving, (7) to reduce accidents resulting from fatigued and distracted drivers, including distractions arising from the use of electronic devices in vehicles,”; and

(C) by inserting “aggressive driving, distracted driving,” after “school bus accidents.”.

(3) ADMINISTRATION OF STATE PROGRAMS.—Section 402(b)(1) is amended—

(A) by striking “and” after the semicolon in subparagraph (C);

(B) by striking “State.” in subparagraph (D) and inserting “State; and”; and

(C) by adding at the end the following:

“(E) provide satisfactory assurances that the State will implement activities in support of national highway safety priorities and performance goals, including—

“(i) mobilizations, including high visibility enforcement and paid media, in support of efforts to improve occupant protection and reduce impaired driving;

“(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;

“(iv) development of statewide data systems to provide timely and effective data analysis to support allocation of highway safety resources;

“(v) effective efforts to adopt Model Minimum Uniform Crash Criteria and National Emergency Medical System Information System data elements; and

“(vi) safety priority programs identified by the Secretary based on national data trends unless a State can demonstrate with data that any such safety priority program is not

a matter of significant concern in its jurisdiction.

(b) APPOINTMENT.—

(1) TRIBAL GOVERNMENT PROGRAMS.—Section 402(c) is amended—

(A) by striking the second sentence; and

(B) by striking “three-fourths of 1 percent” and inserting “2 percent”.

(c) LAW ENFORCEMENT CHASE TRAINING.—Section 402 is amended by adding at the end the following:

“(1) LIMITATION RELATING TO LAW ENFORCEMENT VEHICULAR PURSUIT TRAINING.—No State may receive any funds available for fiscal years after fiscal year 2007 for programs under this chapter until the State submits to the Secretary a written statement that the State actively encourages all relevant law enforcement agencies in that 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 the Highway Safety Grant Program Reauthorization Act of 2005, or as revised and in effect after that 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 included under this chapter through a single application with a single annual deadline. The Bureau of Indian Affairs shall establish a similarly simplified process for applications from Indian tribes.”.

**SEC. 7214. HIGHWAY SAFETY RESEARCH AND OUTREACH PROGRAMS.**

(a) REVISED AUTHORITY AND REQUIREMENTS.—Section 403 is amended to read as follows:

**“§ 403. Highway safety research and development**

“(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 multi-stage graduated licensing systems;

“(7) conduct research, training, and education programs related to older drivers; and

“(8) conduct demonstration projects.

(b) NATIONWIDE TRAFFIC SAFETY CAMPAIGNS.—

“(1) REQUIREMENT FOR CAMPAIGNS.—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 pur-

poses specified in paragraph (2) in each of years 2006 through 2009.

“(2) PURPOSE.—The purpose of each law enforcement campaign is to achieve either or both of the following objectives:

“(A) Reduce alcohol-impaired or drug-impaired operation of motor vehicles.

“(B) Increase use of seat belts by occupants of motor vehicles.

“(3) ADVERTISING.—The Administrator may use, or authorize the use of, funds available under 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 subsection. Consideration shall be given to advertising directed at non-English speaking populations, including those who listen, read, or watch nontraditional media.

“(4) COORDINATION WITH STATES.—The Administrator shall coordinate with the States in carrying out the traffic safety law enforcement campaigns under this subsection, including advertising funded under paragraph (3), with a view to—

“(A) relying on States to provide the law enforcement resources for the campaigns out of funding available under this section and sections 402, 405, and 410 of this title; and

“(B) 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.

“(5) ANNUAL EVALUATION.—The Secretary shall conduct an annual evaluation of the effectiveness of such initiatives.

“(6) FUNDING.—The Secretary shall use \$24,000,000 in each of fiscal years 2006 through 2009 for advertising and educational initiatives to be carried out nationwide in support of the campaigns under this section.

“(c) INTERNATIONAL COOPERATION.—

“(1) AUTHORITY.—The Administrator of the National Highway Traffic Safety Administration may participate and cooperate in international activities to enhance highway safety.

“(2) AMOUNT FOR PROGRAM.—Of the amount available for a fiscal year to carry out this section, \$200,000 may be used for activities authorized under paragraph (1).”.

(b) SPECIFIC RESEARCH PROGRAMS.—

(1) REQUIRED PROGRAMS.—The Secretary shall conduct research under section 403 of title 23, United States Code, on the following:

(A) EFFECTS OF USE OF CONTROLLED SUBSTANCES.—A study on the effects of the use of controlled substances on driver behavior to determine—

(i) methodologies for measuring driver impairment resulting from use of the most common controlled substances (including the use of such substances in combination with alcohol); and

(ii) effective and efficient methods for training law enforcement personnel to detect or measure the level of impairment of a driver who is under the influence of a controlled substance by the use of technology or otherwise.

The Secretary may develop model State legislation based on research conducted under this subparagraph.

(B) ON-SCENE MOTOR VEHICLE COLLISION CAUSATION.—A nationally representative study to collect on-scene motor vehicle collision data, and to determine crash causation, for which 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.

(C) TOLL FACILITIES WORKPLACE SAFETY.—A study on the safety of highway toll collection facilities, including toll booths, conducted in cooperation with State and local

highway safety organizations to determine the safety of highway toll collection facilities for the toll collectors who work in and around such facilities and to develop best practices that would be of benefit to State and local highway safety organizations. The study shall consider—

(i) any problems resulting from design or construction of facilities that contribute to the occurrence of vehicle collisions with the facilities;

(ii) the safety of crosswalks used by toll collectors in transit to and from toll booths;

(iii) the extent of the enforcement of speed limits at and in the vicinity of toll facilities;

(iv) the use of warning devices, such as vibration and rumble strips, to alert drivers approaching toll facilities;

(v) the use of cameras to record traffic violations in the vicinity of toll facilities;

(vi) the use of traffic control arms in the vicinity of toll facilities;

(vii) law enforcement practices and jurisdictional issues that affect safety at and in the vicinity of toll facilities; and

(viii) data (which shall be collected in conducting the research) regarding the incidence of accidents and injuries at and around toll booth facilities.

(2) TIME FOR COMPLETION OF STUDIES.—The studies conducted in subparagraphs (A), (B), and (C) of paragraph (1) may be conducted in concert with other Federal departments and agencies with relevant expertise. The Secretary shall submit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the progress of each study conducted under this subsection.

(3) REPORTS.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit a report on the studies to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(4) 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 this subsection.

(5) PEDESTRIAN SAFETY.—

(A) IN GENERAL.—The Secretary of Transportation shall—

(i) 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

(ii) 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.

(B) DUE DATE.—The Secretary shall complete the report not less than 2 years after the date of enactment of this Act and transmit a copy of the report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(6) **STUDY ON REFUSAL OF INTOXICATION TESTING.**—

(A) **REQUIREMENT FOR STUDY.**—In addition to studies under section 403 of title 23, United States Code, the Secretary of Transportation shall carry out a study of the frequency with which persons arrested for the offense of operating a motor vehicle 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.

(B) **CONSULTATION.**—In carrying out the study under this paragraph, the Secretary shall consult with the Governors of the States, the States' Attorneys General, and the United States Sentencing Commission.

(C) **REPORT.**—

(i) **REQUIREMENT FOR REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report on the results of the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(ii) **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 refusals by arrested persons to submit to a test to determine blood alcohol concentration levels.

**SEC. 7215. NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE TECHNICAL CORRECTION.**

Section 404(d) is amended by striking "Commerce" and inserting "Transportation".

**SEC. 7216. OCCUPANT PROTECTION GRANTS.**

(a) **IN GENERAL.**—Section 405 is amended to read as follows:

**"§ 405. Safety belt performance grants**

"(a) **IN GENERAL.**—The Secretary of Transportation 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 a State safety belt use rate for each of the 2 calendar years immediately preceding the fiscal year of a grant of 90 percent or more, 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) of this subsection is equal to 500 percent of the amount apportioned to the State for fiscal year 2003 under section 402(c) of this title.

"(3) **JULY 1 CUT-OFF.**—For the purpose of determining the eligibility of a State for a grant under paragraph (1)(A), a 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 the beginning 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, then the Secretary shall make grants under this subsection to States in the order in which—

"(A) the primary safety belt use law came into effect; or

"(B) the State's safety belt use rate was 90 percent or more for 2 consecutive calendar years (as measured 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 primary safety belt use law remains in effect or its safety belt use rate is 90 percent or more for the 2 consecutive calendar years preceding such next fiscal year (subject to paragraph (4)).

"(c) **GRANTS FOR PRE-2003 LAWS.**—To the extent that amounts made available for any of fiscal years 2006 through 2009 exceed the total amounts 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 primary safety belt use law for all passenger motor vehicles that was in effect before January 1, 2003. The amount of a grant available to a State under this subsection shall be equal to 250 percent of the amount of funds apportioned to the State under section 402(c) of this title for fiscal year 2003. The Secretary may award the grant in up to 4 installments over a period of 4 fiscal years beginning with fiscal year 2006.

"(d) **ALLOCATION OF UNUSED GRANT FUNDS.**—The Secretary shall make additional grants under this section of any amounts available for grants under this section that, on July 1, 2009, are neither obligated nor expended. 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 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) of this title.

"(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 \$1,000,000,000 of amounts received by States under this section are obligated or expended 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 subsection is 100 percent.

"(h) **PASSENGER MOTOR VEHICLE DEFINED.**—In this section, the term 'passenger motor vehicle' means—

"(1) a passenger car,

"(2) a pickup truck,

"(3) a van, minivan, or sport utility vehicle, with a gross vehicle weight rating of less than 10,000 pounds."

(b) **CONFORMING AMENDMENT.**—The chapter analysis for chapter 4 is amended by striking the item relating to section 405 and inserting the following:

"405. Safety belt performance grants".

**SEC. 7217. OLDER DRIVER SAFETY; LAW ENFORCEMENT TRAINING.**

(a) **IN GENERAL.**—Section 406 is amended to read as follows:

**"§ 406. Older driver safety; law enforcement training**

"(a) **IMPROVING OLDER DRIVER SAFETY.**—

"(1) **IN GENERAL.**—Of the funds made available under this section, the Secretary shall allocate \$2,000,000 in each of fiscal years 2006 through 2009 to conduct a comprehensive research and demonstration program to improve traffic safety pertaining to older drivers. The program shall—

"(A) provide information and guidelines to assist 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.

"(2) **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 this program. The plan shall be submitted to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation within 1 year after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005.

"(b) **LAW ENFORCEMENT TRAINING.**—

"(1) **REQUIREMENT FOR PROGRAM.**—The Administrator of the National Highway Traffic Safety Administration shall carry out a program to train law enforcement personnel of each State and political subdivision thereof 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 amount available for a fiscal year to carry out this section, \$200,000 shall be available for carrying out this subsection.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 4 is amended by striking the item relating to section 406 and inserting the following:

“406. Older driver safety; law enforcement training”.

#### SEC. 7218. EMERGENCY MEDICAL SERVICES.

(a) FEDERAL COORDINATION AND ENHANCED SUPPORT OF EMERGENCY MEDICAL SERVICES.—Chapter 4 is amended by inserting after section 407 the following:

##### “§ 407A. Federal coordination and enhanced support of emergency medical services

“(a) FEDERAL INTERAGENCY COMMITTEE ON EMERGENCY MEDICAL SERVICES.—

“(1) ESTABLISHMENT.—The Secretary of Transportation and the Secretary of Homeland Security, through the Under Secretary for Emergency Preparedness and Response, shall establish a Federal Interagency Committee on Emergency Medical Services. In establishing the Interagency Committee, the Secretary of Transportation and the Secretary of Homeland Security through the Under Secretary for Emergency Preparedness and Response shall consult with the Secretary of Health and Human 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, Emergency Preparedness and Response Directorate, 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, Emergency Preparedness and Response Directorate, Department of Homeland Security.

“(F) The Director, Center for Medicare and Medicaid Services, Department of Health and Human Services.

“(G) The Undersecretary of Defense for Personnel and Readiness.

“(H) The Director, Indian Health Service, Department of Health and Human Services.

“(I) The Chief, Wireless Telecom Bureau, Federal Communications Commission.

“(J) A representative of any other Federal agency identified 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.

“(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 Director, Preparedness Division, Emergency Preparedness and Response Directorate, 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 annually.

“(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 on the Committee's activities, actions, and recommendations.

“(b) COORDINATED NATIONWIDE EMERGENCY MEDICAL SERVICES PROGRAM.—

“(1) PROGRAM REQUIREMENT.—The Secretary of Transportation, acting through the Administrator of the National Highway Traffic Safety Administration, shall coordinate with officials of other Federal departments and agencies, and may assist State and local governments and emergency medical services organizations (whether or not a firefighter organization), private industry, and other interested parties, to ensure the development and implementation of a coordinated nationwide emergency medical services program that is designed to strengthen transportation safety and public health and to implement improved emergency medical services communication systems, including 9-1-1.

“(2) COORDINATED STATE EMERGENCY MEDICAL SERVICES PROGRAM.—Each State shall establish a program, to be approved by the Secretary, to coordinate the emergency medical services and resources deployed throughout the State, so as to ensure—

“(A) improved emergency medical services communication systems, including 9-1-1;

“(B) utilization of established best practices in system design and operations;

“(C) implementation of quality assurance programs; and

“(D) incorporation of data collection and analysis programs that facilitate system development and data linkages with other systems and programs useful to emergency medical services.

“(3) ADMINISTRATION OF STATE PROGRAMS.—The Secretary may not approve a coordinated State emergency medical services program under this subsection unless the program—

“(A) provides that the Governor of the State is responsible for its administration through a State office of emergency medical services that has adequate powers and is suitably equipped and organized to carry out such program and coordinates such program with the highway safety office of the State; and

“(B) authorizes political subdivisions of the State to participate in and receive funds under such program, consistent with a goal of achieving statewide coordination of emergency medical services and 9-1-1 activities.

“(4) FUNDING.—

“(A) USE OF FUNDS.—Funds authorized to be appropriated to carry out this subsection

shall be used to aid the States in conducting coordinated emergency medical services and 9-1-1 programs as described in paragraph (2).

“(B) APPORTIONMENT.—

“(i) APPORTIONMENT FORMULA.—The funds shall be apportioned as follows: 75 percent in the ratio that the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and 25 percent in the ratio that the public road mileage in each State bears to the total public road mileage in all States. For the purpose of this subparagraph, a ‘public road’ means any road under the jurisdiction of and maintained by a public authority and open to public travel. Public road mileage as used in this subsection shall be determined as of the end of the calendar year prior to the year in which the funds are apportioned and shall be certified by the Governor of the State and subject to approval by the Secretary.

“(ii) MINIMUM APPORTIONMENT.—The annual apportionment to each State shall not be less than  $\frac{1}{2}$  of 1 percent of the total apportionment, except that the apportionment to the Secretary of the Interior on behalf of Indian tribes shall not be less than  $\frac{3}{4}$  of 1 percent of the total apportionment, and the apportionments to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not be less than  $\frac{1}{4}$  of 1 percent of the total apportionment.

