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Part 1

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

R E P O R T

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

ON

H.R. 3550

MARCH 29, 2004.—Ordered to be printed

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Mr. YOUNG of Alaska, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 3550]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 3550) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

The amendment strikes all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

PURPOSE OF THE LEGISLATION

The purpose of this bill is to authorize funds for Federal-aid highways, highway safety, truck safety, public transportation, transportation research, transportation planning and project delivery, hazardous materials transportation, and other surface transportation programs carried out by the United States Department of Transportation, to be financed primarily through the Federal Highway Trust Fund.

BACKGROUND AND NEED FOR THE LEGISLATION

Enactment of H.R. 3550, the Transportation Equity Act: a Legacy for Users (TEA LU), is the Committee's highest priority this year. This legislation will set the course for highway, highway safety, truck safety, and public transportation programs for the remainder of this decade. It must also ensure the integrity of the Highway Trust Fund, and the ability of the Trust Fund to meet our nation's surface transportation infrastructure needs. These needs are significant and they must be met.

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Increased investment in transportation infrastructure has far-reaching impacts on the quality of life in our communities, our nation's economy, and our competitiveness in the world marketplace. Every American and every business will benefit from such investment by experiencing shortened travel times, increased productivity, and improved safety.

Transportation Investment Leads to Economic Growth

Throughout our nation's history, economic growth, prosperity, and opportunity have followed investments in the nation's infrastructure. From the "internal improvements" of the early 1800's—canals, locks, and roads—to the Interstate Highway System of today, infrastructure investment has been our foundation for economic growth. For example, between 1980 and 1991, almost one-fifth of the increase in productivity in the U.S. economy was attributable to investment in highways.

Our nation's highways, transit and rail systems, pipelines, airports, harbors, and waterways not only provide the backbone of our economy by moving people and goods, they also employ millions of workers and generate a significant share of total economic output. Transportation-related goods and services generate 10 percent of our total Gross Domestic Product.

In addition to facilitating economic growth, our transportation system has a direct and significant impact on the daily lives of nearly all Americans. The average household spends 19 percent of its income on transportation, more than on any other expense except housing, and the average person travels 40 miles each day.

To the average American, higher Federal investment in surface transportation infrastructure will mean:

- Shorter commutes that save time, fuel, and reduce pollution.
- Better access to work, school, health care, and recreation.
- Lives saved—many of the more than 42,000 highway fatalities each year could be prevented by building better roads and improving the safety features of existing roads.
- Safer systems to accommodate the transport of hazardous materials, estimated at more than 1.2 million shipments per day and an annual movement of 4 billion tons.

Despite the importance of transportation to both our economy and the quality of life in our communities, many of our nation's transportation infrastructure needs are going unmet. This has resulted in, among other things, an alarming increase in congestion.

Congestion Crisis

Congestion is a major national problem, and is increasing. In 1999, 167 major highway bottlenecks located in 30 states plus the District of Columbia were identified. Using the same methodology, the number of major bottlenecks has now grown to a total of 233. According to the Texas Transportation Institute's 2003 Urban Mobility Study, which studies congestion in the nation's 75 largest urban areas, traffic congestion levels have increased in every area since 1982. Congestion now extends to more time of the day, more roads, affects more trips, and creates more extra travel time than in the past.

In fact, the extra time needed for rush hour travel has tripled over the last two decades. The national average Travel Time Index for 2001 was 1.39 (meaning a rush hour trip took 39 percent longer than a non-rush hour trip). The national average in 1982 was only 1.13. This problem is not restricted to the largest cities. In small urban areas (less than 50,000 in population), this index has nearly quadrupled over these same years, indicating that even smaller areas are not able to keep pace with rising demand.

The cost of congestion is continuing to climb. Traffic congestion cost motorists in the nation's 75 largest urban areas a staggering $69.5 billion in 2001 in terms of wasted time and fuel, $4.5 billion more than in 2000. This $69.5 billion total cost equates to an average annual cost per urban resident—adults and children—of about $520.

Congestion negatively impacts our environment by increasing emissions and wasting fuel. Vehicles in stop-and-go traffic emit more pollutants—particularly carbon monoxide and volatile organic compounds—than they do when operating without frequent braking and acceleration. In addition, 5.7 billion gallons of fuel were wasted in 2001 due to traffic congestion in these cities alone. This amount of fuel would fill 570,000 gasoline tank trucks that would stretch from New York to Las Vegas and back again.

Perhaps most importantly, reducing highway congestion would save lives. If modest improvements were made to improve the traffic flow at the 233 severe bottlenecks identified in the highway organization study discussed above, the number and severity of vehicle crashes would be lessened. Over the 20-year life of the projects, such improvements would prevent more than 449,500 crashes, including some 1,750 fatalities and 220,500 injuries.

The Highway Trust Fund

Congress has established, over time, a series of trust funds to collect user fees and then invest those funds on capital improvements. The Highway Trust Fund was established in the 1956 Highway Revenue Act to specifically link taxes on motor fuels to funding for highways. The Revenue Act increased some of the existing user fees, established new ones, and provided that most of the revenues from these taxes would be credited to the Highway Trust Fund. In the 1982 Surface Transportation Assistance Act, a separate Mass Transit Account was established in the Highway Trust Fund to receive part of the motor fuel user fee receipts. Subsequent increases in the user fee brought the Federal gas tax to 18.4 cents. In 1997, the Taxpayer Relief Act redirected a 4.3-cent diversion of user fee payments from the general fund to the Highway Trust Fund. Currently, all Federal motor fuel user fee receipts are deposited to the Highway Trust Fund, with 15.44 cents credited to the Highway Account and 2.86 cents credited to the Mass Transit Account. One of this Committee's highest priorities is to ensure that the user fees deposited into these trust funds are in fact used for their intended purposes—to rebuild our nation's highway and transit infrastructure.

The Highway Trust Fund is: (1) wholly self-financed by the users; (2) a dedicated revenue source; (3) self-supporting, operating on a pay-as-you-go basis; and (4) deficit proof. The Trust Fund represents a contract between the government and the user that speci-

fies that certain user fees will be levied on the users of highways and, in return, the government pledges to use the receipts to build transportation infrastructure for the taxpayer's use.

A major accomplishment of the 1998 Transportation Efficiency Act for the 21st Century (TEA 21) was reestablishing trust with the taxpayer by creating a budgetary mechanism to ensure that the user fees deposited in the Highway Trust Fund become available to be spent for their intended purpose. Maintaining these budgetary firewalls and spending guarantees are a top priority for the Committee.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title: Table of contents

Subsection (a) provides that the short title is the Transportation Equity Act: A Legacy for Users.

Subsection (b) lists the table of contents.

TITLE I—FEDERAL-AID HIGHWAYS

Subtitle A—Authorizations of Programs

Sec. 1101. Authorizations of appropriations

Subsection (a) authorizes funds out of the Highway Trust Fund (other than the Mass Transit Account) for the following highway programs: Interstate Maintenance Program, National Highway System, Bridge Program, Highway Safety Improvements Program, Surface Transportation Program, Congestion Mitigation and Air Quality Improvement Program, Appalachian Development Highway System Program, Recreational Trails Program, Federal Lands Highways Program, National Corridor Infrastructure Improvement Program, Coordinated Border Infrastructure Program, Projects of National and Regional Significance Program, Construction of Ferry Boats and Ferry Terminal Facilities, National Scenic Byways Program, Congestion Pricing Pilot Program, Deployment of 511 Traveler Information Program, High Priority Projects Program, Freight Intermodal Connector Program, High Risk Rural Road Safety Improvement Program, Highway Use Tax Evasion Program, Pedestrian and Cyclist Equity, Dedicated Truck Lanes, Highways for LIFE Program, and Commonwealth of Puerto Rico Program.

Subsection (b) continues the disadvantaged business enterprise (DBE) program from TEA 21.

Sec. 1102. Obligation ceiling

This section provides the obligation limitation for the federal-aid highway and highway safety construction programs. Subsection (b) addresses the exemptions to the obligation limitation. Paragraphs 1–8 in this subsection are identical to TEA 21. Paragraph (9) is added to address 3-year obligation authority (OA) made available under TEA 21 for research programs and "no-year" OA made available for certain programs and projects under TEA 21 or in subsequent appropriations acts. Subsections (c),(d),(e),(f),(g),(h), and (i) address how the obligation authority is distributed, the redistribution of unused obligation authority, and the limitation on obligations for administrative expenses and are virtually identical to TEA 21.

Sec. 1103. Apportionments

This section makes changes to the process by which apportionments are made pursuant to Section 104 of Title 23. Subsection (a) of this section amends the way administrative expenses for FHWA and FMCSA are provided. These expenses were formerly funded as a takedown and are now a specific authorized amount.

Subsection (b) of this section changes the set-aside amount for the Alaska Highway and the set-asides for the U.S. Territories under the National Highway System program apportionment formula.

Subsection (c) of this section makes a conforming amendment to the metropolitan planning set-aside formula to reflect the fact that administrative expenses are no longer funded as a takedown.

Subsection (d) of this section updates the reference for the Puerto Rico Highway program, replacing the TEA 21 reference with a TEA LU reference.

Sec. 1104. Minimum guarantee

This updates the years referred to in Section 105 of Title 23 to reflect the duration of this bill and eliminates high priority projects from the minimum guarantee calculation and includes the border infrastructure program, the freight intermodal connectors program, the safe routes to school program, the highway safety improvement program, and the high risk rural road safety improvement program in the minimum guarantee calculation.

Subsection (b) increases the amount of minimum guarantee funding that is flexible to be used by states as if it were surface transportation program funding.

Sec. 1105. Project approval and oversight

This section amends the Financial Plan portion of section 106 of title 23 requiring states with a project that costs $500 million or more to submit an annual financial plan.

Sec. 1106. Temporary traffic control devices

This section amends Section 109(e) of Title 23 and Section 112 of Title 23 to require that contracts for federally funded highway construction projects include costs for appropriate safety measures. The amendment to Section 109 requires that temporary traffic control devices be installed and maintained during construction and maintenance projects in order to provide protection for construction workers. The amendment to Section 112 requires the Secretary to issue regulations establishing the conditions for and the appropriate use of federal funds for uniformed law enforcement officers, positive protective measures between traffic and workers, and installation of temporary traffic control devices during construction and maintenance projects.

Sec. 1107. Revenue aligned budget authority

This section conveys the Committee's intent to continue the concept of revenue aligned budget authority, but in a way that ensures greater stability in program funding level adjustments.

Sec. 1108. Emergency relief

This section increases the authorized amount for the Emergency Relief Program in Section 125 of Title 23 from $100 million to $120 million beginning in FY 2005. This section also authorizes additional amounts for this program above the $120 million per year to be derived from the General Fund. It is the Committee's intent that if there is the need for additional funds over and above the annually authorized level of $120 million that those funds be appropriated from the General Fund.

Sec. 1109. Surface Transportation Program

This section continues the requirement in Section 133(f)(1) of Title 23 that States suballocate a portion of their Surface Transportation Program funds to urbanized areas with over 200,000 individuals.

Sec. 1110. Highway use tax evasion projects

This section continues the existing program to combat highway use tax evasion and makes changes designed to reduce tax evasion and increase receipts into the Highway Trust Fund.

The Highway Use Tax Evasion program supports State and Federal efforts to enhance motor fuel tax enforcement. To make the program more effective, this provision would amend section 143 of title 23 to: (1) dedicate funding for intergovernmental enforcement efforts; (2) allow projects for identification of tax evasion in the area of foreign imported fuel; (3) assist States and Indian Tribes in addressing issues related to the collection of State motor fuel taxes; and (4) provide for annual reporting on examinations, criminal investigations, and audits by the States and the Internal Revenue Service (IRS).

Sec. 1111. Appalachian Development Highway System

This section directs the Secretary to apportion funds made available for the Appalachian Development Highway System (ADHS) among the states on the basis of the estimated cost to complete the system. It specifies that such funds are subject to title 23 requirements and are available to construct ADHS highways and access roads. It also prohibits the use of toll revenues as non-federal match for the construction, improvement, and maintenance of highways, bridges, or tunnels.

Sec. 1112. Construction of ferry boats and ferry terminal facilities

Subsections (a) and (b) of this section codify the existing Ferry Boat Discretionary Program authorized in Section 1064 of ISTEA. Subsection (c) requires the Secretary to establish a national ferry database. It is the Committee's intent that the information collected and maintained in this database will be used as part of the decision making process for funding allocations under this program.

Sec. 1113. Interstate Maintenance Discretionary

This section eliminates the Interstate Maintenance Discretionary program in Section 118 of Title 23. The Committee does not intend to have any changes to this program affect any projects that have already been funded under this program.

Sec. 1114. Highway bridge

Subsection (a) retains the principles for applications for and approval of Federal assistance for bridge replacement or rehabilitation allowed in current law. It also includes additional language to allow Federal participation in preventive maintenance on a bridge, as well as, installing scour countermeasures to a bridge.

Subsection (b) continues the discretionary bridge program and subsection (c) changes the lower bound for the off-system set-aside from 15 percent to 20 percent.

Sec. 1115. Transportation and Community and System Preservation Program

This section reauthorizes the program for fiscal years 2004 through 2009. It prohibits funds made available for this program from being transferred to other programs, and establishes the federal cost share for projects carried out under this program in accordance with section 120(b) of title 23.

Sec. 1116. Deployment of magnetic levitation transportation projects

This section details the funding and eligibility requirements for constructing fixed guideway infrastructure, as well as, the related components necessary for the construction, but not including costs incurred for a new station. Eligible projects under this section must involve a segment or segments of high speed ground transportation corridor, result in an operating transportation facility that provides a revenue producing service and be approved by the Secretary. It is the Committee's intent for this program to be administered as a new program and not the continuation of any previously authorized program.

Sec. 1117. Recreational trails

Sec. 1117 makes various improvements to the recreational trails program established in section 206 of title 23, U.S. Code.

Subsection (a) amends 23 USC 104(h) to permit use of administrative funds for training and deletes reference to the National Recreational Trails Advisory Committee. Subsection (b) amends 23 USC 206(d)(2) regarding permissible uses of funds to include assessment of trail conditions and to clarify that new trails on Federal lands must be recommended in a statewide comprehensive outdoor recreation plan.

Subsection (c) strikes 23 USC 206 (b)(3)(C), which permits States to waive requirements regarding distribution of funds for various types of projects.

Subsection (d) amends 23 USC 206(f) to provide that the federal share for recreational trails projects shall be determined in accordance with section 120(b) of title 23 and allows recreational trails funds to be used toward the Federal share of certain other Federal programs.

Subsection (e) amends 23 USC 206(h)(1) to provide that pre-approval planning and environmental compliance costs can be credited toward the non-Federal share of a project.

Subsection (f) directs the Secretary to encourage the States to use qualified youth conservation or service corps to complete trail projects.

Sec. 1118. Federal Lands Highways

This section amends the current Federal Lands Highway provision in title 23 to clarify the authority that Indian Tribes have to conduct their own contracting and construction programs for federal-aid highways. The Transportation Equity Act for the 21st Century amended this section to make amendments that the Committee felt were clear on the breadth of this authority, but, the Committee believes the full intent of the TEA 21 amendments has not been fulfilled. The amendments are intended to clarify the intent of the Committee on this important point for Indian Tribes.

Sec. 1120. Pedestrian and cyclist equity

This section establishes two new programs—a Safe Routes to School Program and a Nonmotorized Transportation Pilot Program.

Sec. 1121. National commissions

This section establishes two commissions, one to study future revenue sources to support the Highway Trust Fund and another to study the future of the Interstate Highway System. Both commissions are established using the same criteria for the selection of the members. This section also amends section 101 of title 23 to include a declaration of policy regarding the study of the Interstate Highway System.

The Commission on Future Revenue Sources to Support the Highway Trust Fund will study alternative short-term sources of revenue for the Highway Trust Fund, as well as evaluating alternative long-term sources of revenue to support the Highway Trust Fund. When studying the long-term sources, the Commission is directed to consider the findings, conclusions, and recommendations of a recent study completed by the Transportation Research Board of the National Academy of Sciences on alternatives to the user fee to support highway financing.

The Commission is directed to develop ways to generate revenues to accomplish the requirements of section 1124; oversee a comprehensive investigation of alternatives to replace the user fee as the principal source of revenue for the Highway Trust Fund; consult with the Secretaries of Transportation and Treasury to ensure that their views concerning essential revenue alternatives are understood; consider State transportation agencies views on alternative revenue sources for the Highway Trust Fund; and make specific recommendations regarding their findings and necessary actions to Congress.

When considering alternative sources of revenue, the Commission shall address the advantages or disadvantages of alternative revenue sources and identify the most promising revenue sources to support long-term financing requirements. The Commission shall also establish a time frame for which the necessary actions must be taken and a broad transition strategy to move from the current user fee base to new funding mechanisms, including the time frame for the transition strategy.

Not later than September 30, 2005, the Commission shall transmit to Congress a report on revenues to support actions necessary to meet the requirements of section 1124. The Commission has until September 30, 2006 to transmit to Congress a report on the

alternative long-term sources of revenue for the Highway Trust Fund.

The Commission on the Future of the Interstate Highway System will study the current condition and future of the Dwight D. Eisenhower National System of Interstate and Defense Highways (the "Interstate System"). The study will include a conceptual plan with alternative approaches for the future of the Interstate System and will assure that the Interstate System will continue to serve its National needs.

The Commission is directed to consider the views of State transportation agencies and make specific recommendations regarding design standards, Federal policies, and legislative changes that must be made to assure that national interests in meeting future needs are addressed.

When conducting the study, the Commission is specifically directed to address all issues that could impact the Interstate system including, demographics; usage; natural disasters; design standards; system-wide needs; potential expansion, upgrades, or other changes; community values; environmental issues; and system performance.

The Commission has until September 30, 2006 to transmit to Congress a report on the results of the study.

Sec. 1122. Adjustments for the Surface Transportation Extension Act of 2003

This section is reserved for instructions on how to reconcile adjustments made in the Surface Transportation Extension Act of 2003 and the Surface Transportation Extension Act of 2004 with this Act.

Sec. 1123. Roadway safety

Subsection (a) directs the Secretary to enter into an agreement with an organization to develop a public service campaign to educate transportation officials, public safety officials, and motorists regarding the extent to which road hazards and design features are a factor in motor vehicle crashes.

Subsection (b) directs the Secretary to make grants to an organization to operate a national bicycle and pedestrian clearinghouse, to disseminate techniques and strategies for improving bicycle and pedestrian safety, and to develop information and educational programs related to pedestrian activities and cycling.

Sec. 1124 Equity requirement

This section establishes a requirement that a law be enacted prior to FY 2006 that increases the minimum guarantee rate of return to 95 percent by FY 2009. Subsection (a) states that a law must be enacted that increases the guaranteed rate of return to 92 percent in fiscal year 2006, 93 percent in fiscal year 2007, 94 percent in fiscal year 2008, and 95 percent in fiscal year 2009. The law that increases the rate of return must also ensure that all states receive an increase in formula funds from year to year. The increase can either be derived from the minimum guaranteed rate of return or from the states prior year apportioned highway funds adjusted for inflation using the consumer price index.

If the law referenced above is not enacted by September 30, 2005 no funds may be apportioned for any of the following programs: the National Highway System program, high priority program, the Interstate maintenance program, the surface transportation program, the Metropolitan Planning program, the highway bridge replacement and rehabilitation program, the congestion mitigation and air quality improvement program, the recreation trails program, the Appalachian development highway system, the freight intermodal connectors program, the coordinated border infrastructure program, the high risk rural road safety improvement program, the safe routes to schools program, and the minimum guarantee program.