“(5) APPLICABILITY OF CHAPTER 1.—Section 402(d) of this title shall apply in the administration of this subsection.

“(6) FEDERAL SHARE.—The Federal share of the cost of a project or program funded under this subsection shall be 80 percent.

“(7) APPLICATION IN INDIAN COUNTRY.—

“(A) USE OF TERMS.—For the purpose of application of this subsection in Indian country, the terms ‘State’ and ‘Governor of the State’ include the Secretary of the Interior and the term ‘political subdivisions of the State’ includes an Indian tribe.

“(B) INDIAN COUNTRY DEFINED.—In this subsection, the term ‘Indian country’ means—

“(i) all land within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent and including rights-of-way running through the reservation;

“(ii) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof and whether within or without the limits of a State; and

“(iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

“(c) STATE DEFINED.—In this section, the term ‘State’ means each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Secretary of the Interior on behalf of Indian tribes.

“(d) CONSTRUCTION WITH RESPECT TO DISTRICT OF COLUMBIA.—In the administration of this section with respect to the District of Columbia, a reference in this section to the Governor of a State shall refer to the Mayor of the District of Columbia.”.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 4 is amended by inserting after the item relating to section 407 the following:

“407A. Federal coordination and enhanced support of emergency medical services.”.

#### SEC. 7219. REPEAL OF AUTHORITY FOR ALCOHOL TRAFFIC SAFETY PROGRAMS.

(a) REPEAL.—Section 408 is repealed.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 4 is amended by striking the item relating to section 408.

#### SEC. 7220. IMPAIRED DRIVING PROGRAM.

(a) MAINTENANCE OF EFFORT.—Section 410(a)(2) is amended by striking “the Transportation Equity Act for the 21st Century” and inserting “the Highway Safety Grant Program Reauthorization Act of 2005”.

(b) REVISED GRANT AUTHORITY.—Section 410 is amended—

(1) by striking paragraph (3) of subsection (a) and redesignating paragraph (4) as paragraph (3); and

(2) by striking subsections (b) through (f) and inserting the following:

“(b) PROGRAM-RELATED ELIGIBILITY REQUIREMENTS.—To be eligible for a grant under this section, a State shall—

“(1) for fiscal year 2006 or 2007, carry out 4 of the programs required under subsection (c);

“(2) for fiscal year 2008 or 2009, carry out 5 of the programs required under subsection (c); and

“(3) for any such fiscal year—

“(A) comply with the additional requirements set forth in subsection (d) with respect to such programs and activities; and

“(B) comply with any additional requirements of the Secretary.

“(c) STATE PROGRAMS AND ACTIVITIES.—To qualify for a grant under this subsection, a State shall select programs from among the following:

“(1) CHECK-POINT, SATURATION PATROL PROGRAM.—

“(A) 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 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 or controlled substances that meets the requirements of subparagraphs (B) and (C).

“(B) A program meets the requirements of this subparagraph only if a State organizes the campaigns in cooperation with related periodic national campaigns organized by the National Highway Traffic Safety Administration, but this subparagraph does not preclude a State from initiating sustained high-visibility, Statewide law enforcement campaigns independently of the cooperative efforts.

“(C) A program meets the requirements of this subparagraph only if, for each fiscal year, a 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, as described in subparagraph (A) (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, which shall not be less than 5 percent.

“(2) PROSECUTION AND ADJUDICATION PROGRAM.—A State prosecution and adjudication program under which—

“(A) judges and prosecutors are actively encouraged to prosecute and adjudicate cases of defendants who repeatedly commit impaired driving offenses by reducing the use of State diversion programs, or other means that have the effect of avoiding or expunging a permanent record of impaired driving in such cases;

“(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) IMPAIRED OPERATOR INFORMATION SYSTEM.—

“(A) A State impaired operator information system that—

“(i) tracks drivers who are arrested or convicted for violation of laws prohibiting impaired operation of motor vehicles;

“(ii) includes information about each case of an impaired driver beginning at the time of arrest through case disposition, including information about any trial, plea, plea agreement, conviction or other disposition, sentencing or other imposition of sanctions, and substance abuse treatment;

“(iii) provides—

“(I) accessibility to the information for law enforcement personnel Statewide and for United States law enforcement personnel; and

“(II) linkage for the sharing of the information and of the information in State traffic record systems among jurisdictions and appropriate agencies, court systems and offices of the States;

“(iv) shares information with the National Highway Traffic Safety Administration for compilation and use for the tracking of impaired operators of motor vehicles who move from State to State; and

“(v) meets the requirements of subparagraphs (B), (C), and (D) of this paragraph, as applicable.

“(B) A program meets the requirements of this subparagraph only if, during fiscal years 2006 and 2007, a State—

“(i) assesses the system used by the State for tracking drivers who are arrested or convicted for violation of laws prohibiting impaired operation of motor vehicles;

“(ii) identifies ways to improve the system, as well as to enhance the capability of the system to provide information in coordination with impaired operator information systems of other States; and

“(iii) develops a strategic plan that sets forth the actions to be taken and the resources necessary to achieve the identified improvements and to enhance the capability for coordination with the systems of other States.

“(C) A program meets the requirements of this subparagraph only if, in each of fiscal years 2008 and 2009, a State demonstrates to the Secretary that the State has made substantial and meaningful progress in improving the State’s impaired operator information system, and makes public a report on the progress of the information system.

“(4) IMPAIRED DRIVING PERFORMANCE.—The percentage of fatally-injured drivers with 0.08 percent or greater blood alcohol concentration in the State has decreased in each of the 2 most recent calendar years for which data are available.

“(5) 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.

“(6) LAWS FOR 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, the term ‘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; or

“(ii) only 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 that includes the possibility of a referral to counseling if the official determines that such a referral is appropriate.

“(7) IMPAIRED DRIVING COURTS.—

“(A) IN GENERAL.—A program to consolidate and coordinate impaired driving cases into courts that specialize in impaired driving cases, with the emphasis on tracking and processing offenders of impaired driving laws, (hereinafter referred to as DWI courts) that meets the requirements of this paragraph.

“(B) CHARACTERISTICS.—A DWI Court is a distinct function performed by a court system for the purpose of changing the behavior of alcohol or drug dependent offenders arrested for driving while impaired. A DWI Court can be a dedicated court with dedicated personnel, including judges, prosecutors and probation officers. A DWI court may be an existing court system that serves the following essential DWI Court functions:

“(i) A DWI Court performs an assessment of high-risk offenders utilizing a team headed by the judge and including all criminal justice stakeholders (prosecutors, defense attorneys, probations officers, law enforcement personnel and others) along with alcohol/drug treatment professionals.

“(ii) The DWI Court team recommends a specific plea agreement or contract for each offender that can include incarceration, treatment, and close community supervision. The agreement maximizes the probability of rehabilitation and minimizes the likelihood of recidivism.

“(iii) Compliance with the agreement is verified with thorough monitoring and frequent alcohol testing. Periodic status hearings assess offender progress and allow an opportunity for modifying the sentence if necessary.

“(C) ASSESSMENT.—In the first year of operation, the States shall assess the number of court systems in its jurisdiction that are consistently performing the DWI Court functions.

“(D) PLAN.—In the second year of operation, the State shall develop a strategic plan for increasing the number of courts performing the DWI function.

“(E) PROGRESS.—In subsequent years of operation, the State shall demonstrate progress in increasing the number of DWI Courts and in increasing the number of high-risk offenders participating in and successfully completing DWI Court agreements.

“(d) USES OF GRANTS.—Grants made under this section may be used for 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, such as and 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 described in subsection (c)(3).

“(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 of this title.

“(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) FUNDING.—

“(1) IN GENERAL.—Grant funding under this section shall be allocated among States that meet the eligibility criteria in subsection (b) on the basis of the apportionment formula that applies for apportionments under section 402(c) of this title.

“(2) HIGH FATALITY-RATE STATES.—A State that is among the 10 States with the highest impaired driving-related fatality rates for the calendar year immediately preceding the fiscal year in which the grant may be made shall be eligible for a grant under this section if the State meets the requirements of subsection (g). A State that receives a grant based upon its eligibility under this paragraph may also receive a grant under subsection (b) if it meets the eligibility requirements of that subsection.

“(g) USE OF FUNDS BY HIGH FATALITY-RATE STATES.—

“(1) REQUIRED USES.—At least ½ of the amounts allocated to States under subsection (f)(2) shall be used for the program described in subsection (c)(1).

“(2) REQUIREMENT FOR PLAN.—A State receiving an allocation of grant funds under subsection (f)(2) shall expend those funds only after receiving approval from the Administrator of the National Highway Traffic Safety Administration for a plan regarding such expenditures.

“(h) DEFINITIONS.—In this section:

“(1) 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.

“(2) 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 the Highway Safety Grant Program Reauthorization Act of 2005, 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. 7221. STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.

(a) GRANT PROGRAM AUTHORITY.—Chapter 4 is amended by adding at the end the following:

##### “§ 412. State traffic safety information system improvements

“(a) GRANT AUTHORITY.—Subject to the requirements of this section, the Secretary shall make grants of financial assistance 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.—

“(1) ELIGIBILITY.—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—

“(A) 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;

“(B) completed or updated, within the preceding 5 years, an assessment or an audit of the highway safety data and traffic records system of the State; and

“(C) developed a multiyear highway safety data and traffic records system strategic plan that addresses existing deficiencies in the State’s highway safety data and traffic records system, is approved by the highway safety data and traffic records coordinating committee, and—

“(i) specifies how existing deficiencies in the State’s highway safety data and traffic records system were identified;

“(ii) prioritizes, on the basis of the identified highway safety data and traffic records system deficiencies, the highway safety data and traffic records system needs and goals of the State, including the activities under subsection (a);

“(iii) identifies performance-based measures by which progress toward those goals will be determined; and

“(iv) 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.

“(2) GRANT AMOUNT.—Subject to subsection (d)(3), the amount of a first-year grant to a State for a fiscal year shall be the higher of—

“(A) the amount determined by multiplying—

“(i) the amount appropriated to carry out this section for such fiscal year, by

“(ii) the ratio that the funds apportioned to the State under section 402 of this title for fiscal year 2003 bears to the funds apportioned to all States under such section for fiscal year 2003; or

“(B) \$300,000.

“(c) SUCCESSIVE YEAR GRANTS.—

“(1) ELIGIBILITY.—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, to the satisfaction of the Secretary—

“(A) certifies 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;

“(B) submits an updated multiyear plan that meets the requirements of subsection (b)(1)(C);

“(C) certifies that its highway safety data and traffic records coordinating committee continues to operate and supports the multiyear plan;

“(D) 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;

“(E) demonstrates measurable progress toward achieving the goals and objectives identified in the multiyear plan; and

“(F) includes a current report on the progress in implementing the multiyear plan.

“(2) GRANT AMOUNT.—Subject to subsection (d)(3), the amount of a year grant made to a State for a fiscal year under this subsection shall equal the higher of—

“(A) the amount determined by multiplying—

“(i) the amount appropriated to carry out this section for such fiscal year, by

“(ii) the ratio that the funds apportioned to the State under section 402 of this title for fiscal year 2003 bears to the funds apportioned to all States under such section for fiscal year 2003; or

“(B) \$500,000.

“(d) 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 with 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 Highway Safety Grant Program Reauthorization Act of 2005.

“(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.

“(e) APPLICABILITY OF CHAPTER 1.—Section 402(d) of this title shall apply in the administration of this section.”.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 4 is amended by adding at the end the following:

“412. State traffic safety information system improvements.”.

#### SEC. 7222. NHTSA ACCOUNTABILITY.

(a) IN GENERAL.—Chapter 4, as amended by section 7221, is amended by adding at the end the following:

##### “§ 413. Agency accountability

“(a) TRIENNIAL STATE MANAGEMENT REVIEWS.—At least once every 3 years the National Highway Traffic Safety Administration shall conduct a review of each State highway safety program. The review shall include a management evaluation of all grant programs partially or fully funded under this title. The Administrator shall provide review-based recommendations on how each State may improve the management and oversight of its grant activities and may provide a management and oversight plan.

“(b) RECOMMENDATIONS BEFORE SUBMISSION.—In order to provide guidance to State highway safety agencies on matters that should be addressed in the State highway safety program goals and initiatives as part of its highway safety plan before the plan is submitted for review, the Administrator shall provide data-based recommendations to each State at least 90 days before the date on which the plan is to be submitted for approval.

“(c) STATE PROGRAM REVIEW.—The Administrator shall—

“(1) conduct a program improvement review of any 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 a State's highway safety plan for any goal not achieved.

“(d) REGIONAL HARMONIZATION.—The Administration and the Inspector General of the Department of Transportation shall undertake a State grant administrative review of the practices and procedures of the management reviews and program reviews conducted by Administration regional offices and formulate a report of best practices to be completed within 180 days after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005.

“(e) BEST PRACTICES GUIDELINES.—

“(1) UNIFORM GUIDELINES.—The Administrator 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.

“(2) PUBLICATION.—The Administrator shall make the following documents available via the Internet upon their completion:

“(A) The Administrator's management review guidelines and the program review guidelines.

“(B) State highway safety plans.

“(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 Administrator may not make a plan, report, or review available under paragraph (2) that is directed to a State highway safety agency until after it has been submitted to that agency.

“(f) GENERAL ACCOUNTING OFFICE REVIEW.—The General Accounting Office shall analyze

the effectiveness of the National Highway Traffic Safety Administration's oversight of traffic safety grants by determining the usefulness of the Administration's advice to the States regarding grants administration and State activities, the extent to which the States incorporate the Administration's recommendation into their highway safety plans and programs, and improvements that result in a State's highway safety program that may be attributable to the Administration's recommendations. Based on this analysis, the General Accounting Office shall submit a report by not later than the end of fiscal year 2008 to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 4, as amended by section 7221, is amended by inserting after the item relating to section 412 the following:

“413. Agency accountability.”.

#### SEC. 7223. GRANTS FOR IMPROVING CHILD PASSENGER SAFETY PROGRAMS.

(a) IN GENERAL.—The Secretary of Transportation shall establish a program to provide grants to States to assist in the enactment and enforcement of laws implementing Anton's Law (49 U.S.C. 30127 note).

(b) ELIGIBILITY REQUIREMENTS.—

(1) IN GENERAL.—The Secretary shall make a grant to each State that, as determined by the Secretary, enacts or has enacted, has in effect, and is enforcing a law requiring that children riding in passenger motor vehicles (as defined in section 405(f)(4)) of title 23, United States Code, who are too large to be secured in a child safety seat be secured in a child restraint (as defined in section 7(1) of Anton's Law (49 U.S.C. 30127 note)) that meets requirements prescribed by the Secretary under section 3 of Anton's Law.

(2) YEAR IN WHICH FIRST ELIGIBLE.—

(A) EARLY QUALIFICATION.—A State that has enacted a law described in paragraph (1) that is in effect before October 1, 2005, is first eligible to receive a grant under subsection (a) in fiscal year 2006.