Subtitle B—Congestion Relief

Sec. 1201. motor vehicle congestion relief

This section adds a new Section 139 to title 23 of the U.S. Code. Section 1201 would require each State with an urbanized area population over 200,000 to obligate a portion of its formula funds to target congestion in those areas of the State. The amount to be obligated in each State is determined multiplying the total amount apportioned to each State under Sections 104(b)(1), (2), (3) and (4) of title 23 by 10 percent and by the percentage of the State population residing in urbanized areas over 200,000.

Under-one activities.—40 percent of the funds will be obligated for congestion relief activities that will be complete within one year after the date of commencement of onsite improvements and has a project cost of less than $1 million.

Under-three activities.—35 percent of the funds will be obligated for congestion relief activities that will be complete within three years after the date of commencement of onsite improvements.

Twenty-five percent of the funds will be obligated by a State for one or more of the following: under-one, under-three, eligible capital costs under Chapter 53 of Title 49, or demand relief projects and activities.

States are not required to obligate proportional or equal amounts of their Section 104(b)(1), (2), (3) and (4) funds. Section 1201 does not change the eligibility of projects under Section 104. States may transfer amounts for under-one activities to under-three if the State certifies to the Secretary it has no under-one congestion relief activities.

Congestion relief activities include additional capacity, improvements to interchanges, construction of parallel roads, construction of truck only lanes, operational improvements, and through programs that use existing capacity more efficiently such as reversible lanes or lane management strategies.

Sec. 1202. Transportation Systems Management and Operations

Section 1202 broadens the definition of Operational Costs for Traffic Monitoring, Management and Control in Section 101(a)(17) of title 23 to include transportation systems management and operations. It also broadens the definition of Operational Improvements in Section 101(a)(18)(A)(i) to include transportation systems management and operations and equipment and programs for transportation response to natural disasters.

Section 1202 adds a new definition (39) Transportation Systems Management and Operations to Section 101(a) of Title 23.

Section 1202 adds a new Section 166 to title 23.

Sec. 1203. Real-Time System Management Information Program

The Secretary shall establish a program that provides to all States the capability to monitor, in real-time, the traffic and travel conditions of the nation's major highways and to share the information with other States, local governments and the traveling public.

The Secretary is required to establish a steering committee to provide guidance regarding the content and uniformity of data exchange formats to ensure that data can be shared.

With approval from the Secretary, States may obligate formula funds for activities related to the planning and deployment of this program.

Sec. 1204. Expedited National Intelligent Transportation Systems Deployment Program

Section 1204 requires the Secretary to establish a comprehensive program to accelerate the integration, interoperability and deployment of intelligent transportation systems in order to improve the performance of the surface transportation system.

The Secretary may make grants for projects that improve efficiency, promote safety, reduce emissions of air pollutants, improve traveler information, and build on existing intelligent transportation system projects and other projects.

Sec. 1205. Intelligent Transportation Systems (ITS) deployment

Section 1205 adds a new section 150 to title 23 that requires States to obligate a portion of their formula funds for the deployment of ITS systems in the State. The amount that each State shall spend is determined by multiplying $500,000,000 by the ratio that a state's total funds apportioned under section 104(b)(1), (b)(2), (b)(3) and (b)(4) of title 23 bears to the total amount apportioned to all States for such fiscal year.

Funds must be obligated for ITS projects such as improvements to the performance of a system like incident management, projects that provide for networks to link metropolitan and rural surface transportation systems, improvements to highway safety, operation and management, interagency support between transportation agencies, police, medical services and others, and planning.

States are not required to obligate proportional or equal amounts of their Section 104(b)(1), (2), (3) and (4) funds. Section 1201 does not change the eligibility of projects under Section 104.

Sec. 1206. Environmental review of activities that support deployment of intelligent transportation systems (ITS)

The Secretary shall conduct a rulemaking within one year to establish categorical exclusions, to the extent appropriate, for activities that support the deployment of ITS from the requirement that an environmental assessment or an environmental impact statement be prepared under NEPA, in compliance with the standards for categorical exclusions established by NEPA.

The Secretary shall also develop a nationwide programmatic agreement governing the review of activities that support ITS de-

ployment in accordance with the National Historic Preservation Act. The agreement will be developed in consultation with the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation.

Sec. 1207. Assumption of responsibility for certain programs and projects

This section provides the Secretary the authority to conduct a pilot program for up to five states to assume the responsibilities of the Secretary for projects funded under Sec. 104(h), transportation enhancement activities under Section 133, as defined in Sec. 101(a)(35), and projects defined in Section 101(a)(38) of title 23, and Section 5607 of TEA LU.

Sec. 1208. HOV facilities

Subsection (a) of this section adds a new section 167 to title 23 that authorizes the conversion of HOV lanes to high occupancy toll (HOT) lanes. Subsection (a) of the proposed section 167 in title 23 allows a state agency to establish the occupancy requirements of vehicles operating on an HOV facility except that no fewer than 2 occupants per vehicle may be required for use of an HOV facility.

Subsection (b) of proposed section 167 states the exemptions for the HOV occupancy requirements including motorcycles, bicycles, public transportation vehicles, and High Occupancy Toll (HOT) vehicles and low emission and energy-efficient vehicles.

For HOT lanes the state agency must charge operators of vehicles with less than the established occupancy requirements a fee. The agency must also establish a program that addresses how motorists can enroll and participate in the toll program, automatically collect tolls, and establish policies and procedures to manage demand by varying the toll, enforce violations, and permit low-income drivers to pay a reduced toll.

For inherently low emission vehicles, a state may allow the use of HOV lanes even if the occupancy requirements are not met so long as the vehicles are certified pursuant to section 88.311–93 of title 40, Code of Federal Regulations. The state agency may also allow other low emission and energy efficient vehicles to pay a toll to use HOV lanes though the occupancy requirements are not met if those vehicles meet the certification requirements that the EPA is directed to develop in subsection (e). The toll amount charged to low emission vehicles not certified pursuant to the CFR and other energy efficient vehicles may be charged a toll less than other HOT lane vehicles.

Subsection (c) sets requirements applicable to tolls on HOV lanes. This subsection verifies that HOV facilities on the Interstate can be tolled pursuant to the provisions of this section. The subsection also states that the state agency must first use the toll revenue to repay debt and provide a reasonable rate of return on investments and then must give priority consideration to projects for developing alternatives to single occupancy vehicle travel and projects for improving highway safety, including projects that improve safety by providing increased capacity.

Subsection (d) addresses HOV facility management, operation, monitoring and enforcement. If a state agency allows single occupancy HOV vehicles to use the facility it must ensure that vehicles

maintain a minimum operating speed 90 percent of the time over a 6-month period during weekday peak travel periods.

Sec. 1209. Congestion Pricing Pilot Program

This section amends the congestion pricing pilot program established under the Intermodal Surface Transportation Equity Act of 1991 to expand the authority to conduct such projects to all States, although the number of congestion pricing pilot projects is limited to 25. The limit of 25 projects includes all projects previously approved under this section (prior to the enactment of TEA LU) that collect tolls. This section also requires that any congestion pricing toll programs include a program for low-income drivers to pay a reduced toll. This section also sets aside $3 million a year for congestion pricing programs that do not include tolls.

Subtitle C—Mobility and Efficiency

Sec. 1301. National Corridor Infrastructure Improvement Program

This section directs the Secretary to establish and implement a program to allocate funding to States for highway construction projects in corridors of national significance. A State must submit applications to the Secretary for funds.

The Secretary shall give priority to corridor projects that are part of, or will be designated as part of, the Dwight D. Eisenhower National System of Interstate and Defense highways and to any project that will be complete in 5 years. The Secretary shall consider such factors as mobility, economic growth, linking two existing segments of Interstate, commercial vehicle traffic due to NAFTA, reduction of travel time, value of the cargo traveling through the corridor, economic costs, and the financing associated with the project.

Sec. 1302. Coordinated Border Infrastructure Program

This section establishes a new formula program for border infrastructure projects. The Secretary apportions funds to the States based upon several factors: incoming commercial trucks passing through land border ports of entry; the number of incoming personal motor vehicles and buses passing through the land border ports of entry; the weight of incoming cargo by commercial trucks passing through such ports of entry; and the number of land border ports of entry.

Definitions—"Border region" means any portion of a border State within 20 miles in an international land border with Canada or Mexico. "Border State" means any State that has an international land border with Canada or Mexico. "Commercial Truck" means a commercial motor vehicle as defined in section 31301(4) (other than subparagraph (B)) of title 49, U.S.C.

Sec. 1303. Freight intermodal connectors

This section establishes a new formula program for freight intermodal connectors. The Secretary shall apportion funds to States based upon the number of freight intermodal connectors; a State's annual contribution to the Highway Trust Fund; total lane miles of principle arterial routes; total vehicle miles traveled on lanes on

principle arterial routes; total diesel fuel used on highways; total lane miles on principle arterial highways divided by population.

The purpose of the program is to improve the movement of freight and mitigate the impact of congestion. Eligible projects include construction of and improvements to publicly owned freight intermodal connectors and operational improvements. States shall give priority to connectors to the National Highway System.

States that do not have any freight intermodal connectors or whose connectors are in good condition may use the apportioned funds for projects eligible under the National Highway System (Section 103(b)(6) of title 23).

Sec. 1304. Projects of national and regional significance

This section establishes a program to finance critical high-cost transportation infrastructure that address critical national economic and transportation needs. These projects of national and regional significance will improve the safe, secure, and efficient movement of people and goods throughout the United States and improve the health and welfare of the national economy by increasing economic productivity, facilitating international trade, relieving transportation congestion, and enhancing transportation safety.

The program will fund the construction of high-cost surface transportation projects, including freight railroad projects eligible under Title 23. To be eligible for assistance under this program, eligible project costs must equal or exceed the lesser of $500 million or 75 percent of the State's highway apportionment for the prior fiscal year. The Secretary of Transportation will conduct a national solicitation for applications for projects of national and regional significance and award grants on a competitive basis. The program creates a rigorous review process for project applicants similar to the Federal Transit Administration's review process for transit new start projects.

Sec. 1305. Dedicated truck lanes

This section directs the Secretary to establish a pilot program to allocate funds to States for the construction of projects that separate commercial truck traffic from other motor vehicle traffic. Priority will be given to projects that provide additional capacity. The Secretary will also consider the following factors: improvement to the safe and efficient movement of freight; the extent to which trucks are separated from other traffic; the connectivity of the project to the NHS or the Interstate; if the project removes trucks from surface streets; reductions in travel time; and the extent to which federal funds are leveraged.

Sec. 1306. Truck parking facilities

This section establishes a pilot program in cooperation with appropriate State, regional, and local governments to address the shortage of long-term parking for commercial motor vehicles on the National Highway System.

This section allows State, regional, and local governments to address the safety problem of fatigued drivers through a pilot program designed to allow for the creation of new rest stops, as stated in section 120(c) of title 23, addition of new commercial motor vehicle parking facilities adjacent to commercial truck stops or travel

plazas, or opening existing weigh stations or park-and-ride facilities to commercial motor vehicle parking. Pilot programs may also include using intelligent transportation systems, or other means, to promote the availability of public or privately available parking facilities.

The Committee developed this pilot project after working closely with the Administration, industry, State safety and construction agencies, and truck plaza and rest stop operators. It is the Committee's intent that the projects funded from this pilot program only address adding parking facilities in corridors with an identified truck parking shortage. This pilot program is not intended to compete with local businesses or commercial enterprises.

Not later than five years after the enactment of this bill, the Secretary shall transmit a report on the results of the pilot programs developed under this section.

Subtitle D—Highway Safety

Sec. 1401. Highway Safety Improvement Program

This section amends title 23 by eliminating the requirement that States set aside 10 percent of their section 133, Surface Transportation Program funds to carry out section 130 of Title 23, the Railway-Highway Crossing program and section 152, the Hazard Elimination program. This section also establishes a separate funding authorization for a combined section 130 and 152 called Highway Safety Improvement Program. However, the authorizing language for the two programs still resides in Section 130 and Section 152.

In subsection (a) the definition of Safety Improvement Project as used in Section 101(a)(30) of title 23 is expanded to include the installation of fluorescent, yellow-green signs at pedestrian or bicycle crossings or school zones.

Subsection (b) amends title 23 to move the set-aside for Operation Lifesaver from the apportionment under the Surface Transportation Program to the apportionment for Section 130. It also increases the amount for this program from $500,000 to $600,000.

Subsection (c) increases the amount of the set-aside for hazard elimination in high-speed rail corridors designated under 104(d)(2) of title 23 and for the Minneapolis/St. Paul—Chicago segment of the Midwest High-Speed Rail Corridor. The subsection also adds the Northern New England High Speed Rail Corridor and expands the South Central Corridor in 104(d)(2) of title 23.

Subsection (d) adds a special rule to allow States to use funds for protective devices on other section 130 activities if the State demonstrates to the Secretary that it has met the needs in such State for protective devices. The apportionment formula for rail highway crossings is amended to distribute funds 50 percent based on the STP formula and 50 percent based on the number of rail highway crossings. Each state shall receive at least a minimum of one half of one percent. The federal share will be 90 percent. States will be required to report to Congress every two years and can use up to 2 percent of their funds for analysis and data collection.

Subsection (e) makes technical changes.

Subsection (f) amends section 152(a)(1) of title 23 to include in the state survey dangers to the disabled from hazardous road conditions. It also includes a requirement that States identify the

roadway safety improvements for hazardous locations. It also adds three new activities for which the funds can be used. The Secretary will use the STP apportionment formula to apportion funds to the States for the Hazard Elimination program. Each State shall receive at least one percent from funds apportioned to the States. The federal share will be 90 percent. The Secretary is required to report to Congress every two years the results of this program, including projects completed, the effectiveness of the projects, adequacy of funding and recommendation of improvements to the program.

Subsection (g) makes the amendments in subsection (d), (e) and (f) effective September 30, 2004 since there is no funding for the new Highway Safety Improvement Program in FY 2004.

Sec. 1402. Worker injury prevention and free flow of vehicular traffic

The Secretary shall, within one year, issue regulations requiring workers whose duties place them in close proximity to a Federal-aid highway to wear high visibility garments.

Sec. 1403. High risk rural road safety improvement program

The Secretary shall establish and implement a program to improve safety on rural major or minor collector or rural local roads. Funds will be apportioned to States based on public road lane mileage, population in other than urbanized areas, and vehicle miles traveled on public roads. States will allocate apportioned funds to projects that have the highest benefits to highway safety. Funds can only be used for construction and operational improvements on high-risk rural roads.

Sec. 1404. Transfers of apportionments to safety programs

Subsection (a) caps the amount of apportioned funds that are required to be transferred from sections 104(b)(1), (2), and (3) of title 23 to section 402 of title 23 in an amount equivalent to 3 percent of what was apportioned to states in fiscal year 2003. This transfer is required when States fail to comply with section 153(a)(2) of title 23 (seatbelt use in the front seat). It also caps the amount of obligation authority the Secretary is required to transfer with the apportionment in the preceding sentence.

Subsection (b) caps the amount of apportioned funds that are required to be transferred from sections 104(b)(1), (3), and (4) of title 23 to section 402 of title 23 in an amount equivalent to 3 percent of what was apportioned to states in fiscal year 2003. This transfer is required when States fail to comply with section 154(b) of title 23 (open container laws). It also caps the amount of obligation authority the secretary is required to transfer with the apportionment in the preceding sentence.

Subsection (c) caps the amount of apportioned funds that are required to be transferred from sections 104(b)(1), (3), and (4) of title 23 to section 402 of title 23 in an amount equivalent to 3 percent of what was apportioned to states in fiscal year 2003. The funds are to be used to carry out section 164(b)(1)(A) or (B). This transfer is required when States fail to enact or enforce a repeat intoxicated driver law. It also caps the amount of obligation authority the sec-

retary is required to transfer with the apportionment in the preceding sentence.

Sec. 1405. Safety incentive grants for use of seat belts

Subsection (a) authorizes, in 2004, $112,000,000 for grants to states that have met certain requirements with regards to seatbelts.

Sec. 1406. Safety incentives to prevent operation of motor vehicles by intoxicated persons

Subsection (a) codifies the penalty against states for not enacting and enforcing a 0.08 drunk driving law. This penalty was originally enacted in the 2001 DOT appropriations bill.

Subsection (b) authorizes, in 2004, $110,000,000 for grants to states that have enacted 0.08 laws.

Subsection (c) repeals the appropriations language that enacted the penalty in 2001.

Sec. 1407. Repeat offenders for driving while intoxicated

This section amends Section 164(a)(5)(A) of title 23 by adding an alternative penalty that a person who is a repeat offender can receive for a violation: a forty-five day suspension of driving privileges followed by a reinstatement of limited driving privileges to get to work, school or alcohol treatment programs if an ignition interlock device is installed on each motor vehicle owned or operated, or both, by the individual.

Subtitle E—Construction and Contract Efficiencies

Sec. 1501. Design-build

Subsection (a) of this Section amends section 112 of title 23 with the intent of clarifying and improving the design-build authority provided. During the rulemaking process for the design-build regulation required by section 1307 of TEA 21, which also amended 23 U.S.C. 112, FHWA received several comments regarding the restrictive nature of the "qualified project" definition with respect to the project cost threshold. Approximately 85% of the design-build projects that have been evaluated under the FHWA experimental contracting program (Special Experimental Project No. 14 (SEP–14)—Innovative Contracting) are too small to meet the definition of "qualified project." Based on the Haw's experience with design-build projects under SEP–14, there is no need to limit design-build projects to those costing more than $5 million in the case of a project that involves installation of an intelligent transportation system and to those costing more than $50 million in the case of any other project.

Subsection (b) similarly amends section 112 of title 23 making clear the parameters of the authority for the use of project evaluation criteria. The section also makes clear that this amendment does not disturb any other authority that the Secretary has under current law or that is being carried out by the Secretary as of the date of enactment.

Sec. 1502. Warranty Highway Construction Project Pilot Program

The Committee is aware that highway projects constructed of advanced materials, and often utilizing innovative techniques that also contain warranties of the constructed project's expected performance can, over the life of the project mean less cost to the state for maintenance, reconstruction and rehabilitation, than a similar project not utilizing advanced techniques and materials and not containing a warranty.

This pilot program is meant to take the experience of states already utilizing warranty bid regimes and conduct a pilot within the federal-aid program. The Committee expects that the projects built under this authority will cost less over their life to the taxpayer than non-warranted projects.

Sec. 1503. Private investment study

This section authorizes the national Academy of Sciences to conduct a comprehensive study of private investment in surface transportation infrastructure.

Sec. 1504. Highways for Life Pilot Program

The Committee intends with this pilot to incentivize the use of innovative technologies and practices in the construction of highways and bridges. The Committee expects that safe, efficient highways and bridges can be built faster, and with longer performance, if innovative practices and technologies are better utilized. This pilot authorizes the Secretary to allocate funds for projects deemed to satisfy the requirements of the project. The project criteria is designed to identify projects which utilize material and technique innovations which will produce more quickly constructed, longer lasting, high-quality and cost-effective projects.

Subtitle F—Finance

Sec. 1601. Transportation Infrastructure Finance and Innovation Act

This section makes programmatic changes to the TIFIA program.

Subsection (a) makes technical changes to the definitions Section 181 of title 23.

Subsection (b) amends the eligibility standards in Section 182 of title 23 to simplify the provision regarding statewide and metropolitan planning requirements. This subsection also decreases the minimum eligible project costs to $50,000,000 and to $15,000,000 for ITS projects.