(B) SUBSEQUENT QUALIFICATION.—A State that enacts a law described in paragraph (1) that takes effect after September 30, 2005, is first eligible to receive a grant under subsection (a) in the first fiscal year beginning after the date on which the law is enacted.

(3) CONTINUING ELIGIBILITY.—A State that is eligible under paragraph (1) to receive a grant may receive a grant during each fiscal year listed in subsection (f) in which it is eligible.

(4) MAXIMUM NUMBER OF GRANTS.—A State may not receive more than 4 grants under this section.

(c) GRANT AMOUNT.—Amounts available for grants under this section in any fiscal year shall be apportioned among the eligible States on the basis of population.

(d) USE OF GRANT AMOUNTS.—

(1) IN GENERAL.—Of the amounts received by a State under this section for any fiscal year—

(A) 50 percent shall be used for the enforcement of, and education to promote public awareness of, State child passenger protection laws; and

(B) 50 percent shall be used to fund programs that purchase and distribute child booster seats, child safety seats, and other appropriate passenger motor vehicle child restraints to indigent families without charge.

(2) REPORT.—Within 60 days after the State fiscal year in which a State receives a grant under this section, the State shall transmit to the Secretary a report documenting the manner in which grant amounts were obligated or expended and identifying the spe-

cific programs supported by grant funds. The report shall be in a form prescribed by the Secretary and may be combined with other State grant reporting requirements under this chapter.

(e) DEFINITION OF CHILD SAFETY SEAT.—The term “child safety seat” means any device (except safety belts (as such term is defined in section 405(f)(6)) of title 23, United States Code, designed for use in a motor vehicle (as such term is defined in section 405(f)(4) of that title) to restrain, seat, or position a child who weighs 50 pounds or less.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation—

(1) \$18,000,000 for fiscal year 2006;

(2) \$20,000,000 for fiscal year 2007;

(3) \$25,000,000 for fiscal year 2008; and

(4) \$30,000,000 for fiscal year 2009.

#### SEC. 7224. MOTORCYCLIST SAFETY TRAINING AND MOTORIST AWARENESS PROGRAMS.

(a) IN GENERAL.—Chapter 4 of title 23, United States Code, as amended by section 7222, is amended by adding at the end the following:

##### “§ 414. Motorcyclist safety training and motorist awareness programs

“(a) DEFINITIONS.—In this section:

“(1) MOTORCYCLIST SAFETY TRAINING.—The term ‘motorcyclist safety training’ means any formal program of instruction that—

“(A) provides accident avoidance and other safety-oriented operational skills to motorcyclists, including innovative training opportunities to meet unique regional needs; and

“(B) 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) MOTORIST AWARENESS.—The term ‘motorist awareness’ means individual or collective motorist awareness of—

“(A) the presence of motorcycles on or near roadways; and

“(B) safe driving practices that avoid injury to motorcyclists, bicyclists, and pedestrians.

“(3) MOTORIST AWARENESS PROGRAM.—The term ‘motorist awareness program’ means any informational or public awareness program designed to enhance motorist 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, in the absence of a State Administrator, a motorcycle advisory council appointed by a Governor of the State.

“(4) STATE.—The term ‘State’ means—

“(A) a State;

“(B) the District of Columbia; and

“(C) the Commonwealth of Puerto Rico.

“(b) ELIGIBILITY.—Not later than 90 days after the date of enactment of this section and on September 1 of each fiscal year thereafter, based on a letter of certification provided by the Governor of each State, the Secretary shall develop and publish a list of States that, as of the date of publication of the list, have established motorcyclist safety training programs and motorist awareness programs, including information that indicates—

“(1) the level of base funding provided for each such program for the applicable fiscal year; and

“(2) whether the level of base funding provided for each such program for the applicable fiscal year was increased, decreased, or

maintained from the level of funding provided for the program for the previous fiscal year.

“(c) **ALLOCATION.**—Not later than 120 days after the date of enactment of this section, on October 1 of each fiscal year, the Secretary shall allocate to each State for which the base funding allocated for motorcyclist safety training and motorist awareness programs was not less than the amount allocated for the previous year, not less than \$100,000, to be used only for motorcyclist safety training and motorist awareness programs, including—

“(1) improvements to motorcyclist safety training curricula;

“(2) improvements in program delivery to both urban and rural areas, including—

“(A) procurement or repair of practice motorcycles;

“(B) instructional aides; and

“(C) mobile training units;

“(3) an increase in the recruitment or retention of motorcyclist safety training instructors certified by a State Motorcycle Safety Administrator or motorcycle advisory council appointed by the Governor; and

“(4) public awareness, public service announcements, and other outreach programs to enhance motorist awareness, such as the ‘share-the-road’ safety messages developed in subsection (f).

“(d) **CONTRACTS WITH ORGANIZATIONS.**—The Secretary may enter into an agreement with an organization that is recommended by and represents the interests of State Motorcycle Safety Administrators to review, determine, and disseminate a description of best practices in motorcycle safety training and motorist awareness, and to recommend such practices, to State administrators, governors, State legislative bodies, and chief licensing officers of States.

“(e) **AUTHORIZATION OF APPROPRIATIONS.**—From funds available to carry out section 406 of this title, \$5,200,000 shall be made available for each of fiscal years 2006 through 2009 to carry out this section.

“(f) **SHARE-THE-ROAD MODEL LANGUAGE.**—Not later than 1 year after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005, 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.”

(b) **CONFORMING AMENDMENT.**—The chapter analysis for chapter 4 of title 23, United States Code, as amended by section 7222, is amended by adding at the end the following:

“414. Motorcyclist safety training and motorist awareness programs.”

## **CHAPTER 2—SPECIFIC VEHICLE SAFETY-RELATED RULINGS**

### **SEC. 7251. 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 sub-

section (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 Act.

“(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. 7252. SIDE-IMPACT CRASH PROTECTION RULEMAKING.**

The Secretary of Transportation 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.

### **SEC. 7253. 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.

(b) **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. 7254. 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. 7255. NONTRAFFIC INCIDENT DATA COLLECTION.**

(a) **IN GENERAL.**—In conjunction with the study required in section 7254, 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. 7256. SAFETY BELT USE REMINDERS.**

(a) **BUZZER LAW.**—

(1) **IN GENERAL.**—Section 30124 is amended—

(A) by striking “not” the first place it appears; and

(B) by striking “except” and inserting “including”.

(2) **CONFORMING AMENDMENT.**—Section 30122 is amended by striking subsection (d).

(b) **STUDY OF SAFETY BELT USE TECHNOLOGIES.**—The Secretary of Transportation shall conduct a review of safety belt use technologies to evaluate progress and 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. 7257. 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);”;

(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.**—Not later than January 1, 2006, the Secretary of Transportation shall issue regulations to implement the labeling requirements under subsections (g) and (h) of section 3 of the Automobile Information Disclosure Act, as added by subsection (a).

(c) **APPLICABILITY.**—The labeling requirements under subsections (g) and (h) of section 3 of such Act (as added by subsection (a)), and the regulations prescribed under subsection (b), shall apply to new automobiles delivered on or after—

(1) September 1, 2006, if the regulations under subsection (b) are prescribed not later than August 31, 2005; or

(2) September 1, 2007, if the regulations under subsection (b) are prescribed after August 31, 2005.

(d) **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. 7258. POWER WINDOW SWITCHES.

The Secretary of Transportation 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. 7259. 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 the Surface Transportation Safety Improvement Act of 2005.”.

(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. 7260. UPDATED FUEL ECONOMY LABELING PROCEDURES.

(a) **IN GENERAL.**—The Administrator of the Environmental Protection Agency shall, as appropriate and in consultation with the Administrator of the National Highway Traffic Safety Administration, update and revise the process used to determine fuel economy values for labeling purposes as set forth in sections 600.209-85 and 600.209.95 (40 C.F.R. 600.209-85 and 600.209.95) to take into consideration current factors such as speed limits, acceleration rates, braking, variations in weather and temperature, vehicle load, use of air conditioning, driving patterns, and the use of other fuel consuming features. The Administrator shall use existing emissions test cycles and, or, updated adjustment factors to implement the requirements of this subsection.

(b) **DEADLINE.**—The Administrator of the Environmental Protection Agency shall promulgate a notice of proposed rulemaking by December 31, 2005, and a final rule within 18 months after the date on which the Administrator issues the notice.

(c) **REPORT.**—Three years after issuing the final rule required by subsection (b) and every 3 years thereafter the Administrator of the Environmental Protection Agency shall reconsider the fuel economy labeling procedures required under subsection (a) to determine if the changes in the factors require revisiting the process. The administrator shall report to the Senate Committee on Commerce, Science and Transportation and to the House of Representatives Committee on Energy and Commerce on the outcome of the reconsideration process.

#### SEC. 7261. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Transportation to carry out this chapter and chapter 301 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.

#### Subtitle C—Hazardous Materials

#### SEC. 7301. SHORT TITLE.

This subtitle may be cited as the “Hazardous Material Transportation Safety and Security Reauthorization Act of 2005”.

## CHAPTER 1—GENERAL AUTHORITIES ON TRANSPORTATION OF HAZARDOUS MATERIALS

### SEC. 7321. PURPOSE.

The text of section 5101 is amended to read as follows:

“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. 7322. 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 the “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) is amended—

(A) by inserting “on a fulltime, part time, or temporary basis” after “employed” in subparagraph (A)(i);

(B) by redesignating clause (ii) of subparagraph (A) as clause (iii) and inserting after clause (i) the following:

“(ii) is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce; and”;

(C) by inserting “such full time, part time, or temporary” in clause (iii) of subparagraph (A), as redesignated, after “course of”; and

(D) by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B);

(E) by inserting “on a full time, part time, or temporary basis” after “employed” in subparagraph (B), as redesignated; and

(F) by striking clause (ii) of subparagraph (B), as redesignated, 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 by that person as qualified for use in transporting hazardous material in commerce.”.

(3) **HAZMAT EMPLOYER.**—Paragraph (4) is amended to read as follows:

“(4) ‘hazmat employer’ means a person—

“(A) 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

“(B) 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 by that person as qualified for use in transporting hazardous material in commerce, and

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 subparagraph (B).”.

(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 of this title; 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 by striking “offering” and all that follows and inserting “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 by that person 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. 7323. GENERAL REGULATORY AUTHORITY.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5103(a) is amended by striking “of Transportation”.

(b) DESIGNATING MATERIAL AS HAZARDOUS.—Section 5103(a) is further 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”.

(c) 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 by that person 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) of this subparagraph; and”.

(d) 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. 7324. LIMITATION ON ISSUANCE OF HAZMAT LICENSES.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5103a is amended by striking “of Transportation” each place it appears in subsections (a)(1), (c)(1)(B), and (d) and inserting “of Homeland Security”.

(b) 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.”.

(c) 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 any chemical or biological material or agent for regulation as a hazardous material under section 5103(a) of this title if the Secretary of Health and Human Services determines that such material or agent is a threat to the national security of the United States.”.

(d) CONFORMING AMENDMENT.—Section 5103a(a)(1) is amended by striking “subsection (c)(1)(B),” and inserting “subsection (d)(1)(B),”.

#### SEC. 7325. BACKGROUND CHECKS FOR DRIVERS HAULING HAZARDOUS MATERIALS.

(a) FOREIGN DRIVERS.—

(1) IN GENERAL.—No commercial motor vehicle operator registered to operate in Mexico or Canada may 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) DEFINITIONS.—In this subsection:

(A) HAZARDOUS MATERIALS.—The term “hazardous material” has the meaning given that term in section 5102(2) of title 49, United States Code.

(B) COMMERCIAL MOTOR VEHICLE.—The term “commercial motor vehicle” has the meaning given that term by section 31101 of title 49, United States Code.

(b) OTHER DRIVERS.—

(1) EMPLOYER NOTIFICATION.—Within 90 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security for Transportation Security shall develop and implement a process for the notification of a hazmat employer (as defined in section 5102(4) of title 49, United States Code), if appropriate considering the potential security implications, designated by an applicant seeking a threat assessment under part 1572 of title 49, Code of Federal Regulations, if the Transportation Security Administration, in an initial notification of threat assessment or a final notification of threat assessment, served on the applicant determines that the applicant does not meet the standards set forth in section 1572.5(d) of title 49, Code of Federal Regulations.

(2) RELATIONSHIP TO OTHER BACKGROUND RECORDS CHECKS.—

(A) ELIMINATION OF REDUNDANT CHECKS.—An individual with respect to whom the Transportation Security Administration—

(i) has performed a security threat assessment under part 1572 of title 49, Code of Federal Regulations, and

(ii) has issued a notification of no security threat under section 1572.5(g) of that title,

is deemed to have met the requirements of any other background check that is equivalent to, or less stringent than, the background check performed under section 5103a of title 49, United States Code, that is required for purposes of any Federal law applicable to transportation workers.

(B) DETERMINATION BY ASSISTANT SECRETARY.—Within 30 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall initiate a rulemaking proceeding, including notice and opportunity for comment, that sets forth the background checks and other similar security or threat assessment requirements applicable to transportation workers under Federal law to which subparagraph (A) applies.

(C) FUTURE RULEMAKINGS.—The Assistant Secretary shall make a determination under the criteria established under subparagraph (B) with respect to any rulemaking proceeding to establish or modify required background checks for transportation workers initiated after the date of enactment of this Act.

(C) APPEALS PROCESS FOR MORE STRINGENT STATE PROCEDURES.—If a State establishes standards for applicants for a hazardous materials endorsement to a commercial driver's license that, as determined by the Secretary of Homeland Security, are more stringent than the standards set forth in section 1572.5(d) of title 49, Code of Federal Regulations, then the State shall also provide an appeals process similar to the process provided under section 1572.141 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 in a manner substantially similar to, and to the same extent as, an individual who received an initial notification of threat assessment under part 1572 of that title.

(d) CLARIFICATION OF TERM DEFINED IN REGULATIONS.—The term “severe transportation security incident”, as defined in section 1572.3 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. Within 30 days after the date of enactment of this Act, the Secretary of Homeland Security shall modify the definition of that term to reflect the preceding sentence.

(e) BACKGROUND CHECK CAPACITY.—The Assistant Secretary of Homeland Security (Transportation Security Administration) shall transmit a report by October 1, 2005, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Homeland Security 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.

#### SEC. 7326. REPRESENTATION AND TAMPERING.

(a) REPRESENTATION.—Section 5104(a) 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) by inserting "component of a package, or packaging," after "package," in paragraph (2).

**SEC. 7327. TRANSPORTING CERTAIN MATERIAL.**

Section 5105 is amended by striking subsection (d).

**SEC. 7328. HAZMAT EMPLOYEE TRAINING REQUIREMENTS AND GRANTS.**

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5107 is amended by striking "of Transportation" each place it appears in subsections (a), (b), (c) (other than in paragraph (1)), (d), and (f).

(b) TRAINING GRANTS.—Section 5107(e) is amended—

(1) by striking "section 5127(c)(3)" and inserting "section 5128(b)(1) of this title"; and

(2) by inserting "and, to the extent determined appropriate by the Secretary, grants for such instructors to train hazmat employees" after "employees" in the first sentence thereof.