Subsection (c) makes technical changes to the project selection section in Section 182 of title 23.

Subsection (d) makes technical changes to Section 183 of Title 23. The change to section 183(a)(4) codifies a DOT regulation that requires the project's senior obligations to receive an investment-grade rating in order to execute a secured loan agreement. The change to section 183(b)(2) ensures that the amount of the TIFIA credit instrument may not exceed that of the senior project obligations. The elimination of section 183(c)(3) deletes the description of sources of repayment funds because the subject is already covered in section 183(b)(3).

Subsection (e)(1) makes changes to section 184(b)(3) to ease the restrictions on funding draws on a line of credit in order to help a borrower avoid a payment default. The changes to section 184(b)(4) conform the interest rate setting mechanism for the line of credit with that for secured loans. The change to section 184(b)(5) has the same purpose as the changes to sections 183(b)(3) and 182(a)(4).

Subsection (e)(2) makes changes to Section 184(c) to clarify language regarding the scheduling of principal and interest repayments. The elimination of section 184(c)(3) deletes the description of sources of repayment funds because the subject is already covered in section 184(b)(5)(A)(i).

The changes to sections 185(a), 185(b), and 185(c) in subsection (f) clarify that the Secretary may establish fees to cover the cost of servicing TIFIA credit instruments. The change to section 185(d) clarifies that the program may retain outside counsel to assist in the underwriting and servicing of TIFIA credit instruments.

Subsection (g) sets the funding levels for the TIFIA program, including administrative expenses and limitations on credit amounts.

Sec. 1602. State infrastructure banks

Subsection (a) of this section codifies a state infrastructure bank (SIB) program in Section 189 of title 23.

Subsection (a) of Section 189 provides definitions for the SIBS program. Subsection (b) permits the Secretary to enter into a cooperative agreement with a state for the establishment of a SIB. Subsection (c) allows 2 or more States to enter into a cooperative agreement with the Secretary to establish a multi-state SIB. Subsection (d) establishes funding requirements for SIBs, restricting the amount of federal funding that a state can deposit in their highway, transit, and rail SIB accounts. Subsection (e) establishes the forms of assistance that a SIB can offer. Subsection (f) describes the eligible projects that are allowed to be funded by the SIB.

Subsection (g) establishes the requirements that a State must adhere to when establishing a SIB. Subsection (h) speaks to the applicability of Federal law in the SIBs program. Subsection (i) states that the United States is not obligated by any commitment made by a state SIB. Subsection (k) limits the amount of federal funds that can be used to administer the state SIB to 2 percent of the federal funds contributed to the SIB.

Subsection (b) (c) (d) and (e) of Section 1602 establishes a new chapter 6 in title 23 for infrastructure finance.

Sec. 1603. Interstate System Reconstruction and Rehabilitation Toll Pilot Program

Establishes an interstate system reconstruction and rehabilitation pilot program similar to the one authorized in TEA 21. The new program is limited to 3 facilities and requires states to show that tolling is the most efficient and economical way to finance the project. The previous program required that states prove that tolling was the only way to finance the interstate reconstruction or rehabilitation project. The new program also requires that the state agency collect tolls electronically and that the agency include a program to permit low-income drivers to pay a reduced toll amount.

Sec. 1604. Interstate System Construction Toll Pilot Program

Establishes a new pilot program for projects involving the construction of new interstate facilities. The program is limited to 3 facilities (multi-state corridor projects may be considered as one facility) and states must show that tolling is the most efficient and economical way to finance the project. The new program also requires that the state agency collect tolls electronically and that the agency include a program to permit low-income drivers to pay a reduced toll amount.

It is the Committee's intent that this program be used only for the construction of new interstate facilities and that the pilot program authorized in Section 1603 be used only for rehabilitation and reconstruction of existing interstate facilities.

Sec. 1605. Use of excess funds

This section allows states to audit projects funded with apportionments under sections 104 and 144 of title 23 to determine whether there are excess project funds. If the audit reveals that there are excess funds, the state may develop a plan for spending the apportionment for the design or construction of other similar eligible projects. The state must certify to the Secretary that an audit was conducted and has developed a plan Excess funds used to carry out a project under this section are subject to the requirements of this title that are applicable to the program for which the funds were originally apportioned.

Subtitle G—High Priority Projects

Sec. 1701. High Priority Projects Program

Updates the current high priority projects program to reflect the funding and year-by-year allocations provided in TEA LU.

Sec. 1702. Project authorizations

Lists the state, project description, and dollar amount for each high priority project.

Subtitle H—Miscellaneous Provisions

Sec. 1801. Budget justification

This section requires the Department of Transportation and each agency therein to submit to the Committee on Transportation and Infrastructure a budget justification concurrently with the President's annual Budget submission.

Sec. 1802. Motorist information

Repeals section 124 of title I of division F of the FY 2004 appropriations bill.

Sec. 1803. Motorist information concerning full service restaurants

Requires the Secretary to do a rulemaking to determine whether or not to give priority to full service restaurants on at least two of the panels for highway food service signs.

Sec. 1804. High priority corridors on the national highway system

Adds corridors to the high priority corridor list in ISTEA.

Sec. 1805. Additions to Appalachian region

Adds 12 counties to the jurisdiction of the Appalachian Regional Commission.

Sec. 1806. Transportation assets and needs of Delta region

This section authorizes the Secretary of Transportation to contract with the Delta Regional Authority (DRA) to conduct a study on the Delta region's transportation assets and needs for all modes of transportation, including passenger and freight transportation. This section also directs the DRA to report on the results of the study and establish a regional strategic plan to implement the report's recommendations.

Sec. 1807. Toll facilities workplace safety study

This section directs the Secretary to conduct a study to determine the safety of highway toll collection facilities for toll collectors who work in and around such facilities. It requires the Secretary to submit within 1 year a report on the results of the study and recommendations for improving workplace safety at toll facilities to the congressional committees of jurisdiction.

Sec. 1808. Pavement marking systems demonstration projects

Directs the Secretary to conduct demonstration projects in Alaska and Tennessee to study the impacts of increasing the minimum width for pavement markings from 4 inches to 6 inches.

Sec. 1809. Work zone safety grants

Directs the Secretary to establish a work zone safety grant program to provide training to prevent or reduce highway work zone injuries and fatalities.

Sec. 1810. Grant program to prohibit racial profiling

This section establishes a new incentive grant program to encourage states to enact and to enforce laws that prohibit the use of racial profiling in the enforcement of traffic laws on Federal-aid highways

Sec. 1811. America's Byways Resource Center

This section reauthorizes the America's Byways Resource Center. The Byways Resource Center provides technical support and conducts educational activities for the National Scenic Byways program. Technical support and educational activities shall provide local officials and organizations with proactive, technical, and onsite customized assistance, including training, communications (including a public awareness series), publications, conferences, onsite meetings, and other assistance considered appropriate to develop and sustain Scenic Byways and All-American Roads.

Sec 1812. Technical adjustments

Sec. 1813. Road user charge evaluation pilot project

The issue of future financing of the Highway Trust Fund is a critical one that the Congress must begin to address. The Trust Fund is currently financed primarily through fuel excise taxes and certain truck taxes. When the Trust Fund was established in the

1950s, it was legitimate to have the gas tax serve as a surrogate for road usage and be the basis for the user-pays system of the federal highway program. But with the advent of hybrid cars, alternative fuels, the potential for fuel cell technology, increased fuel efficiency and other technological developments, the relationship between the gas tax and road usage is diminishing.

On July 16, 2002, the Subcommittee on Highways, Transit and Pipelines held a hearing on this and related topics. Testimony was received from representatives of the Public Policy Center of the University of Iowa regarding research that was then in progress, though now completed, to develop a new approach for charging vehicles that travel on the public roads. A consortium of the Federal Highway Administration and 15 State Departments of Transportation funded the study. The purpose of the study was to evaluate how intelligent transportation system technology (GPS and onboard computers, smart cards and collection centers) can be used to assess mileage-based road user charges.

This section provides funding and authorization for the Secretary to conduct a pilot project to test the technology and feasibility of the system. It is contemplated that various cars will be equipped with the technology in different regions of the country with a diverse set of drivers. An important element of the study is measuring the public acceptance of such a system and to ensure that privacy concerns of drivers are met.

The finding of this study will provide useful information as the Congress strives to identify a funding source that is stable, accurate, fairer and more flexible than the current gas tax.

Sec. 1814. Sense of Congress

This section expresses the sense of the Congress that, in honor of his service to the Commonwealth of Massachusetts and to the United States, and in recognition of his contributions toward the construction of the Central Artery Tunnel project in Boston, Massachusetts, the Central Artery Tunnel should be designated as the "Thomas P. 'Tip' O'Neill, Jr. Tunnel".

Sec. 1815. Conforming amendment for transportation planning sections

Section 1814 amends sections 134 and 135 of title 23, United States Code to indicate that metropolitan and statewide transportation planning programs funded under those sections shall be carried out according to the provisions the unified highway and transit planning chapter in chapter 52, title 49, United States Code. (See Title VI of TEA LU.)

TITLE II—HIGHWAY SAFETY

Sec. 2001. Authorizations of appropriations

This section authorizes funds for the section 402 highway safety grant program; highway safety research and development under section 403; occupant protection incentive grants under section 405; alcohol-impaired driving countermeasures incentive grants under section 410; state traffic safety information improvements under section 412; the national driver register; and the high visibility enforcement program. The Secretary is provided the flexibility to

transfer any amounts remaining available under the occupant protection incentive grant program, the alcohol-impaired driving countermeasures program, and the state traffic safety information system improvements program to ensure, to the maximum extent possible, that each state receives the maximum amount of incentive grants under these programs for which the state is eligible.

Sec. 2002. Occupant protection incentive grants

This section extends the occupant protection incentive grant program through the six-year term of the legislation. In order to receive a grant, a state may have a seatbelt rate of 85 percent or greater or a state may comply by implementing at least four of the six safety incentives under the program.

Sec. 2003. Alcohol-impaired driving countermeasures

This section extends the alcohol-impaired driving countermeasures program over the six-year term of the legislation with modifications to the grant requirements. The criteria for eligibility under the Basic Grant A program is expanded to permit a State that has an alcohol-related fatality rate of 0.5 or less per 100 million vehicle miles traveled to receive a grant. The criteria for eligibility for a Basic Grant A is amended under the administrative license revocation requirement to permit a state to allow a first time offender who has had his or her license suspended to operate a motor vehicle after a 15-day suspension period, to and from employment, school, or an alcohol treatment program if an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the individual. Similarly, a state may allow a repeat offender who has had his or her license suspended or revoked to operate a motor vehicle after a 45-day suspension or revocation period, to and from employment, school, or an alcohol treatment program if an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the individual. Under the Basic Grant A criteria, three new eligibility requirements are added in lieu of the elimination of the young adult drinking awareness program. The three new requirements are an outreach program, a self-sustaining drunk driving prevention program, and programs for effective inpatient and outpatient alcohol rehabilitation based on mandatory assessment and appropriate treatment for repeat offenders. The criteria for the eligibility for a Basic Grant B is amended to permit a state to receive a grant if its alcohol-related fatality rate is 0.8 or more per 100 million vehicle miles traveled and the state establishes a task force to evaluate and recommend changes to the state's drunk driving programs. The supplemental grant program is repealed.

Sec. 2004. State traffic safety information system improvements

This section authorizes a new state traffic safety information system incentive grants program under a new section 412 to encourage states to adopt and to implement effective safety data systems programs. The Secretary is required to determine the model data elements necessary for the safety data systems. To receive a grant, a state must comply with safety data system requirements under this section and use the grant only to implement such requirements.

Sec. 2005. High Visibility Enforcement Program

The Secretary is required to establish a program to support national impaired driving mobilization and enforcement efforts and national safety belt mobilization and enforcement efforts, including the purchase of national paid advertisement to support such efforts.

Sec. 2006. Motorcycle crash causation study

The Secretary is required to conduct a study of the causes of motorcycle crashes and to submit a report to Congress on the results of the study not later than 3 years after the date of enactment of this legislation.

Sec. 2007. Child safety and booster seats

This section authorizes a child safety and child booster seat incentive grant program for the benefit of states that enact or enforce a law requiring that children riding in passenger motor vehicles who are too large to be secured in a child safety seat be secured in a child restraint that meets the requirements prescribed by the Secretary under section 3 of Anton's Law (116 Stat. 2772). States may use grants under this section only to carry out child safety seat and child booster seat programs, including education, training, enforcement, and the purchase and distribution of child restraints to families that cannot otherwise afford them. Each state to which a grant is made under this section must transmit a report to the Secretary indicating how the grant funds were expended and identifying the specific programs supported by the grant.

Sec. 2008. Safety data

This section requires the Secretary to collect data and compile statistics on accidents involving motor vehicles being backed up that result in fatalities and injuries.

The Secretary is required to transmit a report to Congress not later than January 1, 2009, on these accidents and any recommendations regarding measures to be taken.

Sec. 2009. Motorcyclist safety

This section establishes a new motorcyclist advisory council to advise the Federal Highway Administrator on infrastructure issues that concern motorcyclists. This section also establishes a motorcycle safety incentive grant program for states that adopt and implement effective programs to reduce the number of single- and multi-vehicle crashes involving motorcycles.

Sec. 2010. Driver fatigue

This section adds driver fatigue to the list of safety factors that must be included in state highway safety programs in accordance with uniform guidelines promulgated by the Secretary under section 402. The Committee wishes to acknowledge the contribution of "Maggie's Law" to its deliberations on this issue.

TITLE III—FEDERAL TRANSIT ADMINISTRATION PROGRAMS

Sec. 3001. Short title; Amendments to title 49, United States Code

Title III of the bill is cited as the "Federal Public Transportation Act of 2004." All amendments in this title, unless otherwise specified, are made to title 49 of the United States Code.

Sec. 3002. Policies, findings, and purposes

This section and subsequent sections of the bill change the terminology used to describe the federal transit programs, which have grown far beyond the original mission and orientation of "urban renewal" in the Federal Transit Administration's organic statute, the Urban Mass Transportation Act of 1964. Today, the federal transit programs also provide vital transportation services to rural and other non-urban constituencies. The title change and subsequent legislative changes to chapter 53, title 49 United States Code in which the terms "mass transit" or "mass transportation" are replaced by "public transportation" reflect this evolution.

Sec. 3003. Definitions

This section includes amendments to section 5302 of title 49, United States Code that change definitions that apply generally to all of chapter 53, except as otherwise specifically provided. These changes include adding new eligibilities for federal capital transit funding. Newly eligible uses for these capital funds include: (1) acquiring, constructing, relocating, and renovating intercity bus stations and terminals; (2) crime prevention and security projects (including security training for personnel and conducting emergency response drills); (3) establishing a debt service reserve fund for bond payments when such bonds are used for the purpose of financing an eligible transit project; and (4) mobility management activities and projects. Mobility management activities and projects improve the coordination among public transportation and other transportation service providers through short-range planning and management activities, such as buying computer software that matches public transportation riders and non-emergency medical and other human services clients to transportation services. Directly providing public transportation services is not an eligible capital expense under this definition.

Under current law, the terms "mass transportation," "public transportation," and "transit" are interchangeable. Under the changes made in this section, these three terms are still synonymous. However, "public transportation" becomes the principal defined term.

Sec. 3004. Metropolitan planning

This section amends sections 5303 and 5304 of title 49, United States Code, which contain the metropolitan planning process for federal transit funded programs under current law. The Transportation Equity Act: a Legacy for Users consolidates the current law metropolitan planning provisions under sections 5303 and 5304 of title 49 and under sections 134 of title 23 into a unified planning title for both transit and highways under chapter 52 of title 49. For ease of reference, section 5303 of title 49 is amended to reflect that grants made under sections 5307–5311, 5316 and 5317 are to be

carried out in accordance with chapter 52. See Title VI of the bill, which contains the planning provisions.

Subsection 5303(b) as amended in this section requires the Secretary to certify that metropolitan planning organizations in transportation management areas (urbanized areas of more than 200,000 in population) comply with all planning and other applicable requirements in law in their transportation planning activities. In section 5306(a) (which is not amended), transit grant recipients are directed to encourage to the maximum extent feasible private enterprise participation in transit plans and programs. However, the Secretary may not withhold certification of a transit grantee's plans based on private enterprise participation. This is a standing limitation in existing law under section 5305(e)(3).

Sec. 3005. Statewide planning

The Transportation Equity Act: a Legacy for Users consolidates the metropolitan and statewide planning provisions currently under title 23 and chapter 53, title 49 into a unified planning title for both transit and highways under chapter 52 of title 49. For ease of reference, section 5304 of title 49 is amended to reflect that grants made under sections 5307–5311, 5316 and 5317 are to be carried out in accordance with chapter 52. Under current law (section 5323(l)), statewide transit planning was subject to statewide highway planning processes outlined in section 135 of title 23. See Title VI of the bill, which contains the planning provisions.

Sec. 3006. Planning programs

Metropolitan planning and statewide planning funding provisions contained in current law sections 5303(g) and 5313(b) are moved into a unified section on planning programs as the amended section 5305 of title 49. The current law section 5305 pertains to metropolitan planning requirements for transportation management areas, which is included in the unified metropolitan planning sections of chapter 52.

Subsections 5305(a), (b) and (c) establish the general planning grant authority and purposes. Subsection (d) describes the metropolitan planning grant apportionment process. Subsection (e) describes the state planning and research grant apportionment process. Subsection (f) sets the Government's share of planning grant activity costs at 80 percent. Subsection (g) describes the allocation of planning funds made available under funding authorization section 5338(c) between metropolitan planning and statewide planning, using the same percentages set in current law section 5338(c)(2)(C) (82.78 percent for metropolitan planning and 17.28 percent for state planning and research). In subsection (h), funds remain available for three years after the fiscal year in which the funds are authorized, the same period of availability as under current law.

Sec. 3007. Private enterprise participation

This section title has been shortened to more clearly reflect the provisions within. The text of section 5306 of title 49, United States Code is not amended.

Sec. 3008. Urbanized area formula grants

This section amends section 5307 of title 49, United States Code, which contains provisions governing the eligibility and procedures for urbanized area formula grants to transit providers in areas of 50,000 and more in population. Two existing law subsections are deleted. Subsection 5307(h) is deleted as a technical cleanup, because streamlined administrative procedures for track and signal equipment certification have already been promulgated as directed in the subsection. Subsection 5307(k) regarding transit enhancement activities is also deleted, but the requirement that one percent of urbanized area formula grant funds for recipients in areas of over 200,000 be spent on enhancement activities is retained, and added to the list of grant recipient requirements in subsection 5307(d)(1). Treating the one percent enhancement requirement as a grant recipient requirement rather than a set-aside relieves the Federal Transit Administration (FTA) from making separate one percent apportionments for transit enhancements activities.

Subsection 5307(b) is amended in paragraph (1) by restating the general authority for urbanized area formula grants in a list format. There is no change to the existing law authority to make grants for: capital projects and associated capital maintenance items; planning; transit enhancements; and, in areas with a population of less than 200,000, operating expenses. In paragraph (2), the existing extension of operating flexibility in urbanized areas that were less than 200,000 under the 1990 Census, but increased to more than 200,000 in the 2000 Census, is further extended through the end of fiscal year 2005.

Currently under subsection 5307(d), recipients are required to certify that they have the legal, financial, and technical capacity to carry out the program of projects for which they are applying as an urbanized area formula grant. This is amended in subparagraph (d)(1)(A) to additionally require that recipients certify such legal, financial, and technical capacity for the safety and security aspects of their program of projects. Subsection 5307(d) is also amended, as discussed above, by adding the requirement that grantees in urbanized areas over 200,000 in population certify that one percent of each grant amount is spent on enhancement activities.

Subsection 5307(e) regarding the Government's share of costs is amended by deleting the 1985 baseline limitation on local match revenues resulting from the sale of advertising or concessions. Additionally, recipients are authorized to use amounts received under service agreements with a State, local social service agency, or private social service organizations as local match. This creates an incentive to transit agencies to better coordinate transportation services with human service agencies that provide transportation services.

Section 5307(i) is redesignated as section 5307(h) and amended to give the Secretary discretion to require annual audits rather than mandate them. There remains in place an audit requirement pursuant to the Single Audit Act, which requires an annual audit of all Federal grantees receiving grants exceeding $300,000, which constitutes about 83 percent of all section 5307 grants. Auditing smaller grants would be discretionary, based on the FTA's annual risk assessment process.

Subsection 5307(l) as redesignated, relationship to other laws, strikes subparagraph (1) and moves the provision contained therein to the General Provisions on Assistance in section 5323, to make the prohibition on making false or fraudulent statements to the Government (18 U.S.C. section 1001) applicable to any Federal public transportation grant program. The existing law paragraph (2) regarding the other sections of title 49 that apply to the Urbanized Area Formula Grants program is retained and redesignated as paragraph (1). A new paragraph (2) is added that exempts non-supervisory transit employees from the Hatch Act limitations, if the Hatch Act applies only because the employees' salaries are funded through Federal grants under this section. This exemption will apply only to employees in urbanized areas under 200,000 in population, where up to 50 percent of the net project cost may be derived from Federal grant funds. This codifies existing Federal transit law, although the provision does not otherwise appear in title 49 because of a codification error in Public Law 103–272, which revised and codified without substantive change certain general and permanent laws related to transportation. The provision is identical to section 142(g) of title 23, regarding non-supervisory employees of urban mass transportation systems receiving funds under the Federal-aid highway program.

Subsection 3008(h) adds a new subsection 5307(m) regarding the treatment of the United States Virgin Islands, which shall be treated as an urbanized area for the purposes of apportionments under section 5307.

Sec. 3009. Clean fuels Formula Grant Program

Section 3009 amends section 5308 of title 49, United States Code, regarding the clean fuels formula grant bus procurement program. Funds are apportioned to recipients in urbanized areas that are designated as nonattainment areas for ozone or carbon monoxide under section 107(d) of the Clean Air Act or are maintenance areas for ozone or carbon monoxide. These grant funds can be used to purchase or lease clean fuel buses, construct or lease facilities supporting such clean fuel buses, and improve existing facilities to accommodate clean fuel buses. Clean fuel buses include those powered by clean diesel, compressed natural gas, liquefied natural gas, biodiesel fuels, batteries, alcohol-based fuels, hybrid electric power systems, fuel cells, or other low or zero emission technologies. Not more than 35 percent of the funds made available under the clean fuels formula grant program may be used for clean diesel bus technology. The apportionment formula is weighted such that two-thirds of the funds go to recipients serving urbanized areas with a population of 1,000,000 or more and one-third of the funds go to recipients serving urbanized areas of less than 1,000,000. The formula is also weighted by the severity of nonattainment in the urbanized area being served.

The grant requirements of section 5307 apply to the clean fuels formula grant program. The Federal share for the clean fuels formula grant program may be increased in accordance with section 5323(i), which allows a 90 percent Federal share of the net project cost of equipment that is attributable to compliance with the Clean Air Act.

Funds made available under the clean fuels formula grants program remain available for one year after the fiscal year in which the amounts are made available, a total of two years. Funds that remain available after this period are added to the amount to be made available for the program in the next fiscal year.

The Committee intends that the Secretary shall encourage recipients of clean fuels formula grants to adequately invest in infrastructure facilities to accommodate the needs of these alternatively fueled vehicles.

Sec. 3010. Capital investment grants

This section amends section 5309 of title 49, United States Code, which authorizes capital investment grants for new fixed guideway capital projects ("new starts"), fixed guideway modernization ("rail modernization"), and bus and bus-related facilities. All references in the current law section heading and text to "capital investment loans" are deleted from section 5309 since, historically, only capital investment grants have been awarded pursuant to this section. Two existing law subsections are deleted. Subsection 5309(b), which deals with loans for real property interests, is struck because the authority to use Federal transit grants under this section for real property loans has not been utilized and is being eliminated. Subsection 5309(c) is reserved under current law, and is deleted as a technical cleanup. The existing subsection 5309(d) is moved to subsection (b), and requires that projects funded under this section be part of an approved program of projects that has gone through the planning process outlined in section 5303–5306, have the legal, financial, and technical capacity to carry out the project, and have the capability to maintain satisfactory continuing control and maintenance of the equipment and facilities associated with the project. Subsection (b) (as redesignated) is further amended by striking the reference to capital loans.

The remaining subsections (e) through (p) of section 5309 are deleted and rewritten as the new subsections (c) through (n), with some organizational changes and the addition of one new program, capital investment grants of less than $75 million ("small starts").

Subsection 5309(c), concerning major capital investment grants of $75 million or more includes the new starts program requirements and FTA evaluation and rating criteria found in current law subsection 5309(e). The term describing all new starts and small starts projects is changed from the current law "capital project for a new fixed guideway system or extension of an existing fixed guideway system" to "new fixed guideway capital project" for the sake of brevity. The new term is defined in subsection (n) as a minimum operable segment of a capital project for a new fixed guideway system or extension to an existing fixed guideway system, which is the same definition for new starts projects as under current law subsection 5309(p). Subsection 5309(c) pertains only to those new fixed guideway capital projects that will require $75 million or more of Federal assistance provided under the authority of Section 5309. Such projects are defined as "major" new starts as opposed to small starts, which involve less than $75 million in such funds and are authorized under subsection (d).

Major new starts projects must be carried out through a full funding grant agreement with the Secretary. Projects must be au-

thorized for final design and construction to enter into a full funding grant agreement. (New starts project authorizations are contained in section 3037 of the bill.) The full funding grant agreement is based upon the evaluations and ratings required under subsection 5309(c). The baseline requirements for a project to secure a grant under this subsection is that the project proposal must be based on the results of alternatives analysis and preliminary engineering; justified based on a comprehensive review of the project's benefits; and supported by an acceptable degree of local financial commitment. The project justification and local financial commitment evaluation criteria are outlined in detail in subparagraphs (c)(3)(A)–(D), consistent with the current law criteria found in subsection 5309(e)(2)–(4). In assessing the local financial commitment for a new starts project, the FTA is authorized to consider the extent to which the project sponsor has overmatched the statutory local match requirement of 20 percent. However, the authority to consider a higher local match as part of the assessment of a project's local financial commitment does not allow the Secretary to require a higher local match than 20 percent.

Proposed new starts projects under subsection (c) are authorized to advance from alternatives analysis to preliminary engineering, and from preliminary engineering to final design and construction, if the Secretary finds that the project meets the requirements of this section. In making these findings, the Secretary is directed to evaluate and rate the project as "highly recommended", "recommended", or "not recommended", based on the results of alternatives analysis, the project justification criteria, and local financial commitment.

Subsection 5309(d) regarding capital investment grants of less than $75 million authorizes a new program under Capital Investment Grants. These "small starts" fall into two subcategories—those involving between $25 million and $75 million in funds under section 5309, and those that are less than $25 million. New fixed guideway capital projects with a section 5309 Federal share of less than $25 million are not subject to the requirements of this subsection regarding project evaluation and rating and do not enter into a long-term financial contract with the Secretary (called a "project construction grant agreement" in the small starts program). The small starts program is based on the new starts program requirements, evaluation and rating procedures, but is streamlined to reflect the lower cost and less complex nature of projects funded under this subsection.

Project justifications for the small starts program are based on five criteria: consistency with local land use policies and likelihood to achieve local developmental goals; cost effectiveness of the project at the time revenue service is initiated; degree of positive impact on local economic development; reliability of cost and ridership forecasts; and other factors the Secretary considers appropriate to carry out this subsection. The Secretary is also required to analyze and consider the results of planning and the alternatives analysis for the project. In the small starts program, emphasis has been placed on supporting local land use and development and encouraging local economic development. The small starts local financial commitment evaluation is a streamlined version of the new starts financial evaluation process. The Secretary is directed to re-

quire that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable, and that there be an acceptable degree of local financial commitment. This provision gives the Secretary the authority to consider a higher local match as part of the assessment of a project's local financial commitment, but does not allow the Secretary to require a higher local match than 20 percent.

The project development process is also simplified. The new starts project development process involves four discrete steps: (1) planning and alternatives analysis, (2) preliminary engineering, (3) final design, and (4) entering into a full funding grant agreement and construction. The small starts program involves three steps: (1) planning and alternatives analysis, (2) project development, and (3) entering into a project construction grant agreement and construction. Small starts projects may advance from planning and alternatives analysis to project development and construction only after the Secretary finds that the project meets the requirements of this subsection and the local metropolitan planning organization adopts the locally preferred alternative into its long-range transportation plan. Small starts projects are evaluated based on project justification criteria and local financial commitment and are rated as "recommended" or "not recommended" based on the results of the FTA's analysis. Only small starts projects that are authorized for construction and rated "recommended" may enter into a project construction grant agreement.

Another important difference between the new starts program and the small starts program is that, under the small starts program, fixed guideway capital projects have a broader definition that includes corridor-based public transportation bus projects if the majority of the project's right-of-way is dedicated alignment. However, the program is written to be "mode neutral"—any fixed guideway capital project fitting the broader definition under small starts is eligible to be funded under this category if it is less than $75 million in section 5309 Federal funds, whether it is a bus rapid transit project, a streetcar or trolley project, commuter rail, or light rail. However, all small starts projects must be included under the new starts authorization list in section 3037 of this bill to receive funds in subsequent appropriations bills within this authorization period.

All new starts projects that are currently approved for final design that fall under the $75 million threshold shall continue to be treated as major new fixed guideway capital projects, to avoid a duplicative review and evaluation process. The FTA is directed to promulgate regulations establishing the evaluation and rating process for the small starts program within 120 days after the enactment of this Act.

In subsection 5309(e), projects for which the FTA has previously issued letters of intent and full funding grant agreements before the date of enactment are exempted from any new program requirements under subsections (c) or (d).

Subsection 5309(f) describes three federal financing mechanisms that can be used to support new fixed guideway capital projects funded under this section: letters of intent, full funding grant agreements, and early systems work agreements. These provisions are identical to those found in subsection 5309(g) under existing

law. Subsection 5309(f)(4) addresses the issue of contingent commitment authority for major new starts and for small starts. Contingent commitment authority enables the Secretary to commit Federal funds in a full funding grant agreement or project construction grant agreement that extends beyond the end of the authorization period. The total amount the Secretary can commit is limited. For full funding grant agreements with major new starts projects, the total amount covered by all outstanding full funding grant agreements may not be more than the greater of the amount authorized for new starts for the 6-year life of the authorization, plus an amount equivalent to the last 3 fiscal years of the funding allocated for new starts under the authorization. For project construction grant agreements, the limitation extends only one fiscal year beyond the total 6-year life of the authorization. In subsection 5309(f)(5), the Secretary is directed to notify, in writing, the House Committee on Transportation and Infrastructure and the Senate Committee on Banking, Housing, and Urban Affairs before issuing a full funding grant agreement or project construction grant agreement, which allows the authorizing committees to review each long-term federal financing commitment before it is executed by the Secretary.

Subsection 5309(g) outlines the Government's share of the net project cost for all projects authorized under section 5309. The Administration had proposed to decrease the Government's share for new start projects to 50 percent. The Committee has rejected this proposal, and retains the provision under subsection 5309(h) in current law that the Federal share for a project shall be 80 percent, unless the grant recipient requests a lower grant percentage. New language is included clarifying that nothing in section 5309, including the language that specifically directs the FTA to consider in its evaluation of a project the extent to which a project has a higher local match than required by law, shall be construed as authorizing the Secretary to require a local match higher than 20 percent of the net capital project cost.

Subsection 5309(i) directs the Secretary to submit an annual new starts report to the House and Senate authorizing committees on the first Monday in February, which includes the Administration's funding proposals for new starts projects in the coming fiscal year, and evaluations and ratings for all new starts projects authorized in section 3037 of this Act. The current law requirement under subsection 5309(o)(2) regarding an August supplemental report is deleted. The Committee directs that the FTA shall forward letter updates to the House and Senate authorizing committees when a project advances to preliminary engineering or to final design after the publication of the annual new starts report. In subsection 5309(i)(2), the U.S. General Accounting Office is directed to conduct an annual review of FTA's processes and procedures for evaluating, rating, and recommending new starts projects and how the agency implements such processes and procedures. This review shall be submitted to the Congress by May 31 of each year.

Subsection 5309(k), regarding bus and bus facility grants, amends the existing law language under subsection 5309(m)(3). The current language regarding consideration of the age of buses, bus fleets, related equipment, and bus-related facilities when making grants is retained. Current law provisions that set aside funds

for the bus testing facility in Altoona, Pennsylvania and for the section 5308 Clean Fuels formula program are deleted, as both these programs are now funded as set-asides from formula grants.

Subsection 5309(l) is a new provision making bus and bus facilities and new starts grant funds available for three fiscal years (including the year in which the amount is made available or appropriated). Funds that remain unobligated after three years shall be deobligated and may be used by the Secretary for any purpose under this section.

Subsection 5309(m) directs the allocation of amounts made available for programs authorized under section 5309. The existing formula of 40 percent for new starts, 40 percent for rail modernization, and 20 percent for bus and bus facilities is retained, after the funding levels authorized for small starts are set aside from the total amount made available for section 5309 programs. Subsection 5309(m)(1) makes allocations for fiscal year 2004, using the current law practice of split funding each Federal transit program with 80 percent funding from the Mass Transit Account of the Highway Trust Fund and 20 percent funding from the general fund of the U.S. Treasury. For fiscal years 2005–2009, the financing of Federal transit programs is changed to eliminate the practice of split funding accounts, though the overall 80:20 ratio of trust funds to general funds for all Federal transit programs is retained. Therefore, subsection 5309(m)(2) makes allocations for fiscal years 2005–2009 from two different subsections of section 5338, which contains all Federal transit program apportionments. Subsection 5338(g) makes funds available for the rail modernization and bus and bus facilities programs from the Mass Transit Account. Subsection 5338(h) makes funds available for the new starts and the small starts programs from the general fund. The current law set-aside of $10.4 million a year for ferry boats and ferry terminal facilities in Alaska or Hawaii is retained. A provision is added establishing a new set-aside for the national fuel cell bus technology development program, authorized in section 3039 of the bill.

Sec. 3011. Formula grants for special needs of elderly individuals and individuals with disabilities

This section amends section 5310 of title 49, United States Code, which authorizes formula grants to States for public transportation projects and services that meet the special needs of elderly and disabled individuals. The definition of grant recipient is amended in paragraph 5310(a)(2) by adding a definition for subrecipients, which is consistent with current practice. Section 5310 elderly and disabled formula grants are apportioned to the States and territories, whereupon a State may then allocate grant funds to: private nonprofit organizations if no public transportation service for these special needs is available, or if the available service is insufficient or inappropriate; or to governmental authorities that are approved by the State to coordinate services or that certify there are not any nonprofits organizations readily available to provide the transportation services. In paragraph 5310(a)(3) and consistent with existing law under section 5310(d), acquiring public transportation services is treated as a capital expense under this section. In paragraph 5310(a)(4), a 10-percent limitation is included on the amount of a State's grant funds that may be used for recipient or for sub-

recipient administrative expenses and technical assistance. This codifies current FTA administrative practice.

Subsection 5310(b) describes the apportionment and transfer processes, which follows current law, except that an adjustment is made to the apportionment formula for particularly low density States. Before the standard formula is run, which apportions funds based on the total number of elderly persons and persons with disabilities in a State to the total U.S. population of elderly and disabled, States with a population density of 10 persons or fewer per square mile have their elderly and disabled population number adjusted upward by a factor of 2; States with a population density of between 10 and 30 persons per square mile have their elderly and disabled population numbers adjusted upward by a factor of 1.25. In low density States, providing essential public transportation is particularly challenging, especially to special needs populations, because of the distances involved. When providing services over these long distances, operating costs are higher and farebox recovery is lower. This formula adjustment may enable low density States to continue providing essential public transportation services to a sector of the population that is particularly dependent on transit—the elderly and disabled. The provision regarding transfers of unobligated grant funds is identical to current law, and allows funds that may lapse under the one year availability to be transferred to other elderly and disabled transportation services in the State that are funded under sections 5307 or 5311.

Subsection (c) amends current law regarding the Government's share of costs. The current Federal match of 80 percent for capital projects is retained. Operating expenses are also made eligible for section 5310 elderly and disabled grant funding, limited to 50 percent of net operating costs. Two new sources of local match funding are authorized: proceeds from a service agreement with a State, local social service agency, or private social service organization; and other Federal funds from non-Department of Transportation agencies that can be expended for transportation (e.g., Temporary Assistance for Needy Families, Medicaid, job training program funds, or Welfare to Work grants). Using these related human service grants funds as a local match for transit projects leverages the Federal investment and increases coordination among Federal agencies that provide transportation services.

Subsection (d) regarding grant requirements changes the general applicability of requirements for the elderly and disabled grant program from current law, which ties the program to section 5309, to the requirements under section 5307, to the extent the Secretary considers appropriate. A new requirement is added that the State must certify that projects funded under this section are derived from coordinated public transit-human services transportation plans with public input. The current law requirement that the State certify allocations of funds were made on a fair and equitable basis is retained.

Subsection (e) repeats the current law provision in subsection 5310(c) regarding use of program funds for projects included in a State program of projects that has been submitted annually to the Secretary for approval, and that provides for the maximum feasible coordination of transportation services.

Subsection (f) allows vehicles acquired under this section to be leased to local governments to improve elderly and disabled transportation services (as under current law subsection 5310(g)). The remaining subsections 5310(h), (i) and (j) are redesignated as (g), (h) and (i) to follow.

Sec. 3012. Formula grants for other than urbanized areas

This section amends section 5311 of title 49, United States Code, regarding the apportionment of formula grant funds for non-urbanized areas. Subsection (a) amends the definition provisions under section 5311(a) to define an eligible recipient and sub-recipient of other than urbanized area funds.

Subsection (b) amends the general authority provisions that allow other than urbanized areas to use formula grant funds for capital transportation projects, or operating assistance projects (including the acquisition of transportation services) provided the projects are contained in a state program of public transportation service projects. Under subsection 5311(b)(3), the rural transportation assistance program (RTAP), a national technical assistance, training and support program for rural public transportation providers, is funded with a 2 percent set-aside of the section 5311 grant funds. From the amounts made available for the RTAP activities, up to 15 percent may be used by the Secretary to carry out projects of a national scope to sustain ongoing national activities. Under current law, the RTAP is funded out of the Research program.

Subsection 5311(c) describes the apportionment process, which follows current law, except that an adjustment is made to the apportionment formula for particularly low density States. Before the standard formula is run, which apportions funds based on the total population in nonurbanized areas in a State to the total U.S. population in nonurbanized areas, States with a population density of 10 persons or fewer per nonurbanized square mile have their population number adjusted upward by a factor of 1.5; States with a population density of between 10 and 12 persons per nonurbanized square mile have their population numbers adjusted upward by a factor of 1.25. In low density States, providing essential public transportation is particularly challenging because of the distances involved. When providing services over these long distances, operating costs are higher and farebox recovery is lower. This formula adjustment may enable low density States to provide essential public transportation services by establishing a level of funding that will support a baseline program. Funds remain available for two years after the fiscal year in which the amount is apportioned, consistent with current law.