**SEC. 7329. REGISTRATION.**

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5108 is amended by striking "of Transportation" each place it appears in subsections (a), (b) (other than following "Department"), (d), (e), (f), (g), (h), and (i).

(b) 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 by that person as qualified for use in transporting hazardous material in commerce."

(3) NO TRANSPORTATION WITHOUT FILING.—Section 5108(a)(3) is amended by striking "fabricate," 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".

(c) FORM AND CONTENT OF FILINGS.—Section 5108(b)(1)(C) by striking "the activity." and inserting "any of the activities."

(d) FILING.—Section 5108(c) is amended to read as follows:

"(c) FILING.—Each person required to file a registration statement under subsection (a) of this section shall file the statement in accordance with regulations prescribed by the Secretary."

(e) FEES.—Section 5108(g)(1) is amended by striking "may establish," and inserting "shall establish,".

(f) RELATIONSHIP TO OTHER LAWS.—Section 5108(i)(2)(B) is amended by inserting "an Indian tribe," after "subdivision of a State,".

(g) REGISTRATION AND ANNUAL FEES.—

(1) REDUCTION IN CAP.—Section 5108(g)(2)(A) is amended by striking "\$5,000" and inserting "\$3,000".

(2) RULEMAKING.—Any rule, regulation, or order issued by the Secretary of Transportation under which the assessment, payment, or collection of fees under section 5108(g) of title 49, United States Code, was suspended or terminated before the date of enactment of this Act is declared null and void effective 30 days after such date of enactment. Beginning on the 31st day after such date of enactment, the fee schedule established by the Secretary and set forth at 65 Federal Register 7297 (as modified by the rule set forth at 67 Federal Register 58343) shall take effect and apply until such time as it may be modified by a rulemaking proceeding.

(3) PLANNING AND TRAINING GRANTS.—Notwithstanding any other provision of law to

the contrary, including any limitation on the amount of grants authorized by section 5116 of title 49, United States Code, not contained in that section, the Secretary shall make grants under that section from the account established under section 5116(i) to reduce the balance in that account over the 4 fiscal year period beginning with fiscal year 2006, but in no fiscal year shall the grants distributed exceed the level authorized by section 5116 of title 49, United States Code.

**SEC. 7330. SHIPPING PAPERS AND DISCLOSURE.**

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5110(a) is amended by striking "of Transportation".

(b) 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.

(c) RETENTION OF PAPERS.—Subsection (d) of section 5110, as redesignated by subsection (b)(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 3 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. 7331. RAIL TANK CARS.**

(a) REPEAL OF REQUIREMENTS.—Section 5111 is repealed.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 51 is amended by striking the item relating to section 5111.

**SEC. 7332. UNSATISFACTORY SAFETY RATINGS.**

(a) IN GENERAL.—The text of section 5113 is amended to read as follows:

"A violation of section 31144(c)(3) of this title shall be considered a violation of this chapter, and shall be subject to the penalties in sections 5123 and 5124 of this title."

(b) CONFORMING AMENDMENTS.—The first subsection (c) of section 31144 is amended—

(1) by striking "sections 521(b)(5)(A) and 5113" in paragraph (1) and inserting "section 521(b)(5)(A) of this title"; and

(2) by adding at the end of paragraph (3) "A violation of this paragraph by an owner or operator transporting hazardous material shall be considered a violation of chapter 51 of this title, and shall be subject to the penalties in sections 5123 and 5124 of this title."

**SEC. 7333. TRAINING CURRICULUM FOR THE PUBLIC SECTOR.**

(a) IN GENERAL.—Section 5115(a) is amended to read as follows:

"(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 shall maintain a current curriculum of lists 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) by striking "developed" in the matter preceding paragraph (1) and inserting "maintained"; and

(2) by striking "under other United States Government grant programs" in paragraph (1)(C) and all that follows and inserting "with Federal assistance; and".

(c) TRAINING ON COMPLIANCE WITH LEGAL REQUIREMENTS.—Section 5115(c)(3) is amended by striking "Association." and inserting "Association or by any other voluntary organization establishing consensus-based standards that the Secretary considers appropriate."

(d) DISTRIBUTION AND PUBLICATION.—Section 5115(d) is amended—

(1) by striking "national response team—" and inserting "National Response Team—"; and

(2) by striking "publish a list" in paragraph (2) and all that follows and inserting "publish and distribute the list of courses maintained under this section, and of any programs utilizing such courses."

**SEC. 7334. PLANNING AND TRAINING GRANTS; EMERGENCY PREPAREDNESS FUND.**

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5116 is amended by striking "of Transportation" each place it appears in subsections (a), (b), (c), (d), (g), and (i).

(b) GOVERNMENT SHARE OF COSTS.—Section 5116(e) is amended by striking the second sentence.

(c) MONITORING AND TECHNICAL ASSISTANCE.—Section 5116(f) is amended by striking "national response team" and inserting "National Response Team".

(d) DELEGATION OF AUTHORITY.—Section 5116(g) is amended by striking "Government grant programs" and inserting "Federal financial assistance programs".

(e) EMERGENCY PREPAREDNESS FUND.—

(1) NAME OF FUND.—Section 5116(i) is amended by inserting after "an account" the following: "(to be known as the '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); and

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

"(3) to publish and distribute an emergency response guide; and".

(3) CONFORMING AMENDMENT.—Section 5108(g)(2)(C) is amended by striking "the account the Secretary of the Treasury establishes" and inserting "the Emergency Response Fund established".

(f) REPORTS.—Section 5116(k) is amended—

(1) by striking the first sentence and inserting "The Secretary shall make available to the public annually 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 of this title."; and

(2) by striking "Such report" in the second sentence and inserting "The information".

**SEC. 7335. SPECIAL PERMITS AND EXCLUSIONS.**

(a) SPECIAL PERMITS AND EXCLUSIONS.—

(1) IN GENERAL.—Section 5117(a)(1) is amended by striking “the Secretary of Transportation may issue” and all that follows through “in a way” and inserting “the Secretary may issue, modify, or terminate a special permit authorizing variances from this chapter, or a regulation prescribed under section 5103(b), 5104, 5110, or 5112 of this title, to a person performing a function regulated by the Secretary under section 5103(b)(1) of this title in a way”.

(2) DURATION.—Section 5117(a)(2) is amended to read as follows:

“(2) A special permit under this subsection—

“(A) shall be effective when first issued for not more than 2 years; and

“(B) may be renewed for successive periods of not more than 4 years each.”.

(b) REFERENCES TO SPECIAL PERMITS.—Section 5117 is further amended—

(1) by striking “an exemption” each place it appears and inserting “a special permit”;

(2) by striking “the exemption” each place it appears and inserting “the special permit”;

(3) by striking “exempt” in subsection (e) and inserting “granted a variance”.

(c) CONFORMING AND CLERICAL AMENDMENTS.—

(1) CONFORMING AMENDMENT.—The heading of section 5117 is amended to read as follows:

**“§ 5117. Special permits and exclusions”**

(2) CLERICAL AMENDMENT.—The chapter analysis for chapter 51 is amended by striking the item relating to section 5117 and inserting the following:

“5117. Special permits and exclusions.”.

(3) SUBSECTION HEADING.—The heading for subsection (a) of section 5117 is amended by striking “EXEMPT” and inserting “ISSUE SPECIAL PERMITS”.

(d) REPEAL OF SECTION 5118.—

(1) Section 5118 is repealed.

(2) The chapter analysis for chapter 51 is amended by striking the item relating to section 5118 and inserting the following:

“5118. Repealed.”.

**SEC. 7336. UNIFORM FORMS AND PROCEDURES.**

The text of section 5119 is amended to read as follows:

“(a) IN GENERAL.—The Secretary may prescribe regulations to establish uniform forms and regulations for States on the following:

“(1) To register and issue permits to persons that transport or cause to be transported hazardous material by motor vehicles in a State.

“(2) To permit the transportation of hazardous material in a State.

“(b) UNIFORMITY IN FORMS AND PROCEDURES.—In prescribing regulations under subsection (a) of this section, the Secretary shall develop procedures to eliminate discrepancies among the States in carrying out the activities covered by the regulations.

“(c) LIMITATION.—The regulations prescribed under subsection (a) of this section may not define or limit the amount of any fees imposed or collected by a State for any activities covered by the regulations.

“(d) EFFECTIVE DATE.—

“(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection, the regulations prescribed under subsection (a) of this section shall take effect 1 year after the date on which prescribed.

“(2) EXTENSION.—The Secretary may extend the 1-year period in subsection (a) for an additional year for good cause.

“(e) STATE REGULATIONS.—After the regulations prescribed under subsection (a) of this section take effect under subsection (d) of this section, a State may establish, maintain, or enforce a requirement relating to the same subject matter only if the require-

ment is consistent with applicable requirements with respect to such activity in the regulations.

“(f) INTERIM STATE PROGRAMS.—Pending the prescription of regulations under subsection (a) of this section, States may participate in the program of uniform forms and procedures recommended by the Alliance for Uniform Hazmat Transportation Procedures.”.

**SEC. 7337. HAZARDOUS MATERIALS TRANSPORTATION SAFETY AND SECURITY.**

The text of section 5121 is amended to read as follows:

“(a) GENERAL AUTHORITY.—

“(1) To carry out this chapter, the Secretary may investigate, conduct tests, make reports, issue subpoenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities.

“(2) Except as provided in subsections (c) and (d) of this section, the Secretary shall provide notice and an opportunity for a hearing before issuing an order directing compliance with this chapter, a regulation prescribed under this chapter, or an order, special permit, or approval issued under this chapter.

“(b) RECORDS, REPORTS, PROPERTY, AND INFORMATION.—A person subject to this chapter shall—

“(1) maintain records, make reports, and provide property and information that the Secretary by regulation or order requires; and

“(2) make the records, reports, property, and information available for inspection when the Secretary undertakes an inspection or investigation.

“(c) INSPECTIONS AND INVESTIGATIONS.—

“(1) A designated officer or employee of the Secretary may—

“(A) inspect and investigate, at a reasonable time and in a reasonable way, records and property relating to a function described in section 5103(b)(1) of this title;

“(B) except for packaging immediately adjacent to the hazardous material contents, gain access to, open, and examine a package offered for or in transportation when the officer or employees has an objectively reasonable and articulable belief that the package may contain hazardous material;

“(C) remove from transportation a package or related packages in a shipment offered for or in transportation for which—

“(i) such officer or employee has an objectively reasonable and articulable belief that the package may pose an imminent hazard; and

“(ii) such officer or employee contemporaneously documents such belief in accordance with procedures set forth in regulations prescribed under subsection (e) of this section;

“(D) gather information from the offeror, carrier, packaging manufacturer or tester, or other person responsible for a package or packages to ascertain the nature and hazards of the contents of the package or packages;

“(E) as necessary under terms and conditions prescribed by the Secretary, order the offeror, carrier, or other person responsible for a package or packages to have the package or packages transported to an appropriate facility, opened, examined, and analyzed; and

“(F) when safety might otherwise be compromised, authorize properly qualified personnel to assist in activities carried out under this paragraph.

“(2) An officer or employee acting under the authority of the Secretary under this subsection shall display proper credentials when requested.

“(3) In instances when, as a result of an inspection or investigation under this sub-

section, an imminent hazards is not found to exist, the Secretary shall, in accordance with procedures set forth in regulations prescribed under subsection (e) of this section, assist the safe resumption of transportation of the package, packages, or transport unit concerned.

“(d) EMERGENCY ORDERS.—

“(1) 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) The action of the Secretary under paragraph (1) of this subsection 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) After taking action under paragraph (1) of this subsection, 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 issuance of the order for the action.

“(4) If a petition for review of an action is filed under paragraph (3) of this subsection 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) 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.—The Secretary shall prescribe in accordance with section 553 of title 5 regulations to carry out the authority in subsections (c) and (d) of this section.

“(f) FACILITY, STAFF, AND REPORTING SYSTEM ON RISKS, EMERGENCIES, AND ACTIONS.—

“(1) The Secretary shall—

“(A) maintain a facility and technical staff sufficient to provide, within the United States Government, the capability of evaluating a risk relating to the transportation of hazardous material and material alleged to be hazardous;

“(B) maintain a central reporting system and information center capable of providing information and advice to law enforcement and firefighting personnel, and other interested individuals, and officers and employees of the United States Government and State and local governments on meeting an emergency relating to the transportation of hazardous material; and

“(C) conduct a continuous review on all aspects of transporting hazardous material to decide on and take appropriate actions to ensure safe transportation of hazardous material.

“(2) Paragraph (1) of this subsection shall not prevent the Secretary from making a contract with a private entity for use of a supplemental reporting system and information center operated and maintained by the contractor.



“(g) GRANTS, COOPERATIVE AGREEMENTS, AND OTHER TRANSACTIONS.—The Secretary may enter into grants, cooperative agreements, and other transactions 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 deemed 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.

“(h) REPORTS.—

“(1) The Secretary shall, once every 2 years, submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a comprehensive report on the transportation of hazardous material during the preceding 2 calendar years. Each report shall include, for the period covered by such report—

“(A) a statistical compilation of the accidents, incidents, and casualties related to the transportation of hazardous material during such period;

“(B) a list and summary of applicable Government regulations, criteria, orders, and special permits;

“(C) a summary of the basis for each special permit issued;

“(D) an evaluation of the effectiveness of enforcement activities relating to the transportation of hazardous material during such period, and of the degree of voluntary compliance with regulations;

“(E) a summary of outstanding problems in carrying out this chapter, set forth in order of priority; and

“(F) any recommendations for legislative or administrative action that the Secretary considers appropriate.

“(2) Before December 31, 2007, and every 3 years thereafter, the Secretary, through the Bureau of Transportation Statistics and in consultation with other appropriate Federal departments and agencies, shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the transportation of hazardous material in all modes of transportation during the preceding 3 calendar years. Each report shall include, for the period covered by such report—

“(A) a summary of the hazardous material shipments, deliveries, and movements during such period, set forth by hazardous materials type, by tonnage and ton-miles, and by mode, both domestically and across United States borders; and

“(B) a summary of shipment estimates during such period as a proxy for risk.

“(i) SECURITY SENSITIVE INFORMATION.—

“(1) If the Secretary determines that particular information may reveal a vulnerability of a hazardous material to attack during transportation in commerce, or may facilitate the diversion of hazardous material during transportation in commerce for use in an attack on people or property, the Secretary may disclose such information, on the condition that such information may not be released to the public without prior authorization by the Secretary, only—

“(A) to the owner, custodian, offeror, or carrier of such hazardous material;

“(B) to an officer, employee, or agent of the United States Government, or a State or local government, including volunteer fire departments, concerned with carrying out transportation safety laws, protecting hazardous material in the course of transportation in commerce, protecting public safety or national security, or enforcing Federal law designed to protect public health or the environment; or

“(C) in an administrative or judicial proceeding brought under this chapter, under other Federal law intended to protect public health or the environment, or under other Federal law intended to address terrorist actions or threats of terrorist actions.