In subsection (e), an amendment is made to 5311(f) that requires States to consult with affected intercity bus service providers before certifying to the Secretary that intercity bus service needs of the State are being adequately met without making the 15 percent allocation of funds to such services. Such consultation would help ensure the state's awareness of any intercity bus service needs.

Subsection (f) amends section 5311(g) to retain the existing Federal share for any capital project at 80 percent or less of the net project cost, as determined by the Secretary; except the Federal share may be increased up to 95 percent in states containing a sig-

nificant percentage of nontaxable Indian lands, individual and tribal lands, public domain lands, national forests, and national parks and monuments. The increased Federal share is the same as provided under section 120(b)(1) of title 23, U.S.C. Also retained is the Federal share for operating assistance at 50 percent or less of the net costs of an operating project, as determined by the Secretary. The remainder of the net project costs may be provided from a number of different sources, including amounts appropriated to or made available to a department or agency of the Federal government, other than the Department of Transportation (e.g., Temporary Assistance for Needy Families, Medicaid, job training program funds, or Welfare to Work grants). Using these related human service grants funds as a local match for transit projects leverages the Federal investment and increases coordination among Federal agencies that provide transportation services.

Subsection (g) strikes section 5311(h) relating to operating assistance because operating assistance eligibility is included under the General Authority provisions at subsection (b).

Subsection (h) corrects the title to Chapter Analysis.

Sec. 3013. Research, development, demonstration, and deployment projects

Currently, section 5312 of title 49, United States Code does not address deployment of emerging technologies, and inappropriately includes training provisions. As amended, section 5312 would authorize research, development, demonstration, and deployment projects, and would move the training provisions in subsections (b) and (c) to section 5322 (Human Resource Program). Under this subsection, the terms "other transactions" is included and is used to replace the terms "other agreements" to provide the Federal government with discretion to enter into project agreements under terms that would encourage private parties to participate in Federally assisted projects. Subsection 5312(a) is further amended to eliminate outdated references to the Secretary of Housing and Urban Development. All references to "urban" transportation are eliminated to clarify that all transportation is public transportation in both urban and rural areas. Mass transportation and public transportation have the same meaning under the transit programs. This subsection also contains a series of clarifying and conforming amendments.

Sec. 3014. Cooperative Research Program

Amendments made to section 5313 of title 49, United States Code provide the correct authorization citation for the research programs and moves subsection (b) to the state planning section under Chapter 52 of title 49.

Sec. 3015. National research and technology programs

Section 5314 of title 49, United States Code is amended to delete the word "Planning" in the heading because the focus of the section is on research and to include "Technology" in the heading to reflect the activities carried out under this subsection. Other amendments under this subsection correct the funding authorization citations and eliminate references to the planning sections of the title. The Secretary is required to continue to make funds available to help

public transportation providers comply with the Americans With Disabilities Act of 1990. Under this section, the term "other transactions" is included to provide the Federal government with discretion to enter into project agreements under terms that encourage private parties to participate in federally assisted projects. The Industry Technical Panel composed of transportation suppliers and others involved in technology development is eliminated because the panel is no longer needed. The Federal Transit Administration has established an ongoing working relationship with all facets of the transit industry.

Sec. 3016. National Transit Institute

Section 5315 of title 49, United States Code is amended by striking references to mass transportation because public transportation is defined to mean mass transportation under the transit program.

Sec. 3017. Job access and reverse commute formula grants

This section codifies the Job Access And Reverse Commute (JARC) program authorized under section 3037 of the Transportation Equity Act for the 21st Century. The program was established to assist welfare recipients and low-income individuals in getting to and from jobs. Under the proposed codified provisions of section 5316, subsection (a) applies definitions for eligible projects, low-income individuals, recipients, reverse commute projects, subrecipients, and welfare recipients.

As proposed in subsection (b), the Secretary would make grants for access to jobs and reverse commute projects to be carried out by the recipient or a subrecipient. A recipient would be permitted to use up to 15 percent of the amount it receives under this section to administer, plan, and provide technical assistance.

Subsection (c) proposes a formula for JARC funds that apportions 60 percent of the funds to designated recipients in urbanized areas with a population of 200,000 or more in a ratio reflecting the number of eligible low-income and welfare recipients in each urbanized area with a population of 200,000 or more; 20 percent of the funds are apportioned among the states in a ratio reflecting the number of eligible low-income and welfare recipients in urbanized areas with populations of less than 200,000 in each state; and 20 percent of the funds are apportioned among states in a ratio reflecting the number of low-income individuals and welfare recipients in other than urbanized areas in each state.

The funds must be used for eligible projects in the designated areas, except funds made available in urbanized areas with populations less than 200,000 and nonurbanized areas may be transferred for projects anywhere in the state if the state has established a statewide program for meeting the objectives of this section and the Governor of the state certifies that all of the objectives of this section are being met in the specific area. The recipient of JARC funds in an urbanized area with a population of 200,000 or more must conduct a competitive process for an areawide solicitation for applications for grants to the recipients and subrecipients. Statewide solicitations must be conducted in urbanized areas of less than 200,000 and in nonurbanized areas for applications for grants to the recipients and subrecipients. All grants shall be awarded on a competitive basis.

After consulting with responsible local public transportation officials and publicly owned operators of transportation in each area JARC funds were originally awarded, a state may transfer funds apportioned for urbanized areas with a population of less than 200,000 and for nonurbanized areas to section 5311(c) or 5336, or both. Any funds transferred must be made available only for eligible JARC projects.

A JARC grant is subject to section 5307 formula grant requirements and a recipient of a grant must certify to the Secretary that allocations of the grant to subrecipients are distributed on a fair and equitable basis. The Federal share for capital projects may not exceed 80 percent of the net capital cost and for operating assistance the Federal share may not exceed 50 percent of the net operating costs. The non-Federal share may be provided from a variety of sources, including other Federal funds (other than from the Department of Transportation). Funds made available through the Social Security Act may also be used for the remainder of the cost of the project.

The Comptroller General is required to conduct a study to evaluate the JARC grant program and transmit the results to the Congress. The study must begin within one year after the enactment of the Federal Transportation Act of 2004, and every two years thereafter. Not later than three years after the date of enactment of this section, the Secretary must conduct a study to evaluate the effectiveness of recipients making grants to subrecipients and transmit the report to Congress.

Sec. 3018. New Freedom Program

This section authorizes a new program to address the transportation needs of persons with disabilities at all income levels. The Secretary would make grants to a recipient for new transportation services and public transportation alternatives beyond the Americans With Disabilities Act of 1990 (ADA) to assist individuals with disabilities with transportation needs.

With the passage of the ADA, it has become a civil rights violation to deny access to persons with disabilities to public transportation. The New Freedom formula grant program was proposed by the administration and has been included in this legislation to provide additional tools to overcome existing barriers facing Americans with disabilities seeking integration into the work force and full participation in society. Lack of adequate transportation is a primary barrier to work for people with disabilities. The 2000 Census showed that only 60 percent of people between the ages of 16 and 64 with disabilities are employed. The New Freedom formula grant program will expand the transportation mobility options available to persons with disabilities beyond the requirements of the ADA. Examples of projects and activities that might be funded under the program include, but are not limited to:

- Purchasing vehicles and supporting accessible taxi, ride-sharing, and vanpooling programs.
- Providing paratransit services beyond minimum requirements (3/4 mile to either side of a fixed route), including for routes that run seasonally.
- Making accessibility improvements to transit and intermodal stations not designated as key stations.

• Supporting voucher programs for transportation services offered by human service providers.

• Supporting volunteer driver and aide programs.

• Supporting mobility management and coordination programs among public transportation providers and other human service agencies providing transportation.

A state may use up to 10 percent of the amount it receives under this section to administer, plan, and provide technical assistance. Funds would be apportioned based on a formula that apportions 60 percent of the funds to designated recipients in urbanized areas with a population of 200,000 or more in a ratio reflecting the number of individuals with disabilities in each such urbanized area; 20 percent of the funds are apportioned among the states in a ratio reflecting the number of individuals with disabilities in urbanized areas with a population of less than 200,000; and 20 percent of the funds are apportioned among the states in a ratio reflecting the number of individuals with disabilities in nonurbanized areas in each state.

The funds made available must be used for projects serving the areas for which the funds are apportioned for eligible projects. The formula provides an adjustment for low densely populated areas to increase the amounts made available to assist in meeting the areas transportation needs. For small urbanized areas with a population of less than 200,000 and a population density of 10 persons per square mile or fewer, their population is multiplied by a factor of 2. For small urbanized areas with a population of 200,000 or less and a population density of 10 but equal to or fewer than 30 persons per square mile, the Secretary shall multiply their population by a factor of 1.25. The low density adjustment for other than urbanized areas with a density of 10 persons per square mile or fewer, the Secretary shall multiply their population by a factor of 1.5. For nonurbanized areas with a population density of more than 10 but equal to or fewer than 12 persons per square mile, the Secretary shall multiply their population by a factor of 1.25.

A state may transfer the amounts apportioned for small urbanized areas and for nonurbanized areas to other small urbanized formula grant programs and to other nonurbanized formula grant programs, provided the state has consulted with responsible local officials and publicly owned operators of public transportation in each area for which the amounts originally were awarded under this section. Any funds transferred must be available for eligible new freedom projects.

The recipient of New Freedom funds in an urbanized area with a population of 200,000 or more must conduct a competitive process for an areawide solicitation for applications for grants to the recipients and subrecipients. Statewide solicitations must be conducted in urbanized areas with a population of less than 200,000 and in nonurbanized areas for applications for grants to the recipients.

A New Freedom grant is subject to the section 5307 formula grant requirements, except for grants for urbanized areas with a population of less than 200,000 and for nonurbanized areas, a special warranty agreement utilized by the Secretary of Labor may be used to provide a fair and equitable arrangement to protect the interest of employees. The recipient of a grant under this section is

required to certify that allocations are distributed to subrecipients on a fair and equitable basis.

The Secretary requires a recipient of a grant to coordinate the new freedom program activities with other related program activities of other Federal agencies. Also a recipient that transfers funds to the urbanized area formula grant program must certify that the project for which funds are requested had been coordinated with nonprofit providers of services. A recipient would also be required to certify that projects selected were derived from a locally developed, coordinated public transit-human services transportation plan and that the plan was developed through a process that involved individuals of the public, private, and nonprofit transportation and human services providers.

The Federal share for the net project capital cost of a project may be up to 80 percent, and not more than 50 percent of the net operating cost of a project. The remainder of the funds could be derived from a variety of other sources, including undistributed cash surpluses; a replacement or depreciation cash fund or reserve; a service agreement with a state or local social service agency or a provide social service organization; a capital; and other eligible Federal funds expended for transportation (other than funds from the Department of Transportation). Federal and state funds made available under section 403(a)(5)(vii) of the Social Security Act may be used for the non-Federal share. A state is prohibited from limiting the level or extent of the Government's share of operating expenses below the 50 percent in statute.

Sec. 3019. Bus testing facility.

This section amends section 5318 of title 49, United States Code, to delete the requirement for the Secretary to establish one bus testing facility because the facility has already been established in Altoona, Pennsylvania. The Secretary is required to maintain the facility. The provisions under section 5318 that establishes a revolving loan fund for expenses related to operating and maintaining the facility are deleted because the bus testing facility relies on state resources to pay for those costs, and has never requested a loan. The provision concerning the acquisition of new bus models is moved to this section from section 5323(c) for clarity.

Sec. 3020. Bicycle facilities

This section includes a technical amendment and an amendment to extend the bicycle related provisions to the new transit in the parks pilot program.

Sec. 3021. Transit in the Parks Pilot Program

This section establishes a new program to provide for public transportation in certain Federally-owned or managed areas that are open to the public. The definition of public transportation for the pilot program means general or special transportation to the public by a conveyance that is publicly or privately owned. The definition does not include school bus or charter transportation, but does include sightseeing transportation. Within 90 days after the enactment of this section, the Secretary of Transportation and the Secretary of the Interior must enter into a memorandum of understanding (MOU) to establish a transit in the parks pilot program

to encourage and to promote the development of transportation systems to improve visitor mobility and enjoyment, reduce pollution and congestion, and enhance resource protection through the use of public transportation.

The Secretary of Transportation will administer the pilot program in consultation with the Secretary of the Interior. The MOU entered into between the Secretaries must be consistent with the planning processes required under Chapter 52 of title 49 and include descriptions and activities eligible for assistance under the pilot program. The Secretary of the Interior may carry out eligible transportation projects as permitted under the interagency agreements. The Government's share for any capital project or activity carried out under the pilot program is 100 percent of the net project costs. Operating assistance grants may not exceed 50 percent of the net operating costs of the project.

Sec. 3022. Human resource programs

Sections 5312(b) and (c) would be moved to sections 5322(b) and (c) to better fit the organization of the revised section 5312 of title 49, United States Code.

Sec. 3023. General provisions on assistance

Amendments are made to section 5323 of title 49, United States Code in this section. The term "private mass transportation company" is changed to "private company engaged in public transportation" in subsection (a), to reflect the change in terminology from mass transportation or mass transit to public transportation.

Subsection 3023(c) regarding conditions on charter bus transportation service amends section 5323(d) by striking the existing law subsection (d)(2) regarding violations of agreements and inserting new language which directs the Secretary to investigate all complaints about violations of the charter service agreement and decide whether a violation has occurred; if a violation has occurred, to correct the violation; and, if a pattern of violations is found, to bar the recipient from receiving funds in an amount the Secretary considers appropriate. Under existing law, the Secretary did not have the flexibility to adjust the amount withheld—the recipient would be barred from receiving further Federal assistance. This overly-broad authority was never used, whereas a more flexible authority to penalize charter violators will encourage a more realistic and responsive approach to charter enforcement by the FTA. The Committee is aware that both public transportation providers and private charter bus providers have expressed strong concerns about the 1987 FTA rule enforcing section 5323(d) regarding charter bus service. The Committee directs the FTA to initiate a rulemaking seeking public comment on the regulations implementing section 5323(d), and to consider the issues listed below. Consideration of any changes to the current regulation shall not disturb the current law provisions under section 5323(f) regarding school bus transportation.

1. Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?

2. How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of internet technology?

3. How can the enforcement of violations of the charter bus regulations be improved?

4. How can the charter complaint and administrative appeals process be improved?

The existing law section 5323(e) regarding bus seat belt functional specifications is deleted because such specifications have been issued by the Secretary. A new subsection (e) takes its place that makes revenue bond proceeds eligible for use as local match against federal transit grants and that authorizes recipients to establish debt service reserves using up to 10 percent of their federal grant funds. The authority to use bond proceeds as local match was established in section 3011 of the Transportation Equity Act for the 21st Century (TEA 21), and FTA has reported that this authority has been beneficial to transit operators. This subsection also permits the Secretary to reimburse recipients for deposits in a debt service reserve established for the purpose of financing transit capital projects, pursuant to section 5302(a)(1)(K). Such reimbursements are capped at 10 percent of the recipient's annual apportionment from section 5307 urbanized area formula grants.

Subsection 5323(f) regarding school bus transportation is amended to allow the Federal Transit Administration to assess fines and withhold grant funds if public transportation agencies violate the narrowly defined conditions under which public transportation providers can provide school bus transportation.

Section 5323(j) regarding Buy America is amended by adding a new requirement that FTA provide a detailed written justification when the agency issues a public interest waiver. Additionally, a new provision is added stating that parties adversely affected by FTA action on Buy America decisions may seek judicial review under the Administrative Procedures Act. The general regulatory waivers for Chrysler 15-passenger vans and wagons from the requirement that public transportation vehicles be assembled in the United States are repealed. In addition, the permanent regulatory waiver for microcomputer equipment is also repealed.

Under current law, section 5323(l) requires state-managed transit grant programs be subject to State transportation planning requirements in section 135 of title 23, United States Code. Since all transportation planning programs are now addressed under chapter 42 of title 49, U.S.C., section 5323(l) contains a new provision that broadens the applicability of section 1001 of title 18, that prohibits fraudulent statements to the Government, to all programs funded under chapter 53.

Sec. 3024. Special provisions for capital projects

This section makes very minor amendments to section 5324 of title 49, United States Code and changes the title of the section from "Limitations on discretionary and special needs grants and loans" to "Special provisions for capital projects," which is more descriptive of the provisions contained therein regarding relocation program requirements and consideration of economic, social, and environmental interests.

Sec. 3025. Contract requirements

This section consolidates sections 5325 "Contract Requirements" and 5326 "Special Procurements" of title 49, United States Code, since the provisions of section 5326 fall within the scope of conditions set on contracts that utilize federal funds provided under chapter 53 of title 49, United States Code. Under the revised subsection 5325(a) and (b), recipients of such funds are expressly required to conduct procurements using full and open competition and to use standard architectural, engineering, and design contract award procedures. A new subsection 5325(d) is added that is identical to existing law section 5326(a), except that the term "turnkey" is replaced with the more commonly used term "design-build", and references to design-build "demonstration projects" are deleted, since design-build contracting has matured beyond the demonstration phase. In addition, design-build contracting does not necessarily result in lower project costs or new technologies and, as a result, this concept as expressed under section 5326(a)(2) in current law is removed.

Sec. 3026. Project management oversight and review

This section amends section 5327 of title 49, United States Code regarding project management oversight activities. The Secretary is authorized to use .5 percent of section 5311 funds, .75 percent of section 5307 funds, and 1 percent of section 5309 funds to make contracts for oversight of major transit construction projects, and to review and audit recipients' compliance with federal requirements and provide technical assistance to correct deficiencies identified in such reviews and audits. This is an increase in the amount set aside for such activities above levels set under current, which provides for .5 percent of section 5307 and section 5311 funds and up to .75 percent for section 5309 funds. Comprehensive agency oversight, compliance review, and technical assistance are necessary for all major grant programs, and particularly important for major capital grants such as new starts and rail modernization.

Sec. 3027. Investigations of safety and hazards

This section amends section 5329 of title 49, United States Code regarding the Secretary's authority to investigate safety and security risks associated with public transportation equipment, facilities, or operations financed under chapter 53 of title 49, United States Code. The Secretary may withhold any amount of a recipient's Federal assistance until a plan to eliminate, mitigate, or correct the hazard has been approved and carried out.

Sec. 3028. State safety oversight

This section amends section 5330 of title 49, United States Code by changing the heading from "Withholding amounts for noncompliance with safety requirements" to reflect the more commonly used title of "State safety oversight." Under this section, a State is required to establish and carry out a safety program plan for rail-based new starts projects. Commuter rail systems that operate on the general railway system are subject to the safety rules and oversight of the Federal Railroad Administration. Amendments to subsection 5330(a) ensure that safety is considered well before a rail-based new start project begins revenue service. In subsection

5330(d), rail-based new start projects that operate in two or more States are required to have a unified safety program plan.

Sec. 3029. Controlled substances and alcohol misuse testing

This section amends section 5331 of title 49, United States Code regarding drug and alcohol testing of public transportation employees, allowing the Secretary to apply a single agency's drug and alcohol testing regime if a particular transportation provider is subject to more than one agency's rules. Currently, section 5331 authorizes the Secretary to exclude from FTA drug and alcohol testing those public transportation providers that are adequately covered by the Federal Motor Carrier Safety Administration or the Federal Railroad Administration testing statutes. The amendment to subsection 5331(a) expands the Secretary's authority to exclude from FTA testing those public transportation providers that are adequately covered under other Federal or Departmental testing, such as the U.S. Coast Guard's testing provisions applicable to ferryboat employees.

Sec. 3030. Employee protective arrangements

This section amends Section 5333 of title 49, United States Code making conforming changes to ensure that all federal public transportation grant programs are subject to fair labor standards and employee protective arrangements.

Sec. 3031. Administrative procedures

This section amends section 5334 of title 49, United States Code regarding the Secretary of Transportation and Federal Transit Administration's authority to administer programs carried out under chapter 53 of title 49, United States Code. The Secretary is prohibited from regulating public transportation provider's routes, schedules, and rates, except in the case of a national or regional emergency. A new subsection 5334(c)(5) has been added that requires the FTA to subject non-regulatory substantive policy statements to a 60-day public review notice and comment period. Currently, FTA circulars, letters, or other policy statements can be issued without the benefit of the same public review and comment process that is required under the regulatory process. However, such documents often carry the same weight and penalties as regulations. An example of this "unwritten rule" is the $500 million per project limitation FTA has placed on the Federal commitment on a full funding grant agreement issued under the authority of section 5309. Although such a project cost limitation might be a valid policy, it has not been published in a form that allows for comment from the affected transit community. The provision added in subsection (c)(5) will add transparency to FTA's administrative procedures and provide opportunity for public review and feedback.

Sec. 3032. National transit database

This section amends Section 5335 of title 49, United States Code by striking subsection (b) regarding a transferability report that was completed in 1993 and changing the title of the section to reflect the remaining provisions regarding the Secretary's authority to maintain a national reporting system of public transportation financial and operating information using a uniform system of ac-

counts. The section header is amended from the current law title "Reports and audits" to "National transit database" to reflect the revised contents of the section.

Sec. 3033. Apportionments based on fixed guideway factors

This section amends Section 5337 of title 49, United States Code regarding apportionment formulas for the fixed guideway modernization program. The provision regarding route segments to be included in the apportionment formula is amended to delete the "1997 Standard" that held eligible rail system mileage to the number of miles a system reported in fiscal year 1997.

Sec. 3034. Authorizations

This section amends Section 5338 of title 49, United States Code, making FTA program funds available on an annual basis for the fiscal year 2004–2009 authorization period. The major FTA programs are Formula Grants, Capital Investment Grants, Planning, Research, and Administrative Expenses. Subsections (a), (c), (d), (e), and (f) break out funding allocations between fiscal year 2004 and fiscal years 2005–2009. This organizational structure is adopted to separate the fiscal year 2004 funding, which splits every account's funding between the Mass Transit Account and the general fund at an 80–20 ratio (current law structure), from funding for fiscal years 2005–2009, which is either 100 percent trust funded or 100 percent general funded. The programs that will be 100 percent trust funded in fiscal years 2005–2009 are Formula Grants and Planning, as well as the bus and bus related facilities grants and the fixed guideway modernization grants under Capital Investment Grants. The programs that will be 100 percent general funded in fiscal years 2005–2009 are Research, Administration, and the new starts and small starts programs under Capital Investment Grants. This restructuring of the program financing will prevent an accounting problem with the spending rate of the Mass Transit Account. By not split-funding any programs, each program will outlay at its actual spending rate.

The Formula Grants programs comprise 54 percent of the total transit programs. There are a number of allocations made from the total formula grants funding for: new bus model testing, grants to the Alaska Railroad, over-the-road bus accessibility equipment costs, the new Transit in the Parks pilot program, the transit portion of funding for the non-motorized transportation pilot program authorized in section 1118(b) of the bill, the New Freedom program, the Job Access and Reverse Commute grant program, and the Clean Fuels grant program. After these allocations of funds have been made, the remainder of the aggregate amount is allocated in the following percentages: 2.5 percent to the elderly and disabled formula grant program, 8 percent to the nonurbanized formula grant program, and 89.5 to the urbanized area formula grant program. The percentage shares for the elderly and disabled program grants and for the nonurbanized formula grants have been increased over such shares under current law.

The Capital Investment Grants programs comprise 43 percent of the total transit programs. The four Capital Investment Grant programs (fixed guideway modernization, new starts, small starts, and bus and bus-related facilities) receive funding allocations under

section 5309(m). For fiscal year 2004, funding for these programs is apportioned under subsection 5338(b), with 80 percent of the funding coming from the Mass Transit Acount and 20 percent from the general fund. In subsection 5338(g), funding is apportioned for fiscal years 2005–2009 from the Mass Transit Account of the Highway Trust Fund for bus and bus facilities and fixed guideway modernization. In subsection 5338(h), funding is authorized to be appropriated in fiscal years 2005–2009 for new starts and small starts.

Planning grant fund apportionments to metropolitan areas and states is provided under subsection 5338(c). For fiscal year 2004, the funding is split-funded and for fiscal years 2005–2009, the funding is derived from the Mass Transit Account. The percentage of planning funds allocated to metropolitan areas is 82.72 percent and 17.28 percent is apportioned to states for state planning activities. These are the same percentages as provided under current law. The total amount of funding authorized for planning activities has been increased from 1 percent of the total program under current law to 1.25 percent, in recognition of additional funding needs resulting from the designation of 46 new urbanized areas in the 2000 Census.

The Research program is funded under subsection 5338(d). For fiscal year 2004, the funding is split-funded, and for fiscal years 2005–2009, the funding is authorized to be appropriated from the general fund. There are a number of allocations made from the total formula grants funding for: the transit cooperative research program, management of the national transit database, the National Transit Institute transit training facility at Rutgers University, and Project Action, a national technical assistance program for providers of transportation services to the disabled. The remainder of funds under this subsection are available for the national research and technology programs. In subsection 5338(e), funding is authorized for university transportation research. This complements funding made available for these programs under the Federal-aid Highway program in Title V of the bill.

Funding for administration of the Federal transit programs is provided under subsection 5338(f). For fiscal year 2004, the funding is split-funded, and for fiscal years 2005–2009, the funding is authorized to be appropriated from the general fund.

Sec. 3035. Over-the-Road Bus Accessibility Program

This section amends Section 3038 of TEA 21 regarding the over-the-road bus accessibility program, which provides grants to intercity and charter bus providers for incremental costs of equipment to reach compliance with the Americans with Disabilities Act. The TEA 21 provision regarding Federal share is amended by increasing the Federal share for such project costs from 50 percent to 80 percent.

Sec. 3036. Updated terminology

This section amends chapter 53 of title 49, United States Code by striking "mass transportation" and replacing it with "public transportation."

Sec. 3037. Project authorizations for new fixed guideway capital projects

This section lists the projects that are authorized under the section 5309 new starts and small starts programs for fiscal years 2004 through 2009. Existing full funding grant agreements are listed separately from projects authorized for final design and construction and those authorized for alternatives analysis and preliminary engineering.

In subsection 3037(a), 23 new start projects originally authorized in the Intermodal Surface Transportation Efficiency Act (ISTEA) or in TEA 21 have continued authorizations with the amount specified by fiscal year that remains outstanding under the schedule of federal funds for the project (or "schedule 6") attached to each project's full funding grant agreement contract with the FTA. The first responsibility of the Appropriations Committees in providing funds for new fixed guideway capital projects must be to ensure that each project under a full funding grant agreement receives the full amount specified for the fiscal year in which it is programmed. Under-funding full funding grant agreements is very damaging to the financial management of the project and to the overall capital and operating budget of the sponsoring agency, and may jeopardize private financing for the local share of such project costs.

In subsection 3037(b), new fixed guideway capital projects that are ongoing projects in the new starts pipeline and are currently in preliminary engineering or final design are authorized for final design and construction.

In subsection 3037(c), new fixed guideway capital projects that have not yet been approved for preliminary engineering by the FTA or that were not previously authorized under TEA 21 are authorized for alternatives analysis and preliminary engineering.

Subsection 3037(d) provides fixed dollar authorizations for the amounts outstanding under current full funding grant agreements for five projects that are essentially complete, but have very small amounts of federal funding remaining.

Subsection 3038(e) sets out rules relating to new starts and small starts funding for the life of the authorization. In general, all projects that are authorized under subsection (a) may expend Federal funds only for final design and construction activities. Projects that are authorized under subsection (b) may expend Federal funds for final design and construction, and for alternatives analysis and preliminary engineering activities. Projects that are authorized under subsection (c) may expend Federal funds only on alternatives analysis and preliminary engineering activities. However, on October 1, 2006, projects authorized under subsection (c) shall also be authorized for final design and construction. Minimum funding levels are established for appropriations for each fiscal year in the full funding grant agreement category (subsection a) and the final design and construction category (subsection b), and maximum funding levels are established for each fiscal year in the alternatives analysis and preliminary engineering category (subsection c). Subsection 3037(b) projects authorized for final design and construction that execute a full funding grant agreement with FTA after the date of enactment of this Act are to be given the full amount indicated in the schedule of federal funds for the project for each fiscal year under the agreement.

Subsection 3037(f) amends the project description for the New Jersey Urban Core project originally authorized in section 3031(d) of ISTEA. This authorization was expanded in TEA 21 and is further amended in this legislation. Elements of New Jersey Urban Core project include:

• The Secaucus Transfer, which consists of construction of a new rail transfer station at the intersection of the Northeast Corridor and the Main, Bergen and Pascack Valley Lines as well as a rail spur north to the Meadowlands Sports Complex and a connection to the Hudson River Waterfront Transportation System.

• The Lackawanna Cutoff, which is the restoration of passenger rail service between Port Morris, NJ and Scranton, PA.

• The Kearny Connection, which is a connection in Kearny allowing Morris and Essex Line commuter rail trains to access the Northeast Corridor to New York.

• The Waterfront Connection, which is a connection allowing Northeast Corridor commuter rail trains to access the Morris and Essex Lines to Hoboken.

• The Northeast Corridor Signal System, which is the implementation of a high- density signal system on the Northeast Corridor between Newark and New York City.

• The Hudson River Waterfront Transportation System, which is being implemented as three segments of Hudson-Bergen Light Rail. The first segment runs from Hoboken Terminal south to 34th Street in Bayonne with a spur to West Side Avenue in Jersey City. The second segment extends the first segment south from 34th Street to 22nd Street in Bayonne and north from Hoboken to Tonnelle Avenue in North Bergen. The third segment extends the line south from 22nd Street to 5th Street in Hoboken and North from Tonnelle Avenue to the Vince Lombardi Park & Ride in Ridgefield. The Hudson River Waterfront Transportation System also includes extensions from the Vince Lombardi Park & Ride in Ridgefield west to Saddlebrook and east to Edgewater.

• The Northern Branch Line or the West Shore Line, which consists of either an extension from the Hudson River Waterfront Transportation System north along the Northern Branch freight line to New York State, or a commuter rail extension north from Secaucus Transfer and the Meadowlands Rail Spur across the Meadowlands to the West Shore freight line, which extends into New York State.

• The Newark-Newark International Airport-Elizabeth Transit Link, which is a light rail project running from Newark Penn Station south through downtown Newark into Union County, including Newark Liberty International Airport Rail Station, the Jersey Gardens Mall, downtown Elizabeth, then proceeding west to Plainfield.

• The rail connection between Newark Penn and Broad Street stations, which is a light rail circulator service in downtown Newark, being implemented as the Newark Elizabeth Rail Link.

• The New York Penn Station Concourse, which is a station expansion project in New York Penn Station.

• The restoration of commuter rail service in Monmouth, Ocean and Middlesex counties, which consists of restored rail service from Lakehurst north to Freehold and proceeding either west to connect

with the Northeast Corridor through Jamesburg or north to connect with the North Jersey Coast Line in Matawan.

New Jersey Urban Core also provides for the construction of any appropriate rail service in Passaic County and the equipment necessary to service all project elements.

Subsection 3037(g) directs that project elements of the New Jersey Trans-Hudson Midtown Corridor that have been advanced with 100 percent non-Federal funds shall be given consideration by the FTA when evaluating the local share of the project in the new starts rating process, including the purchase of bi-level rail equipment.

Sec. 3038. Projects for bus and bus-related facilities

This section lists bus and bus facilities projects and associated funding levels for fiscal years 2005, 2006, and 2007. Each year's designated funding represents half of the authorized amount for section 5309 bus and bus facility projects for that fiscal year.

Sec. 3039. National Fuel Cell Bus Technology Development Program

This section authorizes a new fuel cell bus technology development program for hydrogen fuel cell and liquid methanol fuel cell bus technologies, in order to facilitate the development of commercially viable fuel cell bus technology and related infrastructure. The program is limited to four recipients, at a Federal share of 50 percent.

Sec. 3040. Extension of public transit vehicle exemption from axle weight restrictions

This section amends Section 1023(h)(1) of the Intermodal Surface Transportation Efficiency Act of 1991 by extending from the current exemption from the per-axle weight limitation for buses used in public transportation.

Sec. 3041. High-Intensity Small-Urbanized Area Formula Grant Program

This section establishes a new set-aside program from the section 5307 urbanized area formula grants that provides a small bonus grant payment to urbanized areas under 200,000 in population that operate at a level of service above the industry average level of service in similarly-sized urbanized areas in one or more of six performance categories: passenger miles traveled per vehicle revenue mile, passenger miles traveled per vehicle revenue hour, vehicle revenue miles per capita, vehicle revenue hours per capita, passenger miles traveled per capita, and passengers per capita. These performance categories and a methodology established for providing bonus grants were established in the September 2000 FTA report to Congress called "The Urbanized Area Formula Program and the Needs of Small Transit Intensive Cities."

Sec. 3042. Allocation for national research and technology programs

This section establishes seven specific research areas within the Federal Transit Administration's national research and technology program, and allocates funding levels in each fiscal year of the authorization period for these research areas. These research focus

areas were developed through conferring with the FTA and reflecting priorities established in the agency's Research and Technology Strategic Plan. The programmatic structure and funding floors for each research area will help ensure that adequate funding is provided throughout the authorization period to establish and carry out meaningful programs with depth and continuity.

Sec. 3043. Obligation ceiling

This section sets the annual obligation ceiling for Federal Transit Administration programs authorized by this Act for fiscal years 2004 through 2009, including both amounts made available from the Mass Transit Account of the Highway Trust Fund and general funds from the U.S. Treasury. The total obligation authority for each fiscal year is guaranteed to be provided in the fiscal year for which it is set under the budgetary firewalls established in section VIII of the bill.

Sec. 3044. Adjustments for the Surface Transportation Extension Act of 2004

This section provides for the funding reconciliation of apportionments and allocations made to transit grant recipients under this Act with the levels of funding already made available under the Surface Transportation Extension Act of 2004, which expires April 30, 2004.

TITLE IV—MOTOR CARRIER SAFETY AND TRANSPORTATION

Subtitle A—Commercial Motor Vehicle Safety

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (P.L. 106–159) established the FMCSA within the Department of Transportation (DOT) on January 1, 2000. Prior to the enactment of MCSIA, commercial motor vehicle-related crashes involving fatalities and injuries had been steadily climbing and it was determined that the creation of a separate modal administration within the DOT would improve truck and bus safety. According to data compiled by the DOT, large trucks [1] represent about three percent of registered vehicles; however, they account for seven percent of the vehicle-miles traveled on our Nation's highways, and are involved in about 11 percent of all fatal crashes.

FMCSA's primary responsibility is to enforce the Federal motor carrier safety and hazardous materials regulations, including the requirements governing Mexico-domiciled commercial motors vehicles operating in the United States. The FMCSA also administers the Commercial Drivers' License (CDL) program, oversees the interstate transportation of household goods, and all aspects of hazardous materials transportation via highway. The FMCSA has been directed to accomplish these responsibilities through increased enforcement of the safety regulations, expedited completion of rulemaking proceedings, scientific research, and improved commercial driver's licensing programs.

FMCSA has set a goal of reducing the rate of fatalities in large truck crashes by 39 percent between 1999, the year prior to the

[1] Large truck is defined as a commercial motor vehicle with a gross vehicle weight of 10,001 pounds or more.

agency's creation, and 2008, from a rate of 2.7 fatalities per 100 million vehicle miles traveled (VMT) to a rate of 1.65. The commercial motor vehicle fatality rate, factoring in increases in VMT, was reduced to 2.28 in 2002, a reduction of 7 percent from 2001 when the rate was 2.45. The commercial motor vehicle fatality rate reduction in 2002 marked the fifth consecutive year the rate had been reduced.

Sec. 4101. Authorization of appropriations

From the day of burro-drawn wagons moving our goods to the current day intermodal, just-in-time delivery system, commercial vehicles have always played an important role in our Nation's economy. To ensure this vital system continues in a safe and efficient manner, the Committee has reported out this legislation.

This section provides funding from the Highway Trust Fund, other than the Mass Transit Account, for FMCSA to implement safety programs for fiscal years 2004 through 2009. Funding for the Motor Carrier Safety Assistance Program is authorized in section 1402 of this title.

This bill authorizes FMCSA and its programs to be funded through contract authority. Under the Transportation Equity Act for the 21st Century (TEA 21), which was enacted 18 months prior to the creation of FMCSA, the agency's administrative expenses were funded through a deduction of the Federal Highway Administration's (FHWA) administrative expenses. This set-aside of Federal-aid funds is called a "takedown". MCSIA amended TEA 21 by increasing the takedown to one-third of one percent from the FHWA's administrative expenses to administer FMCSA activities. Other than the first year of enactment, the takedown has proven to be ineffective for funding the motor carrier safety program adequately. In addition, the takedown has not been adequate for additional safety and program needs created with the implementation of the North American Free Trade Agreement, and the security improvements needed in response to the terrorist attacks of September 11, 2001. Therefore, it is appropriate to create new contract authority for FMCSA expenses.

Sec. 4102. Motor carrier safety grants

An important FMCSA responsibility is managing the Motor Carrier Safety Assistance Program (MCSAP), which provides grants to States for the enforcement of the Federal safety and hazardous materials regulations governing commercial motor vehicles. Safety enforcement under MCSAP is primarily achieved through roadside inspections and safety compliance reviews. MCSAP grants are authorized to provide up to 80 percent of State program costs. The MCSAP was initiated in the early 1980s and the program has grown in size every year since. From 1997 to 2003, the annual authorization grew from $78.2 million to $189 million. In 2003, MCSAP officers conducted over 2.9 million commercial motor vehicle and driver inspections nationwide, with approximately 7 percent of drivers and 23 percent of vehicles placed out of service for violations of the safety and hazardous materials regulations. Under current law, MCSAP agencies may be reimbursed for traffic enforcement activities when those activities are conducted in conjunc-

tion with safety inspections, while conducting weight inspections, or while conducting a drug interdiction inspection.

Subsection (a) of this section would reauthorize the Motor Carrier Safety Assistance Program, with a number of changes. In addition to increases in authorized funding levels, the program would be amended to require the States to include five new requirements in their annual commercial vehicle safety plans. The first would require the implementation of performance-based activities, including deployment of technology to enhance the efficiency and effectiveness of commercial motor vehicle safety programs. The second would require States to include in their training manuals, for all drivers' licensing examinations, information about best practices for safely sharing the road with trucks and cars. States would also be required to enforce the registration requirements of section 13902, of title 49, United States Code, by removing from service vehicles that are unregistered or operating beyond the scope of their registration. Another change would require States to conduct highly visible traffic enforcement programs in locations or corridors that have been identified as having a high incidence of car and truck crashes. The final change would require States to establish a program ensuring that all information and data provided to the Secretary that is used for safety rating purposes, or in identifying high-risk carriers, is accurate, timely, and complete.