“(2) The Secretary may make determinations under paragraph (1) of this subsection with respect to categories of information in accordance with regulations prescribed by the Secretary.

“(3) A release of information pursuant to a determination under paragraph (1) of this subsection shall not be treated as a release of such information to the public for purposes of section 552 of title 5.”

#### SEC. 7338. ENFORCEMENT.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5122(a) is amended by striking “of Transportation”.

(b) GENERAL.—Section 5122(a) is further amended—

(1) by striking “chapter or a regulation prescribed or order” in the first sentence and inserting “chapter, a regulation prescribed under this chapter, or an order, special permit, or approval”; and

(2) by striking the second sentence and inserting “In an action under this subsection, the court may award appropriate relief, including a temporary or permanent injunction, civil penalties under section 5123 of this title, and punitive damages.”

(c) IMMINENT HAZARDS.—Section 5122(b)(1)(B) is amended by striking “ameliorate” and inserting “mitigate”.

#### SEC. 7339. CIVIL PENALTIES.

(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 “\$32,500”;

(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, 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) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5123(b) is amended by striking “of Transportation”.

(c) HEARING REQUIREMENT.—Section 5123(b) is amended by striking “chapter or a regulation prescribed” and inserting “chapter, a regulation prescribed under this chapter, or an order, special permit, or approval issued”.

(d) 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.”.

(e) EFFECTIVE DATE.—(1) The amendments made by subsections (b) and (c) of this sec-

tion shall take effect on the date of the 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) The amendment made by subsection (d) of this section 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), which violations occur on or after the date of the enactment of this Act.

#### SEC. 7340. CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 5124 is amended—

(1) by inserting “(a) IN GENERAL.—” before “A person”; and

(2) by striking “chapter or a regulation prescribed or order” and inserting “chapter, a regulation prescribed under this chapter, or an order, special permit, or approval”.

(b) ADDITIONAL MATTERS.—Section 5124 is further amended by adding at the end the following:

“(b) AGGRAVATED VIOLATIONS.—A person knowingly violating section 5104(b) of this title or willfully violating this chapter or a regulation prescribed, or an order, special permit, or approval issued, under this chapter, who thereby causes the release of hazardous material shall be fined under title 18, imprisoned for not more than 20 years, or both.

“(c) SEPARATE VIOLATIONS.—A separate violation occurs for each day the violation, committed by a person who transports or causes to be transported hazardous material, continues.”

#### SEC. 7341. PREEMPTION.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5125(b)(2) is amended by striking “of Transportation”.

(b) PURPOSES.—Section 5125 is amended—

(1) by redesignating subsections (a), (b), (c), (d), (e), (f), and (g) as subsections (b), (c), (d), (e), (f), (g), and (h), respectively;

(2) by inserting before subsection (b), as so redesignated, the following:

“(a) PURPOSES.—The Secretary shall exercise the authority in this section—

“(1) to achieve uniform regulation of the transportation of hazardous material;

“(2) to eliminate rules that are inconsistent with the regulations prescribed under this chapter; and

“(3) to otherwise promote the safe and efficient movement of hazardous material in commerce.”;

(3) by striking subsection (g), as redesignated; and

(4) by redesignating subsection (h), as redesignated, as subsection (g).

(c) GENERAL PREEMPTION.—Section 5125(b), as redesignated by subsection (b)(1) of this section, is further amended by striking “GENERAL.—Except as provided in subsection (b), (c), and (e)” and inserting “PREEMPTION GENERALLY.—Except as provided in subsections (c), (d), and (f)”.

(d) SUBSTANTIVE DIFFERENCES.—Section 5125(c), as so redesignated, is further amended—

(1) in the matter preceding subparagraph (A) of paragraph (1), by striking “subsection (c)” and inserting “subsection (d)”;

(2) 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 by that person as qualified for use in transporting hazardous material in commerce.”; and

(3) by striking “prescribes after November 16, 1990. However, the” in paragraph (2) and inserting “prescribes. The”.

(e) DECISIONS ON PREEMPTION.—Section 5125(e), as so redesignated, is further amended by striking “subsection (a), (b)(1), or (c) of this section.” in the first sentence and inserting “subsection (b), (c)(1), or (d) of this section or section 5119(b) of this title.”.

(f) WAIVER OF PREEMPTION.—Section 5125(f), as so redesignated, is further amended by striking “subsection (a), (b)(1), or (c) of this section.” and inserting “subsection (b), (c)(1), or (d) of this section or section 5119(b) of this title.”.

(g) STANDARDS.—Section 5125 is further 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) of this section, and in section 5119(b) of this title, 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. 7342. RELATIONSHIP TO OTHER LAWS.

Section 5126 is amended—

(1) by striking “or causes to be transported hazardous material,” in subsection (a) and inserting “hazardous material, or causes hazardous material to be transported.”;

(2) by striking “manufactures,” and all that follows through “or sells” in subsection (a) 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” in subsection (a) and inserting “shall”;

(4) by striking “manufacturing,” in subsection (a) and all that follows through “testing” and inserting “designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing”;

(5) by striking “39.” in subsection (b)(2) and inserting “39, except in the case of an imminent hazard.”.

#### SEC. 7343. JUDICIAL REVIEW.

(a) IN GENERAL.—Chapter 51 is amended—

(1) by redesignating section 5127 as section 5128; and

(2) by inserting after section 5126 the following:

##### “§ 5127. Judicial review

“(a) FILING AND VENUE.—Except as provided in section 20114(c) of this title, 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 of the United States for the circuit in which the person resides or has a principal place of business. The petition shall be filed not more than 60 days after the action of the Secretary becomes final.

“(b) PROCEDURES.—When a petition on a final action is filed under subsection (a) of this section, the clerk of the court shall immediately 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 in which a petition on a final action is filed under subsection (a) of this section has exclusive jurisdiction, as provided in subchapter II of chapter 5 of title 5 to affirm or set aside any part of the final action and may order the Secretary to conduct further proceedings.

“(d) REQUIREMENT FOR PRIOR OBJECTIONS.—In reviewing a final action under this section, the court may consider an objection to the final action only if—

“(1) the objection was made in the course of a proceeding or review conducted by the Secretary; or

“(2) there was a reasonable ground for not making the objection in the proceeding.”.

(b) CLERICAL AMENDMENT.—The chapter 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. 7344. AUTHORIZATION OF APPROPRIATIONS.

Section 5128, as redesignated by section 7343 of this chapter, is amended to read as follows:

##### “§ 5128. Authorization of appropriations

“(a) GENERAL.—In order to carry out this chapter (except sections 5107(e), 5108(g), 5112, 5113, 5115, 5116, and 5119 of this title), the following amounts are authorized to be appropriated to the Secretary:

“(1) For fiscal year 2005, not more than \$24,940,000.

“(2) For fiscal year 2006, not more than \$29,000,000.

“(3) For each of fiscal years 2007 through 2009, not more than \$30,000,000.

“(b) EMERGENCY PREPAREDNESS FUND.—There shall be available from the Emergency Preparedness Fund under section 5116(i) of this title, amounts as follows:

“(1) To carry out section 5107(e) of this title, \$4,000,000 for each of fiscal years 2005 through 2009.

“(2) To carry out section 5115 of this title, \$200,000 for each of fiscal years 2005 through 2009.

“(3) To carry out sections 5116(a) and (b) of this title, \$21,800,000 for each of fiscal years 2005 through 2009, 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 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.

“(4) To carry out section 5116(f) of this title, \$150,000 for each of fiscal years 2005 through 2009.

“(5) To carry out section 5116(i)(4) of this title, \$150,000 for each of fiscal years 2005 through 2009.

“(6) To carry out section 5116(j) of this title, \$1,000,000 for each of fiscal years 2005 through 2009.

“(7) To publish and distribute an emergency response guidebook under section 5116(i)(3) of title 49, United States Code, \$750,000 for each of fiscal years 2005 through 2009.

“(c) SECTION 5121 REPORTS.—There are authorized to be appropriated to the Secretary of Transportation for the use of the Bureau of Transportation Statistics such sums as may be necessary to carry out section 5121(h) of this title.”.

“(d) CREDIT TO APPROPRIATIONS.—The Secretary may credit to any appropriation to carry out this chapter an amount received from a State, political subdivision of a State, Indian tribe, or other public authority

or private entity for expenses the Secretary incurs in providing training to the State, political subdivision, Indian tribe, or other authority or entity.

“(e) AVAILABILITY OF AMOUNTS.—Amounts available under subsections (a) and (b) of this section shall remain available until expended.”.

#### SEC. 7345. 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 of this title—”; and

(2) by inserting “or chapter 51 of this title” 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. 7346. TECHNICAL CORRECTIONS.

(a) HIGHWAY ROUTING OF HAZARDOUS MATERIAL.—The second sentence of section 5112(a)(1) is amended by striking “However, the Secretary of Transportation” and inserting “The Secretary”.

(b) AIR TRANSPORTATION OF IONIZING RADIATION MATERIAL.—Section 5114(b) is amended by striking “of Transportation”.

(c) INTERNATIONAL UNIFORMITY OF STANDARDS AND REQUIREMENTS.—Section 5120 is amended by striking “of Transportation” each place it appears in subsections (a), (b), and (c)(1).

#### CHAPTER 2—OTHER MATTERS

#### SEC. 7361. ADMINISTRATIVE AUTHORITY FOR PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION.

Section 108 is amended by adding at the end the following:

“(h) ADMINISTRATIVE AUTHORITIES.—

“(1) GRANTS, COOPERATIVE AGREEMENTS, AND OTHER TRANSACTIONS.—The Administrator may enter into grants, cooperative agreements, and other transactions with Federal agencies, State and local government agencies, other public entities, private organizations, and other persons—

“(A) to conduct research into transportation service and infrastructure assurance; and

“(B) to carry out other research activities of the Administration.

“(2) LIMITATION ON DISCLOSURE OF CERTAIN INFORMATION.—

“(A) LIMITATION.—If the Administrator determines that particular information developed in research sponsored by the Administration may reveal a systemic vulnerability of transportation service or infrastructure, such information may be disclosed only to—

“(i) a person responsible for the security of the transportation service or infrastructure;

“(ii) a person responsible for protecting public safety; or

“(iii) an officer, employee, or agent of the Federal Government, or a State or local government, who, as determined by the Administrator, has need for such information in the performance of official duties.

“(B) TREATMENT OF RELEASE.—The release of information under subparagraph (A) shall not be treated as a release to the public for purposes of section 552 of title 5.”.

#### SEC. 7362. MAILABILITY OF HAZARDOUS MATERIALS.

(a) NONMAILABILITY GENERALLY.—Section 3001 of title 39, United States Code, is amended—

(1) by redesignating subsection (n) as subsection (o); and

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

“(n)(1) Except as otherwise authorized by law or regulations of the Postal Service under section 3018 of this title, hazardous material is nonmailable.

“(2) In this subsection, the term ‘hazardous material’ means a substance or material designated by the Secretary of Transportation as hazardous material under section 5103(a) of title 49.”

(b) MAILABILITY.—

(1) IN GENERAL.—Chapter 30 of title 39, United States Code, is amended by adding at the end the following:

“§ 3018. Hazardous material

“(a) IN GENERAL.—The Postal Service shall prescribe regulations for the safe transportation of hazardous material in the mails.

“(b) PROHIBITIONS.—No person may—

“(1) mail or cause to be mailed hazardous material that has been declared by statute or Postal Service regulation to be non-mailable;

“(2) mail or cause to be mailed hazardous material in violation of any statute or Postal Service regulation restricting the time, place, or manner in which hazardous material may be mailed; or

“(3) manufacture, distribute, or sell any container, packaging kit, or similar device that—

“(A) is represented, marked, certified, or sold by such person for use in the mailing of hazardous material; and

“(B) fails to conform with any statute or Postal Service regulation setting forth standards for a container, packaging kit, or similar device used for the mailing of hazardous material.

“(c) CIVIL PENALTY.—

“(1) IN GENERAL.—A person who knowingly violates this section or a regulation prescribed under this section shall be liable to the Postal Service for—

“(A) a civil penalty of at least \$250, but not more than \$100,000, for each violation;

“(B) the costs of any clean-up associated with such violation; and

“(C) damages.

“(2) KNOWING ACTION.—A person acts knowingly for purposes of paragraph (1) 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 had that knowledge.

“(3) KNOWLEDGE OF STATUTE OR REGULATION NOT ELEMENT OF OFFENSE.—Knowledge of the existence of a statutory provision or Postal Service regulation is not an element of an offense under this subsection.

“(4) SEPARATE VIOLATIONS.—

“(A) VIOLATIONS OVER TIME.—A separate violation under this subsection occurs for each day hazardous material, mailed or cause to be mailed in noncompliance with this section, is in the mail.

“(B) SEPARATE ITEMS.—A separate violation under this subsection occurs for each item containing hazardous material that is mailed or caused to be mailed in noncompliance with this section.

“(d) HEARINGS.—The Postal Service may determine that a person has violated this section or a regulation prescribed under this section only after notice and an opportunity for a hearing.

“(e) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty for a violation of this section, the Postal Service shall consider—

“(1) the nature, circumstances, extent, and gravity of the violation;

“(2) with respect to the person who committed the violation, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue in business;

“(3) the impact on Postal Service operations; and

“(4) any other matters that justice requires.

“(f) CIVIL ACTIONS TO COLLECT.—

“(1) IN GENERAL.—In accordance with section 4409(d) of this title, a civil action may be commenced in an appropriate district court of the United States to collect a civil penalty, clean-up costs, and damages assessed under subsection (c).

“(2) LIMITATION.—In a civil action under paragraph (1), the validity, amount, and appropriateness of the civil penalty, clean-up costs, and damages covered by the civil action shall not be subject to review.

“(3) COMPROMISE.—The Postal Service may compromise the amount a civil penalty, clean-up costs, and damages assessed under subsection (c) before commencing a civil action with respect to such civil penalty, clean-up costs, and damages under paragraph (1).

“(g) CIVIL JUDICIAL PENALTIES.—

“(1) IN GENERAL.—At the request of the Postal Service, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this section or a regulation prescribed under this section.

“(2) RELIEF.—The court in a civil action under paragraph (1) may award appropriate relief, including a temporary or permanent injunction, civil penalties as determined in accordance with this section, or punitive damages.

“(3) CONSTRUCTION.—A civil action under this subsection shall be in lieu of civil penalties for the same violation under subsection (c)(1)(A).

“(h) DEPOSIT OF AMOUNTS COLLECTED.—Amounts collected under this section shall be deposited into the Postal Service Fund under section 2003 of this title.”

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 30 of title 39, United States Code, is amended by adding at the end the following:

“3018. Hazardous material.”

(c) CONFORMING AMENDMENT.—Section 2003(b) of title 39, United States Code, is amended—

(1) by striking “and” after the semicolon in paragraph (7);

(2) by striking “purposes.” in paragraph (8) and inserting “purposes; and”; and

(3) by adding at the end the following:

“(9) any amounts collected under section 3018 of this title.”