Subsection (b) of this section details the new activities for which States can use funds provided under the Motor Carrier Safety Assistance Program. These activities would include the ability to conduct traffic enforcement on commercial motor vehicles without a corresponding safety inspection and on non-commercial motor vehicles when the behavior of the drivers of smaller vehicles increases the risk of crashes involving commercial motor vehicles. The Secretary would also be required to provide an annual report to Congress detailing the effect these new activities and requirements have had on commercial motor vehicle and highway safety.

The Committee intends this new authority in the MCSAP to be used for conducting highly visible roadside enforcement activities in high crash corridors. The Committee intends these changes to establish a commercial motor vehicle and highway safety program similar to State impaired driving programs, as well as "buckle-up" campaigns. With these changes in mind, the Committee has also increased funding for outreach and education currently conducted by FMCSA. With this legislation, the outreach program will be jointly managed by FMCSA and NHSTA. The Committee believes combining enforcement activities with a robust outreach and education program is necessary to maximize the results.

Subsection (c) of this section authorizes funding for the Motor Carrier Safety Assistance Program. This funding is for the basic grant program, high priority grants, and the new entrant program. This bill does not continue the incentive program for MCSAP. By increasing the funding total and removing the incentive program the Committee will ensure more resources go to the core function of the MCSAP program, conducting commercial motor vehicle and driver safety and hazardous materials inspections.

Subsection (d) of this section provides the Federal Motor Carrier Safety Administration the authority to provide grants without a matching requirement to the States to conduct safety audits of new

entrant motor carriers. This subsection also increases the current amount of Motor Carrier Safety Assistance Program funding available for high priority activities to 10% of the total funds authorized. The funding may be used for activities designed to improve all information and data provided to the Secretary from the State that is used for safety rating purposes, or for identifying high-risk carriers. In addition, this subsection also allows the Secretary to use up to $15,000,000 each fiscal year to conduct safety audits of new entrant motor carriers described in subsection (c).

Subsection (e) contains a technical amendment.

Sec. 4103. Border enforcement grants

Subsection (a) deletes contract authority funding for information systems by striking the section where it currently is located. Funding for information systems is now included in the administrative expenses. Subsection (a) also creates a new grant program for Border Enforcement Programs.

This grant program is for State enforcement activities at the Canadian and Mexican borders. No Federal activity would be conducted using this money. States would be authorized to use the grants for virtually anything related to CMV safety enforcement and compliance with State and Federal CMV requirements involving foreign motor carriers, including the purchase of land and buildings. Grant recipients could not use Federal funds to replace State funds and they would be required to maintain the average level of border-related expenditures during fiscal years 2002–2003. It is intended, and quite possible, that this money will not be distributed to every State that shares a border with another Country, but will only be distributed to States with an identified need.

These grants do not require a State match.

Subsection (b) includes the conforming amendments necessary for the changes made in subsection (a).

Sec. 4104. Commercial driver's license improvements

Subsection (a) creates a new program for commercial driver's license improvement grants. These grants would enable States to improve the implementation of their commercial driver's license programs. The grants may be used to improve training, computer software, computer hardware, publications, testing, quality control, and to hire personnel. However, the funds received under this program must first be used to ensure the State has met the commercial driver's license program improvements that were required in the Motor Carrier Safety Improvement Act. Unlike the border grants, these funds may not be used to purchase land or buildings.

In order to apply for a grant, the State must first conduct a self-assessment of their commercial driver's license program identifying deficiencies within their commercial driver's licensing program. Based on these assessments, the State will then apply for the appropriate amount of funding to correct these issues. The State must also maintain an average level of commercial driver's license expenditures during the fiscal years 2002–2003. The government share for these grants is 80 percent. Five percent of these funds will be set aside for high priority commercial driver's license activities.

Subsection (b) includes the conforming amendments necessary for the changes made in subsection (a).

Subsection (c) would authorize the Secretary to redirect up to 5 or 10 percent of the funds a State receives under this program, if the State is found to be in serious non-compliance with the commercial driver's license programs. The penalty provisions found in the CDL statutes have been amended to encourage the Secretary, through more flexibility, to assess penalties for non-compliance.

Sec. 4105. Hobbs act

Subsection (a) would amend the Hobbs Act to make explicit the interpretation given to that act by a series of decisions of the U.S. Circuit Courts of Appeal.

In 1966, when the Department of Transportation (DOT) was created, Congress transferred responsibility for regulating motor carrier safety and driver qualifications from the former Interstate Commerce Commission (ICC) to the Department.

Sections 351(a) and 352 of title 49 provide for the same method of judicial appeal from actions based on these transferred functions as would have been required had the functions remained with the ICC. Prior to 1966, ICC orders were reviewed by three-judge District Courts, with a right of direct appeal to the Supreme Court. In 1975, Congress altered the path of review for ICC actions, substituting for the three-judge District Court, a right of direct appeal to the Court of Appeals for the relevant jurisdiction. This statute is known as the Hobbs Act (28 U.S.C. 2321, 2342).

The ICC was abolished in 1995 and most of its remaining functions were transferred to the newly created Surface Transportation Board (STB) or to FMCSA. The corresponding revisions to the Hobbs Act, however, created uncertainty.

That raised the question whether an action by FMCSA pursuant to the safety authority transferred in 1966 could still be reviewed by the Courts of Appeal, since section 2342(3)(A) applied to the commercial statutes, while section 2342(5) applied to actions of the STB.

Subsection (a) would be amended to ensure that both of these issues would be covered by inserting in section 2342(3)(A) a reference to "subchapter III of chapter 311, chapter 313, and chapter 315 of Part B of subtitle VI of title 49." FMCSA's safety statutes are codified there, including statutes enacted after 1966. All safety statutes would thus be subject to exclusive review by the Courts of Appeal.

Subsections (b) and (c) would simply replace the term "Federal Highway Administration" with "Federal Motor Carrier Safety Administration" in 49 U.S.C. 351(a) and 352. The ICC's motor carrier safety functions were exercised by FHWA until the fall of 1999 and were statutorily entrusted to FMCSA when it was created on January 1, 2000. Because FHWA retains no duties or powers transferred from the ICC, sections 351(a) and 352 should refer to FMCSA.

Sec. 4106. Penalty for denial of access to records

FMCSA investigators have broad authority to inspect and copy motor carrier and shipper records (see 49 U.S.C. 504(c), 31133(a)). The majority of carriers and shippers readily grant access to re-

quested records, however, some deliberately impede the investigative process by refusing to set an audit date, or, after setting a date, by ordering investigators off the premises—occasionally with a show of force. Others take a more subtle approach, feigning illness or declaring an "emergency" during the audit; pleading inability to produce records because of the absence of key personnel; or delivering documents at a pace designed to prolong the audit beyond the time available to the investigator.

FMCSA can issue an administrative subpoena for documents, and the refusal to comply requires the agency to file an action in Federal court to enforce the subpoena. This process, though effective, is relatively slow and labor-intensive, and the cost to a carrier or shipper who does not seriously contest the action is minimal.

New section 521(b)(2)(E) would create a financial penalty to dissuade any uncooperative carriers or shippers from denying or impeding FMCSA's legitimate access to records.

Sec. 4107. Medical review board

This section requires the FMCSA to establish a Medical Review Board to serve as a source of up-to-date medical advice for the FMCSA on matters related to driver qualification rules, guidelines for medical examiners, and standards for medical exemptions under 49 U.S.C. 31315(b).

The Committee has included the Administration's proposal for establishing a five-member Medical Review Board to make recommendations on medical standards for commercial drivers, medical examiner education, and medical research. Due to the variety of motor carrier operations and the sheer number of commercial drivers, the Committee is not overly prescriptive in describing how FMCSA should conduct this proposal. With over 6.5 million commercial drivers requiring biennial medical certifications, permitting FMCSA to set the standard for who should be allowed to conduct physical examinations, with the help of the Medical Review Board, is the most feasible way to ensure no disruption in the medical certification system currently in place. Having this provision will ensure medical examiners know the driver qualification standards and guidelines, while understanding the mental and physical demands involved in driving a commercial motor vehicle.

Sec. 4108. Increased penalties for out-of-service violations and false records

Subsection (a) would double the penalties for recordkeeping violations under 49 U.S.C. 521(b)(2)(B) up to $1,000 for each day the offense continues, or up to $10,000 for an offense that conceals the fact that a non-recordkeeping violation occurred. Recordkeeping violations frequently have no other purpose than to conceal a safety violation, and they often succeed. Higher penalties should reduce both the number of recordkeeping violations and the number of safety violations as well.

The current penalties under 49 U.S.C. 31310(i)(2) for a driver who violates an out-of-service (OOS) order are, for a first offense, a 90–day disqualification from operating a CMV and a civil penalty of at least $1,000 and for a second offense, disqualification for one to five years and a civil penalty of at least $1,000. An employer who knowingly allows or requires a driver to violate an OOS order

is subject to a civil penalty of up to $10,000. OOS orders can be issued for a variety of reasons: for failure to pay civil penalties on schedule, for having an unsatisfactory safety rating, for violating the agency's hours-of-service or equipment regulations, or because the motor carrier constitutes an imminent hazard. Enforcement officers cannot afford to spend hours monitoring a single OOS vehicle, and tracking possible movements of an entire OOS fleet is even more difficult. As a result, many OOS orders are violated. One effective deterrent to violating an OOS order is to raise the cost to violators. Subsection (b) would increase to a maximum of $25,000 the civil penalty for a motor carrier that knowingly orders a driver to proceed despite an OOS order. An employer that knowingly and willfully ignores OOS orders is liable to imprisonment for up to a year or a fine of up to $100,000 if the violation did not result in death, or up to $250,000 if it did result in death, or both. But drivers sometimes decide to ignore an OOS order. Subsection (b) would also increase a driver's penalty for a first offense to a 180–day disqualification and a civil penalty of at least $2,500, and, for a second offense, to a two to five year disqualification and a civil penalty of up to $5,000.

Sec. 4109. Commercial vehicle information systems and networks deployment

This section moves the commercial vehicle information system and networks deployment program out of FHWA and to FMCSA in order to streamline the grant process. Historically, FMCSA has been responsible for implementing and deploying this program with the money passing through FHWA. This streamlined process is intended to ensure the completion of the core deployment of commercial vehicle information systems and networks. It also will help with the expanded deployment of the program.

Subsection (a) provides general direction to carry out the commercial vehicle information systems and networks deployment program.

Subsection (b) describes the overall purpose of the commercial vehicle information systems and networks deployment program.

Subsection (c) would require the Secretary to make grants of up to $2.5 million for the core deployment of commercial vehicle information systems and networks. A State that has previously received funding for the core deployment of commercial vehicle information systems and networks would receive a grant that has been reduced by the amount of funds previously received for core deployment. States that have not previously received funding for core deployment would receive a grant of $2.5 million. To be eligible for a core deployment grant, a State must have a program plan and must certify that its activities are consistent with National Intelligent Transportation Systems and Commercial Vehicle Information Systems and Networks architectures and available standards, and must agree to execute a successful interoperability test. The use of the grant would be limited to core deployment activities.

Subsection (d) would authorize the Secretary to make grants to States for the expanded deployment of commercial vehicle information systems and networks. The amount of the grants would be determined by the amount of funds that remain after the core deployment grants have been made and by the number of States that re-

quest an expanded deployment grant. The maximum expanded deployment grant that may be given to a State in a fiscal year would be $1 million. Only States that have completed core deployment would be eligible for an expanded deployment grant.

Subsection (e) describes the eligibility requirements to receive these grants. Subsection (f) provides that the Federal share of grant funds under this section would be 50 percent. The Federal share for funds used for commercial vehicle information systems and networks from all eligible sources would be 80 percent.

Subsection (g) provides definitions for terms used in this section.

Subsection (h) repeals Section 5209 of TEA 21 that established the commercial vehicle information systems and networks program.

Sec. 4110. Safety fitness

As defined in 49 U.S.C. 31132(1), a vehicle is not a commercial motor vehicle unless it operates in interstate commerce. One of the implications of the definition is that the Secretary's authority to determine the safety fitness of CMV owners and operators encompasses the accident and safety inspection record of such companies or individuals on interstate trips, but not on intrastate trips. Most interstate motor carriers also have substantial intrastate operations.

For purposes of safety, it is artificial and counterproductive to create two classes of accidents and safety inspection data—one subject to Federal jurisdiction, the other not—when both involve the same vehicles, drivers, dispatchers, mechanics, and safety management controls, and may cause the same kind of death, injury, or physical damage. In examining a motor carrier's accident and inspection data, it is often difficult, and sometimes impossible, to determine whether the vehicle involved was making an interstate or intrastate trip.

In order to simplify and rationalize the analysis of accident data and provide a complete picture of the safety of motor carrier operations, subsection (a) requires the Secretary, in the course of determining the safety fitness of commercial motor vehicle (i.e., interstate) owners and operators, to consider the accident and inspection record of such owners and operators both on interstate and intrastate trips.

In addition, owners and operators of commercial motor vehicles who are determined to be unfit and prohibited from operating in interstate commerce, would also be prohibited by subsection (b) from operating commercial motor vehicles in intrastate commerce until they are able to demonstrate their fitness.

Subsection (c) would direct the Secretary to place all interstate operations of a motor carrier out of service if a State, using the Federal safety fitness standards prescribed under 49 U.S.C. 31144(b), has placed out of service the intrastate operations of a carrier that has its principal place of business in that State.

A Federal safety determination that an interstate motor carrier is unfit would thus halt both its interstate and intrastate operations, while a State safety determination that an intrastate carrier is unfit will halt both its intrastate and any interstate operations.

This subsection also provides the Secretary the authority to make grants to the States to conduct new entrant safety audits.

This funding requires no State match; however, if the Secretary determines that a State is unable to use government employees to conduct these activities, the Secretary may utilize the funding to conduct new entrant audits with Federal resources.

Sec. 4111. Patterns of violations by motor carrier and broker management

Some motor carrier and brokers managers order, encourage, or tolerate widespread regulatory violations and, when caught, declare bankruptcy, rename the company and reshuffle the managers' titles, sell its assets to a pre-existing shell corporation owned and managed by the same people, or otherwise attempt to evade the payment of civil penalties, obscure the identity of the company and thus its violation record, and perpetuate a casual indifference to regulatory compliance and public safety. Although the total number of such managers is small, their actions create risks disproportionate to their numbers.

This section would address these problems. It would amend 49 U.S.C. 31135 to authorize the Secretary to suspend, amend, or revoke the registration of a for-hire motor carrier if any of its officers has engaged in a pattern or practice of avoiding compliance, or concealing non-compliance, with Federal standards. The Secretary could also deny an application to register as a for-hire motor carrier or broker if any of the proposed officers of the company has engaged in a pattern of non-compliance. In this context, "officer" means owner, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor.

This provision would not apply to all officers whose companies are found to be in violation of the Federal safety rules. Rather, it is intended to authorize the Secretary to force out of the industry those few who have shown unusual and repeated disregard for compliance.

Sec. 4112. Motor Carrier Research and Technology Program

This section authorizes a comprehensive FMCSA research and technology program. The goal is to support—through contracts, cooperative agreements, and grants—research designed to produce innovative advances in motor carrier, driver, and passenger safety. Equally critical, however, would be the transfer of promising results—whether technical or operational—to potential users and rapid deployment of the products of research and development.

The Federal share of the cost of activities carried out under a cooperative research and development agreement could not exceed 50 percent, except if there is substantial public interest or benefit, the Secretary could approve a greater Federal share.

Sec. 4113. International cooperation

This section authorizes the Secretary, and thus the Federal Motor Carrier Safety Administration (FMCSA), to engage in international activities. This authority is necessary to aid in implementing the North American Free Trade Agreement and to carry on discussions with U.S. trading partners concerning a variety of safety issues.

Sec. 4114. Performance and registration information systems management

Subsection (a) updates the current statute to more closely follow how the performance and registration information systems management (PRISM) program is currently administered.

Subsection (b) establishes a new separate grant program for PRISM. These grants do not require a State match.

Sec. 4115. Data quality improvement

This section adds language to the current information systems requirements to ensure that the data FMCSA receives from the States is timely, accurate, and complete.

Sec. 4116. Driveaway saddlemount vehicles

This section creates a new national standard for the maximum length of drive-away saddlemount with fullmount vehicle transporter combinations operated on the Interstate Highway System.

Sec. 4117. Completion of uniform carrier registration

This section repeals the single state registration system and requires FMCSA to complete a rule-making for an on-line registration system to replace the old registration system originally administered by the Interstate Commerce Commission. This rule-making must be completed within one year.

Sec. 4118. Registration of motor carriers and freight forwarders

This section harmonizes the jurisdictional reach of the commercial and the safety statutes by eliminating the requirement for motor carriers to register if they are not subject to the Federal motor carrier safety regulations.

Sec. 4119. Deposit of certain civil penalties into Highway Trust Fund

This section amends current law by requiring the deposit of all civil penalties collected from motor carriers for violations of the Federal insurance requirements into the Highway Trust Fund, other than the Mass Transit Account.

Sec. 4120. Outreach and education

This section authorizes the Secretary to conduct an outreach and education program through the FMCSA and NHTSA to promote highway safety. Elements of the program shall include a comprehensive national effort to educate commercial motor vehicle and passenger vehicle drivers about how to share the road safely with each other, as well as an emphasis on traffic enforcement aimed at reducing the most common driving behaviors that cause or contribute to crashes, similar to such programs as "Click It or Ticket" and drunk driving awareness campaigns. The Secretary is required to provide an annual report each year demonstrating the programs and activities carried out under this section.

The Committee has significantly increased the funding for the outreach and education program currently conducted by FMCSA, but with this legislation, the outreach program will be jointly managed by FMCSA and NHSTA. Although, the Committee believes a strong enforcement program is important for improving commercial

motor vehicle and highway safety, combining enforcement activities with a robust outreach and education program is necessary to maximize the results. Also, consistent with the recommendations in the U.S. General Accounting Office report GAO–03–680, the Committee recommends that the outreach and education activities conducted by FMCSA are directly linked to the program's goal and establish a systematic process for evaluating the effectiveness of the program.

Sec. 4121. Insulin-treated diabetes mellitus

This section requires the Secretary to allow individuals who use insulin to treat their diabetes to operate commercial motor vehicles in interstate commerce without requiring the individual to have experience operating a commercial motor vehicle while using insulin.

The Committee directs FMCSA to issue a final rule to amend the current exemption program to allow individuals who use insulin to treat their diabetes to operate commercial motor vehicles in interstate commerce that is consistent with the findings of the expert medical panel report issued in July 2000. That report concluded that individuals could be qualified to operate a commercial motor vehicle following a one- to two-month period of adjustment to insulin use. This provision is intended to preempt FMSCA's notice of final disposition issued September 3, 2003, which requires an individual to have three years of experience operating a commercial motor vehicle in intrastate commerce while using insulin for treatment of diabetes before the individual could qualify to drive in interstate commerce. According to the American Diabetes Association, approximately 20 States do not have an intrastate exemption program for insulin-dependent commercial drivers, therefore, these drivers would never be able to meet the Federal requirement to drive in interstate commerce. The Committee is concerned that by issuing a notice of final disposition that is inconsistent with the finding of FMCSA's own expert medical panel, qualified drivers may not be able to get employment.

Sec. 4122. Grant program for commercial motor vehicle operators

This section would establish a grant program to train drivers and future drivers of commercial motor vehicles to operate such vehicles in a safe manner.

Sec. 4123. Commercial Motor Vehicle Safety Advisory Committee

This section requires the establishment of a commercial motor vehicle safety advisory committee to provide advice and recommendations on a range of commercial motor vehicle safety issues. Members are appointed by the Secretary and include representatives of industry, drivers, safety advocates, manufacturers, safety enforcement officials, representatives of law enforcement agencies from border States, and other individuals affected by rulemakings. No one interest may constitute a majority. The advisory committee should provide advice to the Secretary on commercial motor vehicle safety regulations and other matters relating to activities and functions of the FMCSA.