SEC. 7363. CRIMINAL MATTERS.

Section 845(a)(1) of title 18, United States Code, is amended by striking “which are regulated” and all that follows and inserting “that is subject to the authority of the Departments of Transportation and Homeland Security”;

SEC. 7364. CARGO INSPECTION PROGRAM.

(a) IN GENERAL.—The Secretary of Transportation may establish a program of random inspections of cargo at points of entry into the United States for the purpose of determining the extent to which undeclared hazardous material is being offered for transportation in commerce through such points of entry.

(b) INSPECTIONS.—Under the program under subsection (a)—

(1) an officer of the Department of Transportation who is not located at a point of entry into the United States may select at random cargo shipments at points of entry into the United States for inspection; and

(2) an officer or employee of the Department may open and inspect each cargo shipment so selected for the purpose described in subsection (a).

(c) COORDINATION.—The Secretary of Transportation shall coordinate any inspections under the program under subsection (a) with the Secretary of Homeland Security.

(d) DISPOSITION OF HAZARDOUS MATERIALS.—The Secretary of Transportation

shall provide for the appropriate handling and disposition of any hazardous material discovered pursuant to inspections under the program under subsection (a).

SEC. 7365. INFORMATION ON HAZMAT REGISTRATIONS.

The Administrator of the Department of Transportation's Research and Special Programs Administration shall—

(1) transmit current hazardous material registrant information to the Federal Motor Carrier Safety Administration to cross reference the registrant's Federal motor carrier registration number; and

(2) notify the Federal Motor Carrier Safety Administration immediately, and provide a registrant's United States Department of Transportation identification number to the Administration, whenever a new registrant registers to transport hazardous materials as a motor carrier.

SEC. 7366. REPORT ON APPLYING HAZARDOUS MATERIALS REGULATIONS TO PERSONS WHO REJECT HAZARDOUS MATERIALS.

Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall complete an assessment of the costs and benefits of subjecting persons who reject hazardous material for transportation in commerce to the hazardous materials laws and regulations. In completing this assessment, the Secretary shall—

(1) estimate the number of affected employers and employees;

(2) determine what actions would be required by them to comply with such laws and regulations; and

(3) consider whether and to what extent the application of Federal hazardous materials laws and regulations should be limited to—

(A) particular modes of transportation;

(B) certain categories of employees; or

(C) certain classes or categories of hazardous materials.

SEC. 7367. NATIONAL FIRST RESPONDER TRANSPORTATION INCIDENT RESPONSE SYSTEM.

(a) IN GENERAL.—The Secretary of Transportation 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) OREIS EXPANSION.—

(1) IN GENERAL.—The system designed, built, and operated by the Institute shall include an expansion of the Operation Respond Emergency Information System.

(2) FUNCTIONALITY.—The Secretary may require that the system designed by the Operation Respond Institute function across multiple transportation modes.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section \$5,000,000 for each of fiscal years 2005 through 2009.

SEC. 7368. 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. 7369. WELDED RAIL AND TANK CAR SAFETY IMPROVEMENTS.**

(a) **TRACK STANDARDS.**—

(1) **IN GENERAL.**—Within 90 days after the date of enactment of this Act, 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) 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.**—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 Act; 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 Act.

(c) **OLDER TANK CAR IMPACT RESISTANCE ANALYSIS AND REPORT.**—Within 1 year after the date of enactment of this Act 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—

(1) establish a program to rank those cars according to their risk of catastrophic fracture and separation;

(2) implement measures to eliminate or mitigate this risk; and

(3) transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure setting forth the measures implemented.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Federal Railroad Administration \$1,000,000 for fiscal year 2006 to carry out this section, such sums to remain available until expended.

**SEC. 7370. HAZARDOUS MATERIALS COOPERATIVE RESEARCH PROGRAM.**

(a) **IN GENERAL.**—There are authorized to be appropriated to the Secretary of Transportation \$2,000,000 for each of fiscal years 2005 through 2009 to develop and administer a hazardous materials cooperative research program.

(b) **GOVERNANCE.**—The Secretary of Transportation shall establish an independent governing board to select projects and studies to be carried out under the hazardous materials cooperative research program. The Board shall be comprised of one voting representative from the following:

- (1) The Federal Aviation Administration.
- (2) The Federal Motor Carrier Administration.

(3) The Federal Transit Administration.

(4) The Federal Railroad Administration.

(5) The Maritime Administration.

(6) The Research and Innovative Technology Administration.

(7) The Pipeline and Hazardous Materials Safety Administration.

(8) The Department of Homeland Security.

(9) The Department of Energy.

(10) The Environmental Protection Agency.

(11) A State department of transportation.

(12) A State emergency management agency.

(13) A nonprofit organization representing emergency responders.

(14) A hazmat employer.

(15) A nonprofit organization representing hazmat employees.

(16) A hazardous materials shipper.

(17) A hazardous materials manufacturer.

(18) An organization representing the hazardous materials manufacturing industry.

(19) A research university or research institution.

(20) Additional representatives as the Secretary considers appropriate.

(c) **RESEARCH STUDIES.**—Under the cooperative research program, the governing board shall select cooperative research studies of hazardous materials transportation that are cross-cutting in nature and that consider issues not adequately addressed by existing Federal or private sector research programs. Priority shall be given to research studies that will yield results immediately applicable to risk analysis and mitigation or that will strengthen the ability of first responders to respond to incidents and accidents involving transportation of hazardous materials.

(d) **SPECIAL RULES REGARDING STUDIES.**—

(1) **SAFETY AND SECURITY.**—The purpose of at least one of the studies to be conducted under the cooperative research program shall be—

(A) to provide an assessment of opportunities for integrating and supplementing safety and security measures for hazardous materials transportation;

(B) to identify areas where safety and security measures currently utilized in the transportation of hazardous materials conflict or complement one another;

(C) to outline a comprehensive approach to hazardous materials transportation that effectively incorporates safety and security procedures;

(D) to produce a model of reasonable State and local risk response and management plans that effectively address safety and security of hazardous materials transportation; and

(E) to provide an assessment of the need and feasibility of substituting less lethal substances than toxic inhalation hazards in the manufacturing process.

(2) **PERFORMANCE DATA FOR BULK CONTAINERS.**—The purpose of at least one of the studies to be conducted under the research program shall be to provide—

(A) an analysis of, and recommendations for, the design and funding of a nationwide system capable of collecting and analyzing performance data from bulk containers involved in transportation accidents; and

(B) recommendations that can be used to develop conditional release probabilities for various container design specifications (by transport mode).

(3) **PACKAGING REQUIREMENTS.**—The purpose of at least one of the studies to be conducted under the research program shall be to provide an analysis of recommendations on appropriate packaging requirements for those hazardous materials that are most frequently involved in release incidents.

(4) **ROUTING.**—The purpose of at least one of the studies to be conducted under the re-

search program shall be to identify the components that could comprise a model of risk and consequence analysis in rail and highway transportation and that can be used to facilitate decisionmaking regarding the routing of hazardous materials shipments and the development of regulations regarding mandatory routing decisions.

(5) **RESPONSE COVERAGE.**—The purpose of at least one of the studies to be conducted under the research program shall be to provide an assessment of the quality of response coverage for hazardous materials incidents, including cost-effective strategies for improving response capabilities and making recommendations on systematic approaches that could be used to allocate government funding to enhance response capability.

(e) **IMPLEMENTATION.**—The Secretary of Transportation shall make grants to, and enter a cooperative agreement with, the National Academy of Sciences to carry out activities under this Act.

(f) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the effectiveness of the program in meeting the needs of government and the private sector for cooperative research on hazardous materials transportation.

(g) **DEFINITIONS.**—In this section, the terms 'hazmat employer' and 'hazmat employee' have the meaning given those terms in section 5102 of title 49, United States Code.

**CHAPTER 3—SANITARY FOOD TRANSPORTATION**

**SEC. 7381. SHORT TITLE.**

This chapter may be cited as the "Sanitary Food Transportation Act of 2005".

**SEC. 7382. RESPONSIBILITIES OF THE 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) **NONCOMPLIANCE WITH SANITARY TRANSPORTATION PRACTICES.**—If the food is transported under conditions that are not in compliance with the sanitary transportation practices prescribed by the Secretary 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 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.—No State or political subdivision of a State may directly or indirectly establish or continue in effect, as to any food in interstate commerce, any authority or requirement concerning transportation of food that is not identical to an authority or requirement 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.—

(1) 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.

(2) 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) NONCOMPLIANCE WITH SANITARY TRANSPORTATION PRACTICES.—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. 7383. DEPARTMENT OF TRANSPORTATION REQUIREMENTS.

Chapter 57, is amended to read as follows:

#### “CHAPTER 57—SANITARY FOOD TRANSPORTATION

“Sec.

“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—

“(A) establish procedures for transportation safety inspections for the purpose of identifying suspected incidents of contamination or adulteration of—

“(i) food in violation of regulations promulgated under section 416 of the Federal Food, Drug, and Cosmetic Act;

“(ii) meat subject to detention under section 402 of the Federal Meat Inspection Act (21 U.S.C. 672); and

“(iii) poultry products subject to detention under section 19 of the Poultry Products Inspection Act (21 U.S.C. 467a); and

“(B) train personnel of the Department of Transportation in the appropriate use of the procedures.

“(2) APPLICABILITY.—The procedures established under paragraph (1) of this subsection 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) of this section may include inspections conducted by State employees using funds authorized to be appropriated under sections 31102 through 31104 of this title.”.

#### SEC. 7384. EFFECTIVE DATE.

This chapter takes effect on October 1, 2005.

#### CHAPTER 4—HOUSEHOLD GOODS MOVERS

#### SEC. 7401. SHORT TITLE.

This chapter may be cited as the “Household Goods Mover Oversight Enforcement and Reform Act of 2005”.

#### SEC. 7402. DEFINITIONS.

In this chapter, the terms “carrier”, “household goods”, “motor carrier”, “Secretary”, and “transportation” have the meaning given such terms in section 13102 of title 49, United States Code.

#### SEC. 7403. PAYMENT OF RATES.

Section 13707(b) is amended by adding at the end the following:

“(3) SHIPMENTS OF HOUSEHOLD GOODS.—

“(A) IN GENERAL.—A carrier providing transportation for a shipment of household goods shall give up possession of the household goods 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. 7404. HOUSEHOLD GOODS CARRIER OPERATIONS.

Section 14104(b) is amended—

(1) by striking “135, upon request of a prospective shipper, may provide” in paragraph (1) and inserting “135 shall provide”; and

(2) by striking “services.” the first place it appears in paragraph (1) and inserting “services in accordance with the requirements of sections 375.401, 375.403, 375.405, and 375.213 of title 49, Code of Federal Regulations, as those requirements were in effect on the date of enactment of the Surface Transportation Safety Improvement Act of 2005 or may thereafter be revised.”;

(3) by redesignating paragraph (2) as paragraph (4); and

(4) by inserting after paragraph (1) the following:

“(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 edition or publication) entitled ‘Ready to Move?’. Before the execution of a contract for service, a motor carrier shall provide the shipper a copy of the Department of Transportation publication OCE 100, entitled ‘Your Rights and Responsibilities When You Move’ required by section 375.2 of title 49, Code of Federal Regulations (or any corresponding similar regulation).

“(3) BINDING AND NONBINDING ESTIMATES.—The written estimate required by paragraph (1) may be either binding or nonbinding. The written estimate shall be based on a visual inspection 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. The Secretary may not prohibit any such carrier from charging a prospective shipper for providing a written, binding estimate for the transportation and related services.”.

#### SEC. 7405. LIABILITY OF CARRIERS UNDER RECEIPTS AND BILLS OF LADING.

Section 14706(f) is amended—

(1) by resetting the text as a paragraph indented 2 ems from the left margin and inserting “(1) IN GENERAL,—” before “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, subject 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. 7406. ARBITRATION REQUIREMENTS.**

(a) **OFFERING SHIPPERS ARBITRATION.**—Section 14708(a) 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 the shipper for transportation and services related to the transportation of household goods”.

(b) **THRESHOLD FOR BINDING ARBITRATION.**—Section 14708(b)(6) is amended by striking “\$5,000” each place it appears and inserting “\$10,000”.

(c) **DEADLINE FOR DECISION.**—Section 14708(b)(8) is amended—

(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) is amended—

(1) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and

(2) by inserting before subparagraph (B) (as so redesignated) the following:

“(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;”

(e) **REVIEW AND REPORT ON DISPUTE SETTLEMENT PROGRAMS.**—

(1) **REVIEW AND REPORT.**—Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall complete a review of the outcomes and the effectiveness of the programs carried out under title 49, United States Code, to settle disputes between motor carriers and shippers and submit a report on the review to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The report shall describe—

(A) the subject of, and amounts at issue in, the disputes;

(B) patterns in disputes or settlements;

(C) the prevailing party in disputes, if identifiable; and

(D) any other matters the Secretary considers appropriate.

(2) **REQUIREMENT FOR PUBLIC COMMENT.**—The Secretary shall publish notice of the review required by paragraph (1) and provide an opportunity for the public to submit comments on the effectiveness of such programs. Notwithstanding any confidentiality or nondisclosure provision in a settlement agreement between a motor carrier and a shipper, it shall not be a violation of that provision for a motor carrier or shipper to submit a copy of the settlement agreement, or to pro-

vide information included in the agreement, to the Secretary for use in evaluating dispute settlement programs under this subsection. Notwithstanding anything to the contrary in section 552 of title 5, United States Code, the Secretary may not post on the Department of Transportation’s electronic docket system, or make available to any requester in paper or electronic format, any information submitted to the Secretary by a motor carrier or shipper under the preceding sentence. The Secretary shall use the settlement agreements or other information submitted by a motor carrier or shipper solely to evaluate the effectiveness of dispute settlement programs and shall not include in the report required by this subsection the names, or other identifying information concerning, motor carriers or shippers that submitted comments or information under this subsection.

#### **SEC. 7407. ENFORCEMENT OF REGULATIONS RELATED TO TRANSPORTATION OF HOUSEHOLD GOODS.**

(a) **NONPREEMPTION OF INTRASTATE TRANSPORTATION OF HOUSEHOLD GOODS.**—Section 14501(c)(2)(B) is amended by inserting “intrastate” before “transportation”.

(b) **ENFORCEMENT OF FEDERAL LAW WITH RESPECT TO INTERSTATE HOUSEHOLD GOODS CARRIERS.**—

(1) **IN GENERAL.**—Chapter 147 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 that apply to individual shippers, as determined by the Secretary of Transportation, of this title that 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, notwithstanding any provision of law to the contrary, be paid 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 such 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.**—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 that apply to individual shippers, as determined by the Secretary of Transportation, of this title that are related to the delivery and transportation of household goods in interstate commerce, or regulations or orders of the Sec-

retary or the Board thereunder, or to impose the civil penalties authorized by this part or such regulation or order, 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 of this title, or a foreign motor carrier providing transportation registered under section 13902 of this title, that is engaged in household goods transportation that violates this part or a regulation or order of the Secretary or Board, as applicable, promulgated under this part.

“(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 such notice immediately upon instituting such civil action.

“(c) **AUTHORITY TO INTERVENE.**—Upon receiving the notice required by subsection (b), the Secretary or Board may intervene in such civil action 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 action.

“(d) **CONSTRUCTION.**—For purposes of bringing any civil action under subsection (a), nothing in this section shall 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) **INDIVIDUAL SHIPPER DEFINED.**—Section 13102 is amended by redesignating paragraphs (12) through (24) as paragraphs (13) through (25) and by inserting after paragraph (11) the following:

“(12) **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) **CONFORMING AMENDMENT.**—The analysis for 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. 7408. 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 authorities that regulate the movement of household goods, 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 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.

**SEC. 7409. INFORMATION ABOUT HOUSEHOLD GOODS TRANSPORTATION ON CARRIERS' WEBSITES.**

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 motor carrier or broker that is subject to such regulations and that establishes (or has established) and maintains a website to prominently display on the website—

(1) the number assigned to the motor carrier or broker by the Department of Transportation;

(2) the OCE 100 publication referred to in section 14104(b)(2) of title 49, United States Code; and

(3) in the case of a broker, 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. 7410. CONSUMER COMPLAINTS.**

(a) **REQUIREMENT FOR DATABASE.**—Subchapter II of chapter 141 is amended by adding at the end the following:

**"§ 14124. Consumer complaints**

"(a) **ESTABLISHMENT OF SYSTEM AND DATABASE.**—The Secretary of Transportation shall—

"(1) establish a system to—

"(A) file and log a complaint made by a shipper that relates to motor carrier transportation of household goods; and

"(B) to solicit information gathered by a State regarding the number and type of complaints involving the interstate transportation of household goods;

"(2) establish a database of such complaints; and

"(3) develop a procedure—

"(A) to provide public access to the database, subject to section 522a of title 5;

"(B) 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(c) in the State in which the complainant resides; and

"(C) to permit a motor carrier to challenge information in the database.

"(b) **SUMMARY TO CONGRESS.**—The Secretary shall transmit a summary each year of the complaints filed and logged under subsection (a) for the preceding calendar year to the Senate Committee on Commerce,

Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure."

(b) **CONFORMING AMENDMENT.**—The analysis for chapter 141 is amended by inserting after the item relating to section 14123 the following:

"14124. Consumer complaints."

**SEC. 7411. 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;

(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; and

(4) whether the section 14706 of title 49, United States Code, should be modified.

**SEC. 7412. CIVIL PENALTIES RELATING TO HOUSEHOLD GOODS BROKERS.**

Section 14901(d) is amended—

(1) by resetting the text as a paragraph indented 2 ems from the left margin and inserting "(1) **IN GENERAL.**—" before "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 of this title 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 this title or provides broker services for such transportation without being registered under chapter 139 of this title 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. 7413. CIVIL AND CRIMINAL PENALTY FOR FAILING TO GIVE UP POSSESSION OF HOUSEHOLD GOODS.**

(a) **IN GENERAL.**—Chapter 149 is amended by adding at the end the following:

**"§ 14915. Penalties for failure to give up possession of household goods**

"(a) **CIVIL PENALTY.**—Whoever is found to have failed to give up possession of household goods is liable to the United States for a civil penalty of not less than \$10,000. Each day a carrier is found to have failed to give up possession of household goods may constitute a separate violation. If such person is a carrier or broker, the Secretary may suspend the registration of such carrier or broker under chapter 139 of this title for a period of not less than 12 months nor more than 36 months. 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 5 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) of this title."

(b) **CONFORMING 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. 7414. PROGRESS REPORT.**

Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the progress being made in implementing the provisions of this chapter.

**SEC. 7415. ADDITIONAL REGISTRATION REQUIREMENTS FOR MOTOR CARRIERS OF HOUSEHOLD GOODS.**

Section 13902(a) is amended—

(1) by striking paragraphs (2) and (3);

(2) by redesignating paragraph (4) as paragraph (5) and inserting after paragraph (1) the following:

"(2) **ADDITIONAL REGISTRATION REQUIREMENTS FOR HOUSEHOLD GOODS TRANSPORTATION.**—Notwithstanding paragraph (1), the Secretary may register a person to provide transportation of household goods (as defined in section 13102(10) of this title) only after that person—

"(A) provides evidence of participation in an arbitration program and provides a copy of the notice of that program as required by section 14708(b)(2) of this title;

"(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) of this title;

"(C) provides 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; 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 the past 3 years.

"(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

(3) by adding at the end of paragraph (5), as redesignated, "In the case of a registration for the transportation of household goods (as defined in section 13102(10) of this title), 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."

**Subtitle E—Sportfishing and Recreational Boating Safety**

**SEC. 7501. SHORT TITLE.**

This subtitle may be cited as the “Sportfishing and Recreational Boating Safety Act of 2005”.

**CHAPTER 1—FEDERAL AID IN SPORT FISH RESTORATION ACT AMENDMENTS**

**SEC. 7511. AMENDMENT OF FEDERAL AID IN 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. 7512. 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. 7513. 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 fiscal years 2006 through 2020, 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.—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.—18.5 percent to the Secretary of Homeland Security for State recreational boating safety programs under section 13106 of title 46, United States Code.

“(3) CLEAN VESSEL ACT.—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.—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.—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 por-

tion 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 a fiscal year after fiscal year 2005, the Secretary of the Interior may use no more than the amount specified in subparagraph (B) for the fiscal year for expenses of 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 a fiscal year after fiscal year 2005, 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)”;

(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 Homeland Security and shall be expended for State recreational boating safety programs under section 13106(a) of title 46, United States Code.”.

**SEC. 7514. 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).”;

(2) by striking “subsection (c) or (d)” in subsection (d)(3) and inserting “subsection (a)(5) or subsection (b)”.

**SEC. 7515. 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. 7516. 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)”;

(2) by striking “section 4(d)(1)” in subsection (b)(1) and inserting “section 4(b)”.

**SEC. 7517. 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 pro-

gram 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. 7518. 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 fiscal year after fiscal year 2005, 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)”;

(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. 7519. EXPENDITURES FROM BOAT SAFETY ACCOUNT.**

The Act is amended by adding at the end the following:

**“SEC. 15. EXPENDITURES FROM BOAT SAFETY ACCOUNT.**

“The following amounts in the boating safety account under section 9504(c) of the Internal Revenue Code of 1986 shall be made available without further appropriation 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 AMENDMENTS

### SEC. 7531. 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); and

(2) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

## CHAPTER 3—RECREATIONAL BOATING SAFETY PROGRAM AMENDMENTS

### SEC. 7551. STATE MATCHING FUNDS REQUIREMENT.

Section 13103(b) of title 46, United States Code, is amended by striking “one-half” and inserting “75 percent”.

### SEC. 7552. 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. 7553. AUTHORIZATION OF APPROPRIATIONS FOR STATE RECREATIONAL BOATING SAFETY PROGRAMS.

Section 13106 of title 46, United States Code, is amended—

(1) by striking “section 4(b) of the Act of August 9, 1950 (16 U.S.C. 777c(b))” in subsection (a)(1) and inserting “subsections (a)(2) and (f) of section 4 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(a)(2) and (f))”; and

(2) by striking “not less than one percent and” in subsection (a)(2);

(3) 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”; and

(B) by striking “(16 U.S.C. 777c(b))” and inserting “(16 U.S.C. 777c(a)(2))”; and

(C) by striking “\$3,333,336” and inserting “not more than 5 percent”; and

(D) by striking “\$1,333,336” and inserting “not less than \$2,000,000”; and

(4) by striking “until expended.” in subsection (c)(3) 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.”.

### SEC. 7554. MAINTENANCE OF EFFORT FOR STATE RECREATIONAL BOATING SAFETY PROGRAMS.

(a) IN GENERAL.—Chapter 131 of title 46, United States Code, is amended by inserting after section 13106 the following:

#### “§ 13107. Maintenance of effort for State recreational boating safety programs

“(a) IN GENERAL.—The amount payable to a State for a fiscal year from an allocation under section 13103 of this chapter shall be reduced if the usual amounts expended by the State for the State’s recreational boating safety program, as determined under section 13105 of this chapter, for the previous fiscal year is less than the average of the total of such expenditures for the 3 fiscal years immediately preceding that previous fiscal year. The reduction shall be proportionate, as a percentage, to the amount by which the level of State expenditures for such previous fiscal year is less than the average of the total of such expenditures for the 3 fiscal years immediately preceding that previous fiscal year.

“(b) REDUCTION OF THRESHOLD.—If the total amount available for allocation and distribution under this chapter in a fiscal year for all participating State recreational boating safety programs is less than such amount for the preceding fiscal year, the level of State expenditures required under subsection (a) of this section for the preceding fiscal year shall be decreased proportionately.

“(c) WAIVER.—

“(1) IN GENERAL.—Upon the written request of a State, the Secretary may waive the provisions of subsection (a) of this section for 1 fiscal year if the Secretary determines that a reduction in expenditures for the State’s recreational boating safety program is attributable to a non-selective reduction in expenditures for the programs of all Executive branch agencies of the State government, or for other reasons if the State demonstrates to the Secretary’s satisfaction that such waiver is warranted.

“(2) 30-DAY DECISION.—The Secretary shall approve or deny a request for a waiver not later than 30 days after the date the request is received.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 131 of title 46, United States Code, is amended by inserting after the item relating to section 13106 the following:

“13107. Maintenance of effort for State recreational boating safety programs.”.

## Subtitle F—Miscellaneous Provisions

### SEC. 7601. OFFICE OF INTERMODALISM.

(a) IN GENERAL.—Section 5503 is amended—

(1) 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.” in subsection (e);

(2) by redesignating subsection (f) as subsection (h), and 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 of this title 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 Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. 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 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.”.

### SEC. 7602. 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 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 passing through a municipality of the State that—

“(1) either—

“(A) 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 in the municipality; or

“(B) involves a lateral or vertical relocation of any portion of the rail line within the municipality to avoid a closing of a grade crossing or the construction of a road underpass or overpass; and

“(2) meets the costs-benefits requirement set forth in subsection (c).

“(c) **COSTS-BENEFITS REQUIREMENT.**—A grant may be awarded under this section for a project for the relocation of a rail line only if the benefits of the project for the period equal to the estimated economic life of the relocated rail line exceed the costs of the project for that period, as determined by the Secretary considering the following factors:

“(1) The effects of the rail line and the rail traffic on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce if the rail line were not so relocated.

“(2) The effects of the rail line, relocated as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce.

“(3) The effects of the rail line, relocated as proposed, on the freight and passenger rail operations on the rail line.

“(d) **CONSIDERATIONS FOR APPROVAL OF GRANT APPLICATIONS.**—In addition to considering the relationship of benefits to costs 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 (e).

“(3) Equitable treatment of the various regions of the United States.

“(e) **ALLOCATION REQUIREMENTS.**—

“(1) **GRANTS NOT GREATER THAN \$20,000,000.**—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.

“(2) **LIMITATION PER PROJECT.**—Not more than 25 percent of the total amount available for carrying out this section for a fiscal year may be provided for any 1 project in that fiscal year.

“(f) **FEDERAL SHARE.**—The total amount of a grant awarded under this section for a rail line relocation project shall be equal to a percentage of the shared costs of the project, as determined under subsection (g)(4).

“(g) **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) **FEDERAL PERCENTAGE; COSTS NOT SHARED.**—

“(A) **IN GENERAL.**—The Secretary shall determine the percentage of the shared costs of a project eligible for a grant under this section, which may not exceed 90 percent of those costs, after considering—

“(i) the level of participation by the State, local government, and private sector participation in the project; and

“(ii) the relative public and private benefits excepted to be derived from the project.

“(B) **COSTS NOT SHARED.**—For the purposes of subsection (f) and this subsection, the shared costs of a project in a municipality do not include any cost that is defrayed with any funds or in-kind contribution that a source other than the municipality makes available for the use of the municipality without imposing at least 1 of the following conditions:

“(i) The condition that the municipality use the funds or contribution only for the project.

“(ii) The condition that the availability of the funds or contribution to the municipality is contingent on the execution of the project.

“(C) **DETERMINATIONS OF THE SECRETARY.**—The Secretary shall determine the amount of the costs, if any, that are not shared costs under this paragraph and the total amount of the shared costs. A determination of the Secretary shall be final.

“(h) **MULTISTATE 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.

“(i) **REGULATIONS.**—The Secretary shall prescribe regulations for carrying out this section.

“(j) **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) or (2) 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 installment, 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

“(G) and other activities defined by the Secretary.

“(2) **STATE.**—The term ‘State’ includes, except as otherwise specifically provided, a political subdivision of a State.

“(k) **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) **INTERIM 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. 7603. 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 by striking “Secretary may provide direct loans and loan guarantees to State and local governments,” and inserting “Secretary shall provide direct loans and loan guarantees to State and local governments, agreements or interstate compacts consented to by Congress under section 410(a) of Public Law 105-134 (49 U.S.C. 24101 nt).”.

(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 subsection (5);

(2) by striking “areas.” in subsection (6) and inserting “areas; or”; and

(3) by adding at the end the following:

“(7) enhance service and capacity in the national rail 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 “\$6,000,000,000”; and

(2) by striking “\$1,000,000,000” and inserting “\$3,000,000,000”; 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 (1);

(2) by redesignating subparagraph (E) of paragraph (1) as subparagraph (F);

(3) by inserting adding after subparagraph (D) of paragraph (1) 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) 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 FOR APPROVAL OR DISAPPROVAL.—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) CONSTRUCTION PROJECTS.—

“(1) IN GENERAL.—For loans involving construction projects that require more than one year to complete, the Secretary shall establish a repayment schedule requiring payments to commence not later than the sixth anniversary date of the original loan issuance.

“(2) ADDITIONS.—The Secretary shall add to the outstanding balance of the loan on the first anniversary date of the original loan issuance on which payments are made, the product of (A) the loan principal, (B) the annual rate of interest on the loan, and (C) the number of years payments were deferred under the repayment schedule.”.

(h) INTEREST RATE.—Paragraph (1) of section 822(e) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(e)) is amended to read as follows:

“(1) DIRECT LOANS.—For Class III railroads, as defined by the Surface Transportation Board, the Secretary shall require interest to be paid on a direct loan made under this section at a rate not more than 3 percentage points below the yield on marketable United States Treasury securities of a maturity similar to the maturity of the loan on the date on which the loan agreement was executed.”.

(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:

“(1) 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. 7604. 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. 7605. FIRST RESPONDER VEHICLE SAFETY PROGRAM.**

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Administrator of the National Highway Traffic Safety Administration, shall—

(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 for fiscal year 2006 to carry out this section.

**TITLE VIII—TRANSPORTATION DISCRETIONARY SPENDING GUARANTEE AND BUDGET OFFSETS**

**SEC. 8101. SENSE OF THE SENATE ON OVERALL FEDERAL BUDGET.**

It is the sense of the Senate that—

(1) comprehensive statutory budget enforcement measures, the jurisdiction of which lies with the Senate Budget Committee and Senate Governmental Affairs Committee, should—

(A) be enacted this year; and

(B) address all areas of the Federal budget, including discretionary spending, direct spending, and revenues; and

(2) special allocations for transportation should be included in that context.

**SEC. 8102. DISCRETIONARY SPENDING CATEGORIES.**

(a) DEFINITIONS.—

(1) HIGHWAY CATEGORY.—Section 250(c)(4)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(4)(B)) is amended—

(A) by striking “Transportation Equity Act for the 21st Century” and inserting “Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005”; and

(B) by adding at the end the following:

“(v) 69-8158-0-7-401 (Motor Carrier Safety Grants).

“(vi) 69-8159-0-7-401 (Motor Carrier Safety Operations and Programs).”.

(2) MASS TRANSIT CATEGORY.—Section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(4)) is amended 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, and Efficient Transportation Equity Act of 2005 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) 69-8303-0-7-401 (Formula Grants and Research).

“(vi) 69-1127-0-1-401 (Interstate Transfer Grants—Transit).

“(vii) 69-1125-0-1-401 (Job Access and Reverse Commute).

“(viii) 69-1122-0-1-401 (Miscellaneous Expired Accounts).

“(ix) 69-1139-0-1-401 (Major Capital Investment Grants).

“(x) 69-1121-0-1-401 (Research, Training and Human Resources).

“(xi) 69-8350-0-7-401 (Trust Fund Share of Expenses).

“(xii) 69-1137-0-1-401 (Transit Planning and Research).

“(xiii) 69-1136-0-1-401 (University Transportation Research).

“(xiv) 69-1128-0-1-401 (Washington Metropolitan Area Transit Authority).”.

(b) HIGHWAY FUNDING REVENUE ALIGNMENT.—Section 251(b)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(1)(B)) is amended—

(1) in clause (i)—

(A) by inserting “for each of fiscal years 2006 through 2009” after “submits the budget”; and

(B) by inserting “the obligation limitation and outlay limit for” after “adjustments to”; and

(C) by striking “provided in clause (ii)(I)(cc).” and inserting the following: “follows:

“(I) 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 clause (iii), plus any amount previously calculated under clauses (i)(II) and (ii) for that year.

“(II) OMB shall take the current estimate of highway receipts for the current year and subtract the estimated level of highway receipts in clause (iii) for that year.

“(III) OMB shall—

“(aa) take the sum of the amounts calculated under subclauses (I) and (II) and add that amount to the obligation limitation set forth in section 8103 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for the highway category for the budget year, and calculate the outlay change resulting from that change in obligations relative to that amount for the budget year and each outyear using current estimates; and

“(bb) after making the calculation under item (aa), adjust the obligation limitation set forth in section 8103 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for the budget year by adding the amount calculated under subclauses (I) and (II).”;

(2) by striking clause (ii) and inserting the following:

“(i) When the President submits the supplementary budget estimates for each of fiscal years 2006 through 2009 under section 1106 of title 31, United States Code, OMB’s Mid-Session Review shall include adjustments to the obligation limitation and outlay limit for the highway category for the budget year and each outyear as follows:

“(I) OMB shall take the most recent estimate of highway receipts for the current year (based on OMB’s Mid-Session Review) and subtract the estimated level of highway receipts in clause (iii) plus any amount previously calculated and included in the President’s Budget under clause (i)(II) for that year.

“(II) OMB shall—

“(aa) take the amount calculated under subclause (I) and add that amount to the amount of obligations set forth in section 8103 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for the highway category for the budget year, and calculate the outlay change resulting from that change in obligations relative to that amount for the budget year and each outyear using current estimates; and

“(bb) after making the calculation under item (aa), adjust the amount of obligations set forth in section 8103 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for the budget year by adding the amount calculated under subclause (I).”;

(3) by adding at the end the following:

“(iii) The estimated level of highway receipts for the purpose of this subparagraph are—

“(I) for fiscal year 2005, \$34,163,000,000;

“(II) for fiscal year 2006, \$36,972,000,000;

“(III) for fiscal year 2007, \$38,241,000,000;

“(IV) for fiscal year 2008, \$39,432,000,000; and

“(V) for fiscal year 2009, \$40,557,000,000.

“(iv) In this subparagraph, the term “highway receipts” means the governmental receipts and interest credited to the highway account of the Highway Trust Fund.”.

(C) CONTINUATION OF SEPARATE SPENDING CATEGORIES.—For the purpose of section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(c)), the discretionary spending limits for the highway category and the mass transit category shall be—

(1) for fiscal year 2005—

(A) \$33,657,000,000 for the highway category; and

(B) \$6,844,000,000 for the mass transit category;

(2) for fiscal year 2006—

(A) \$37,086,000,000 for the highway category; and

(B) \$5,989,000,000 for the mass transit category;

(3) for fiscal year 2007—

(A) \$40,192,000,000 for the highway category; and

(B) \$7,493,000,000 for the mass transit category;

(4) for fiscal year 2008—

(A) \$41,831,000,000 for the highway category; and

(B) \$8,479,000,000 for the mass transit category; and

(5) for fiscal year 2009—

(A) \$42,883,000,000 for the highway category; and

(B) \$9,131,000,000 for the mass transit category.

(d) ADDITIONAL ADJUSTMENTS.—Section 251(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(1)) is amended—

(1) in subparagraph (C)—

(A) in clause (i), by striking “fiscal years 2000, 2001, 2002, or 2003,” and inserting “each of fiscal years 2006, 2007, 2008, and 2009.”; and

(B) in clause (ii), by striking “2002 and 2003” and inserting “2008 and 2009”; and

(2) in subparagraph (D)—

(A) in clause (i)—

(i) by striking “1999” and inserting “2005”; and

(ii) by striking “2000 through 2003” and inserting “2006 through 2009”; and

(iii) by striking “section 8103 of the Transportation Equity Act for the 21st Century” and inserting “section 6102 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005”; and

(B) in clause (ii), by striking “2000, 2001, 2002, or 2003” and inserting “2006, 2007, 2008, and 2009”.

#### SEC. 8103. LEVEL OF OBLIGATION LIMITATIONS.

(a) HIGHWAY CATEGORY.—For the purpose of section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)), the level of obligation limitations for the highway category is—

(1) for fiscal year 2005, \$35,154,000,000;

(2) for fiscal year 2006, \$40,110,000,000;

(3) for fiscal year 2007, \$40,564,000,000;

(4) for fiscal year 2008, \$42,544,000,000; and

(5) for fiscal year 2009, \$43,281,000,000.

(b) MASS TRANSIT CATEGORY.—For the purpose of section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)), the level of obligation limitations for the mass transit category is—

(1) for fiscal year 2005, \$7,609,000,000;

(2) for fiscal year 2006, \$8,902,000,000;

(3) for fiscal year 2007, \$9,367,000,000;

(4) for fiscal year 2008, \$10,171,000,000; and

(5) for fiscal year 2009, \$10,502,000,000.

For the purpose of this subsection, the term “obligation limitations” means the sum of budget authority and obligation limitations.

#### PRIVILEGE OF THE FLOOR

Mr. LOTT. Mr. President, I ask unanimous consent that Susan Kirinich, a detailee of the Senate Committee on Commerce Science and Transportation from the National Highway Traffic Safety Administration be granted the privilege of the floor for the duration of the consideration of H.R. 3.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the following

fellows and interns of the Democratic staff of the Finance Committee be allowed on the Senate Floor for the duration of the debate on the Transportation Reauthorization Bill.

Brian Townsend,

Cuong Huynh,

Richard Litsey,

Jorlie Cruz,

Waylon Mathern,

Emily Meeker,

Rob Grayson.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MEASURE PLACED ON THE CALENDAR—S. 975

Mr. McCONNELL. Mr. President, I understand there is a bill at the desk that is due for a second reading.

The PRESIDING OFFICER. The Senator is correct. The clerk will read the title of the bill for the second time.

The legislative clerk read as follows:

A bill (S. 975) to provide incentives to increase research by private sector entities to develop medical countermeasures to prevent, detect, identify, contain, and treat illnesses, including those associated with a biological, chemical, nuclear, or radiological weapons attack or an infectious disease outbreak, and for other purposes.

Mr. McCONNELL. In order to place the bill on the calendar under the provisions of rule XIV, I object to proceeding further.

The PRESIDING OFFICER. Objection is heard, and the bill will be placed on the calendar.

#### MEASURE READ THE FIRST TIME—S. 981

Mr. McCONNELL. Mr. President, I understand there is a bill at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for the first time.

The legislative clerk read as follows:

A bill (S. 981) to ensure that a Federal employee who takes leave without pay in order to perform service as a member of the uniformed services or member of the National Guard shall continue to receive pay in an amount which, when taken together with the pay and allowances such individual is receiving for such service, will be no less than the basic pay such individual would then be receiving if no interruption in employment had occurred.

Mr. DURBIN. Mr. President, it is with some measure of frustration that I rise to again introduce the Reservist Pay Security Act. This bill allows members of the National Guard and Reserve who are Federal employees to



maintain their normal salary when called to active duty by having Federal agencies make up the difference between their military pay and what they would have earned at their Federal civilian job.

This is not a radical concept. Many of the major employers in America offer a similar benefit for their employees in the Guard and Reserve who are mobilized and, due to lower military pay, suffer a loss of income. Companies such as Ford, General Motors, IBM, 3M and, in my own State of Illinois, Sears, as well as the Illinois State government and that of 23 other States provide this same exact security for their workers.

Why do they do this? For two reasons: First, These employers are patriotic members of American society who want to step up and do their part for the country while it is engaged in a war. Second, they want to send a clear message to their employees that they are valued where they work and that the organization is looking forward to their return. The Department of Defense operates a highly respected program known as Employer Support for the Guard and Reserve, or ESGR, which pays tribute to more than 900 such patriotic employers.

It is nothing less than shameful that the largest employer in America, the United States Federal Government, is not on that list because we do not provide a similar benefit for our employees in the Guard and Reserve.

I must note, however, that my colleagues in the Senate have generally recognized this and have joined me to correct this situation by passing the Reservist Pay Security Act. In October 2003, the Senate approved, by a vote of 96 to 3, my amendment to S. 1689, the supplemental appropriations for 2004. In June of 2004, it was agreed to by a voice vote as an amendment to S. 2400, the National Defense Authorization Act for 2005. Most recently, on April 13, the Senate passed this needed measure as an amendment to the supplemental appropriations bill for 2005. That was the third time this measure has passed the Senate. In each of those instances, this measure has been dropped in conference with our colleagues in the House of Representatives. It is unfortunate that some of our colleagues fail to appreciate the need to pass this bill.

The Senate knows this is important. The Reserve Officers Association knows that it is important. The National Guard Association of the United States knows that it is important. The Enlisted Association of the National Guard of the United States knows that it is important. And I can assure you that we in the Senate will not give up on this matter.

Today I introduce this measure with my colleagues, Senators MIKULSKI, ALLEN, LANDRIEU, LEAHY, LAUTENBERG, KERRY, SARBANES, and BINGAMAN. This bill is identical to the Reservist pay amendment to the supplemental with the exception that this measure pro-

vides a mechanism for possible retroactive payments for those who have served since October 11, 2002.

Of the nearly 1.2 million members of the National Guard and Reserves, some 120,000—approximately 10 percent—are also Federal employees. As of January 2005, more than 43,000 Federal employees had been activated since September 11, 2001. More than 17,000 are currently on active duty.

Income loss hurts Reserve component retention. Of the top 10 reasons cited for leaving the National Guard/Reserve, income loss was No. 4, trailing only family burden, deployment frequency and deployment length.

This measure has not been scored by CBO. Funds would likely come from existing appropriations. In addition to my own State of Illinois, 23 other State governments have similar salary continuation laws for State employees: Alabama, Alaska, California, Connecticut, Delaware, Florida, Kansas, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, and Wyoming. Most of these States report that this has required no additional appropriations. The differential was paid from funds already appropriated for government employee pay. With the exception of any retroactive payments, that would be true of our measure as well.

Reservists bring to military service their civilian professional skills and provide their civilian employers with the expertise and experience they have gained in the Armed Forces. This adds value to America.

Last year, the Senate Governmental Affairs Committee saw the value of supporting our citizen soldiers and reported this measure to the floor, but it did not see action as a free-standing bill before the Congress adjourned. I hope we can make it as a freestanding bill or as an amendment on some other legislation this year.

Our bottom line is simply this: Federal employees should not lose income when mobilized for extended duty in the National Guard and Reserve. Major American employers already protect their workers from such loss. It is time for the Federal Government to support our troops by doing the same.

Mr. MCCONNELL. Mr. President, I now ask for its second reading, and in order to place the bill on the calendar under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard, and the bill will be read for the second time on the next legislative day.

#### NATIONAL CYSTIC FIBROSIS AWARENESS MONTH

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of and the Senate now proceed to S. Res. 115.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 115) designating May 2005 as "National Cystic Fibrosis Awareness Month".

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 115) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

#### S. RES. 115

Whereas cystic fibrosis, characterized by chronic lung infections and digestive disorders, is a fatal lung disease;

Whereas cystic fibrosis is 1 of the most common genetic diseases in the United States and 1 for which there is no known cure;

Whereas more than 10,000,000 Americans are unknowing carriers of the cystic fibrosis gene and individuals must have 2 copies to have the disease;

Whereas 1 of every 3,500 babies born in the United States is born with cystic fibrosis;

Whereas newborn screening for cystic fibrosis has been implemented by 12 States and facilitates early diagnosis and treatment which improves health and longevity;

Whereas the Centers for Disease Control and Prevention and the Cystic Fibrosis Foundation recommend that all States consider newborn screening for cystic fibrosis;

Whereas approximately 30,000 people in the United States have cystic fibrosis, many of them children;

Whereas the average life expectancy of an individual with cystic fibrosis is in the mid-thirties, an improvement from a life expectancy of 10 years in the 1960s, but still unacceptably short;

Whereas prompt, aggressive treatment of the symptoms of cystic fibrosis can extend the lives of people who have the disease;

Whereas recent advances in cystic fibrosis research have produced promising leads in gene, protein, and drug therapies beneficial to people who have the disease;

Whereas this innovative research is progressing faster and is being conducted more aggressively than ever before, due in part to the establishment of a model clinical trials network by the Cystic Fibrosis Foundation;

Whereas the Cystic Fibrosis Foundation marks its 50th year in 2005, continues to fund a research pipeline for more than 2 dozen potential therapies, and funds a nationwide network of care centers that extend the length and the quality of life for people with cystic fibrosis, but lives continue to be lost to this disease every day; and

Whereas education of the public on cystic fibrosis, including the symptoms of the disease, increases knowledge and understanding of cystic fibrosis and promotes early diagnosis: Now, therefore, be it

*Resolved*, That the Senate—

(1) designates May 2005 as "National Cystic Fibrosis Awareness Month";

(2) calls on the people of the United States to promote awareness of cystic fibrosis and actively participate in support of research to control or cure cystic fibrosis, by observing the month with appropriate ceremonies and activities; and