Sec. 4124. Safety Data Improvement Program

This section establishes a grant program to the States dedicated to improving the quality and timeliness of the data provided to the Secretary. Prior to receiving a grant under this section, the State must complete an audit of its safety data system and develop a plan recognizing the needs and goals for improving its safety data system. The Secretary must provide a report every two years on the results of the program carried out under this section.

The Safety Data Improvement program is intended to address safety data problems identified in the DOT Inspector General's audit of the FMSCA database. FMSCA's limited resources require focusing on the motor carriers who are considered most "at risk". In order to do this, the data FMCSA uses for selecting carriers must be accurate, and timely. The Committee is concerned that without additional funding, the States may have trouble improving their data reporting.

Sec. 4125. Commercial driver's license information system improvements

This section creates a grant program to be used to modernize the commercial driver's license information system (CDLIS). Since the creation of the CDLIS, improvements to the database and operability of the system have not kept up with improvements in technology. This program will help to modernize the system and improve the State licensing and Federal enforcement personnel's ability to access the necessary information.

This section also allows the Secretary to conduct a pilot project in 3 States to evaluate a program for sharing information about all drivers' licenses, both commercial and non-commercial, between States.

Sec. 4126. Maximum hours of service for operators of ground water well drilling rigs

For operators of commercial motor vehicles transporting ground water well drilling rigs, this section preserves the 24-hour restart provision enacted in the NHS designation act and provides that no additional off-duty time (greater than 10 hours) shall be required to operate the vehicle.

Sec. 4127. Safety performance history screening

In order to improve motor carrier safety, this provision requires the Secretary to provide companies conducting pre-employment screening services for motor carrier employers, electronic access to commercial motor vehicle accident reports involving a driver-applicant that are collected and maintained by the Federal Motor Carrier Safety Administration in its Motor Carrier Management Information System. The accidents reported to FMCSA must meet the accident definition found in 49 CFR 390.5. This provision also requires the Secretary to provide electronic access to roadside safety inspection reports involving a driver-applicant that resulted in a serious driver-related safety violation. This electronic access may be accomplished only after the prospective employer obtains written consent of the driver applicant. This safety compliance and performance information is unique to FMCSA's Motor Carrier Management Information System and, therefore, is not found on any

other national database. Prohibiting the release of this driver safety information unless expressly authorized or required by law protects driver privacy. The Secretary may require a fee from companies conducting pre-employment screening services, to cover necessary administrative costs to implement this screening service.

Sec. 4128. Intermodal chassis roadability rule-making

This section directs the Secretary to initiate a rule-making to ensure that equipment used to transport intermodal chassis is safe. The rule-making must be completed no later than 1 year after enactment of this bill and must address a way to identify the equipment owner, a civil penalty structure, a petition process, and an inspection system.

Sec. 4129. Substance abuse professionals

This section requires the Secretary to update the current regulatory definition of a substance abuse professional to include State licensed or certified mental health counselors, as well as, individuals certified as addiction specialists by the American Academy of Healthcare Providers in the Addictive Disorders.

Sec. 4130. Interstate van operations

This section directs the Secretary to extend the Federal motor carrier safety regulations found in 49 Code of Federal Regulations, Parts 387, 390 through 399 to all operations of commercial motor vehicles designed to transport between nine and fifteen passengers (including the driver), regardless of their operational distance. This section is intended to amend the final rule issued by the DOT on August 12, 2003.

The Committee intends the Secretary to address this situation through the rule-making process. As part of the rule-making, the Secretary shall amend the final rule addressing commercial motor vehicles transporting nine to fifteen passengers to specifically exempt vanpool operations as defined by section 132(f) of the Internal Revenue Code. The rule-making shall also exempt stretch sedan limousines that are designed to seat nine to fifteen passengers. The rule-making would not exempt SUV stretch limousines, or super stretch sedan limousines that are designed to seat sixteen or more passengers (including the driver).

Sec. 4131. Hours of service for operators of utility service vehicles

This section provides an exemption for drivers of utility service vehicles from Federal, State, and local laws, rules, regulations, or standards that limit the number of hours operators of utility service vehicles may remain on duty.

Sec. 4132. Technical corrections

Subsection (a) adds the Administrator as a member of the Intermodal Transportation Advisory Board.

Subsection (b) changes the reference from "Regional Director" to "Field Administrator", that position's correct title since the creation of the FMCSA in the Motor Carrier Safety Improvement Act of 1999.

Subtitle B—Household Goods Transportation

Oversight of the interstate household goods moving industry had been the responsibility of the Interstate Commerce Commission (ICC) prior to the "sun-setting" of the ICC by the ICC Termination Act of 1995. Most Federal oversight responsibilities for the transportation of household goods were transferred to the FHWA and later transferred to the FMCSA upon enactment of MCSIA in 1999. FHWA and then FMCSA, focused their limited resources on their primary mission of highway safety, rather than on consumer protection. The lack of Federal oversight has permitted unscrupulous "rogue" household goods movers to exploit this regulatory gap.

Subtitle B of title IV of this bill is intended to provide greater protection to consumers shipping their household goods via motor carrier. However, the provisions in Subtitle B of title IV of this bill only relate to the movement of household goods motor carriers and brokers. For purposes of this subtitle, 'household goods motor carrier' means a carrier that provides as part of its transportation services the inventorying, packing, unpacking, loading, and unloading of household goods.

Sec. 4201. Federal-State relations relating to transportation of household goods

This section confers authority to a State Attorney General of any state to bring a civil action on behalf of its residents in an appropriate district court of the United States to compel a motor carrier to relinquish possession of a household goods shipment, to pay a civil penalty assessed under section 14915.

For purposes of bringing any civil action under this section, nothing in this section shall prevent a State Attorney General from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or to compel the attendance of witnesses or the production of documentary and other evidence.

Whenever a civil action has been instituted on a defendant by, or on behalf of, the Secretary for violation of any provision specified in this section, a State may not institute a civil action under this section.

A civil action under this section may be brought in the district in which the defendant is found, resides, or transacts business or whenever venue is proper under section 1391 of title 28.

This section would allow State attorneys general to pursue civil penalties in any appropriate district court of the United States in cases where a "rogue mover" committed repeated violations of holding household goods hostage. This ability to enforce Federal law by State officials will be a huge step towards improving the consumer protection that has been lacking since the termination of the ICC, and will help augment the limited Federal resources currently available. Although, this additional power may be seen by some as an infringement on the long-standing "Carmack" amendment, the Committee was careful not to touch upon any more than was necessary to ensure proper enforcement at the State level.

Sec. 4202. Arbitration requirements

This section requires household goods carriers to offer shippers arbitration on all matters related to loss and damage, as well as, including disputes about charges. This section also increases the threshold for binding arbitration from $5,000 to $10,000. These two changes will provide the consumer with more options for settling disputes when they arise.

Sec. 4203. Civil penalties relating to household goods brokers and unauthorized transportation

This section creates civil penalties for household goods brokers who provide estimates prior to entering into a contract with a household goods mover. This section also creates a civil penalty for anyone who transports household goods in interstate commerce without having the authority to conduct that activity.

Sec. 4204. Penalties for holding household goods hostage

This section creates penalties, both civil and criminal, for anyone who holds a person's household goods hostage once full payment (up to 110% of the estimate) has been made. The civil penalty for holding household goods hostage shall not be less than $10,000, and if the person holding the goods hostage is a motor carrier, the carrier's operating authority will be suspended for 6 months. The criminal penalty for holding household goods hostage is up to $250,000 and two years imprisonment.

This legislation codifies existing regulations that require a carrier to give up possession of a household goods shipment provided the shipper pays the mover 100 percent of a binding estimate of the charges, or 110 percent of a non-binding estimate of the charges.

One of the most important parts of Subtitle B of Title IV, is the new definition and penalties for the practice of holding household goods hostage. This situation arises when a household goods motor carrier informs the shipper that the charges for shipping or unloading the shipper's possessions have double, tripled, or even quadrupled, and the only way the carrier will unload the goods is upon payment of these higher charges. These actions, conducted primarily by "rogue movers", have gone largely unchecked in recent years. With the addition of civil penalties, and for egregious violations, criminal penalties, Federal and State enforcement personnel have tremendous powers to prosecute these individuals.

Sec. 4205. Working group for development of practices and procedures to enhance federal-state relations

This section would require the Secretary of Transportation to create a working group of State attorney generals, State consumer protection administrators and Federal and local law enforcement officials for the purpose of developing uniform enforcement procedures with respect to interstate transportation of household goods.

Sec. 4206. Consumer handbook on DOT Web site

This section requires the Secretary of Transportation to publish a handbook about consumer's rights in readily understandable language and display it prominently on the DOT Web site.

Sec. 4207. Release of household goods broker information

This section requires the Secretary to modify the regulations to require household goods brokers to provide shippers, or potential shippers, with information about the motor carriers the broker uses, the broker's DOT identification number, the general information handbook, and a statement that the broker is not a motor carrier.

The Committee intends to deter the current practice of some brokers who advertise over the Internet, providing a low estimate without seeing the items to be shipped, then trying to find a carrier to transport the household goods without regard to the rate the broker quoted the shipper.

Sec. 4208. Consumer complaint information

This section requires the Secretary to establish a system for logging consumer complaints about household goods movers in a database that will be accessible to the public. This section also requires the Secretary to establish a way for carriers to correct any incorrect information on the database. The Secretary is encouraged to use this information when determining which carriers should be the subject of a commercial investigation.

Sec. 4209. Insurance regulations

This section directs the Secretary to review current regulatory requirements regarding insurance coverage provided by household goods motor carriers to shippers. The review should determine whether the current regulations provide adequate protection, whether the shipper should purchase insurance as opposed to the carrier, and whether there are abuses of the current regulations that leave shippers unprotected.

Sec. 4210. Estimating requirements

This section requires household goods motor carriers to provide written estimates for shipments of household goods. When providing these estimates, the motor carrier must conduct a physical survey of the household goods to be transported. A shipper may waive the on-site survey, but a copy of the waiver must accompany the estimate and remain as an addendum to the bill of lading.

This section also provides definitions of binding, and non-binding, estimates. The binding estimate guarantees the total cost of the move based upon the quantities and services shown on the estimate.

Sec. 4211. Application of state consumer protection laws to certain household goods carriers

This section requires the GAO to conduct a study of the impact on motor carriers and shippers of household goods if State attorneys general and consumer protection agencies were allowed to enforce their State consumer protection laws and regulations with respect to interstate transportation of household goods. The GAO shall provide a report to Congress on the results of this study within 18 months of the date of enactment of this Act.

TITLE V—RESEARCH

Subtitle A—Funding

Sec. 5101. Authorization of appropriations

This section provides authorizations for each of the programs in the Research Title. The Surface Transportation Research Program and the Technology Deployment program, which were separate programs in the Transportation Equity Act for the 21st Century (TEA 21), are now merged into one program—the Surface Transportation Research, Development, and Deployment Program.

Sec. 5102. Obligation ceiling

This section establishes the obligation ceiling for fiscal years 2004 through 2009.

Subtitle B—Research, Technology, and Education

Sec. 5201. Research, technology and education

This section establishes basic principles for transportation research, including the federal responsibility and role, stakeholder input, competition, and performance review. This section provides the Secretary with authority to enter into cooperative agreements and establishes a mechanism to facilitate "pooled funding" of projects when several states wish to fund a research project of common interest to those states. One of the principles governing research and technology investments directs that the Federal highway research program would become more oriented toward exploratory advanced research. The 20-year Long-Term Pavement Performance Program, initiated in the late 1980's will be continued to its conclusion in 2009. The role and function of the Turner-Fairbank Highway Research Center is codified in law.

Sec. 5202. Long-Term Bridge Performance Program; Innovative Bridge Research and Deployment Program

A 20-year Long-Term Bridge Performance Program, modeled on the Long-Term Pavement Performance Program, is established. An Innovative Bridge Research and Deployment program to demonstrate innovative designs and construction methods for the construction, repair and rehabilitation of bridges is established.

Sec. 5203. Surface Transportation Environment and Planning Cooperative Research Program

A new research program is created to study the interaction between transportation and the environment. The program will be managed and administered by the National Academy of Sciences. An Advisory Committee, appointed by the Secretary, and with a balanced membership representing transportation and environmental perspectives, will recommend the national research agenda for this program.

Sec. 5204. Technology deployment

An Innovative Pavement Research and Deployment program to demonstrate innovative pavement technologies, practices and performance is established. The goals of this program include new,

cost-effective designs to extend pavement life and performance, and the reduction of both initial cost and life-cycle cost of pavements. A Safety Innovation Deployment Program is established to foster the deployment and evaluation of safety technologies and innovations at State and local levels.

Sec. 5205. Training and education

The National Highway Institute—the training office of the Federal Highway Administration—is continued and the general topics for courses that it develops and administers are specified. The Local Technical Assistance program is authorized for fiscal years 2004–2009. The federal share for State LTAP grant recipients is up to 50 percent and the share for tribal technical assistance centers is 100 percent. Federal law is revised to allow states to spend NHS, IM, STP, CMAQ, and Bridge funds for transportation workforce development, training, and education. The federal share is 100 percent for the workforce development activities.

Sec. 5206. Freight planning capacity building

A Freight Planning Capacity Building Program is established to improve the capabilities of Metropolitan Planning Organizations (MPOs) and other planning agencies in transportation planning for freight.

Sec. 5207. Advanced Travel Forecasting Procedures Program

TRANSIMS is a state-of-the-art travel forecasting model that will have special utility for large MPOs in areas with air quality problems. Funding grants to states and MPOs will support deployment of this forecasting model.

Sec. 5208. National Cooperative Freight Transportation Research Program

The National Academy of Sciences will manage and administer a freight transportation research program. The program's purpose is to discover improved ways to provide surface transportation mobility for freight movement. An Advisory Committee will be appointed by the Academy and will include a representative cross-section of freight stakeholders. The Advisory Committee is directed to recommend a national research agenda for this program.

Sec. 5209. Future Strategic Highway Research Program

This section establishes the Future Strategic Highway Research Program (F–SHRP), which is to be carried out by the National Academy of Sciences. F–SHRP is modeled on the Strategic Highway Research Program that was established by Congress in 1987. TEA–21 directed that a study be conducted to determine the research agenda for a new strategic highway research program. F–SHRP will carry out the recommendations made by the study and will focus on four specific research areas—renewal of aging highway infrastructure, human factors related to highway safety, reducing highway congestion, and planning and designing new highway capacity. Projects and researchers will be selected to conduct research for the program on the basis of merit and open solicitation of proposals.

Sec. 5210. Transportation safety information management system project

Funding is provided over two years to develop a software system that will link driver licensing, vehicle registration, roadway inventory, and motor carrier databases. The purpose of this system is to more easily identify the cause of accidents, injuries, and fatalities, so that appropriate countermeasures can be developed.

Sec. 5211. Surface transportation congestion relief solutions research initiative

Two independent research programs are established to assist State DOTs and MPOs in measuring and addressing surface transportation congestion problems. These research programs will focus on the effectiveness of Congestion Management Systems and identify the best methods for acquiring and reporting congestion information. Funding is included for technical assistance and training.

Sec. 5212. Motor carrier efficiency study

This section provides funding for a study of the use of wireless technology to improve the safety and productivity of motor carrier freight transportation. The study will assess use of wireless technologies in fuel monitoring and management, electronic document imaging, border pre-clearance systems, Radio Frequency Identification technology, electronic manifest systems, and cargo theft prevention.

Subtitle C—University Transportation Research; Scholarship Opportunities

sec. 5301. national university transportation centers

This section provides for national university transportation centers and states that the role of such centers shall be to advance significantly transportation research on critical national transportation issues and to expand the workforce of transportation professionals.

Sec. 5302. University transportation research

This section provides for grants to be made to University Transportation Centers (UTCs). Funding is made available to ten Regional University Transportation Centers, which are Centers that currently receive funding from an ongoing UTC program. Funding is made available for each of ten Tier I Centers, which were identified in TEA–21 and were subsequently successful in a competition. Ten Tier II Centers will be selected by a competitive process.

The purpose of UTCs is to advance significantly the state-of-the-art in transportation research and expand the workforce of transportation professionals through research, education and technology transfer. Regional UTCs, Tier I Centers, and Tier II Centers will all be subject to competitive selection every four years and all institutions must meet eligibility criteria to qualify for competition. The research and education activities of each Center must support a national strategy for surface transportation research. Each Center must match each dollar of federal grant funds with one dollar of local funds.

Sec. 5303. Transportation Scholarship Opportunities Program

This section allows the Secretary to establish a scholarship program to attract qualified students for transportation-related critical jobs.

Subtitle D—Advanced Technologies

Sec. 5401. Advanced Heavy-Duty Vehicle Technologies Research Program

Section 5401 directs the Secretary to conduct research, development, demonstration and testing on advanced heavy-duty vehicle technologies. The Secretary shall consult with the Secretary of Energy and the EPA Administrator. Projects must have a cost share of at least 50 percent from non-federal sources.

Sec. 5402. Commercial remote sensing products and spatial information technologies

This section directs the Secretary, in cooperation with NASA and a consortium of university research centers, to carry out a program to validate commercial remote sensing products and spatial information technologies for application to transportation infrastructure.

Subtitle E—Transportation Data and Analysis

Sec. 5501. Bureau of Transportation Statistics

This section provides for the appointment of the Director of the Bureau of Transportation Statistics (BTS) and defines the Director's responsibilities. The National Transportation Library is retained as part of BTS's activities. Several provisions are included on the collection of freight data, including a requirement for mandatory response by corporations to BTS requests for data. Safeguards are provided to prevent disclosure of freight data that can be identified with any corporation or individual. An Advisory Council on Transportation Statistics is established.

Subtitle F—Intelligent Transportation Systems Research

Sec. 5601. Short title

The short title is "Intelligent Transportation Systems Act of 2004"

Sec. 5602. Goals and purposes

The goals and purposes of the Intelligent Transportation Systems Program are articulated. While the wording is different from TEA 21, the substance is similar.

Sec. 5603. General authorities and requirements

This section grants the Secretary authority to use an advisory committee to carry out this subtitle.

Sec. 5604. National architecture and standards

The Secretary is directed to develop, implement and maintain a national architecture for Intelligent Transportation Systems, as well as the supporting standards and protocols, to promote the

widespread use of Intelligent Transportation Systems. The Secretary shall designate a panel of experts to advise the Secretary on ways to expedite development of standards. Any Intelligent Transportation Systems projects that use Highway Trust Fund monies shall conform to the national architecture and applicable standards.

Sec. 5605. Research and development

The Secretary is directed to carry out a comprehensive Intelligent Transportation Systems research, development, and operational test program with priority given to enhancing mobility and productivity, enhancing safety, and integration of vehicle and infrastructure technologies.

Sec. 5606. Infrastructure development

This section states that funds made available in this subtitle shall be used for ITS infrastructure and not for conventional highway and transit infrastructure.

Sec. 5607. Definitions

This section defines key terms, including ITS, Intelligent Transportation Infrastructure, National Architecture, Standard, and Transportation Systems Management and Operations.

Sec. 5608. Rural Interstate Corridor communications study

This section provides funding for a study on the feasibility of installing fiber optic cabling and wireless communication infrastructure along Interstate route corridors for improved communications services to rural communities.

Sec. 5609. Repeal

The Intelligent Transportation Systems subtitle in TEA 21 is repealed and replaced by the sections 5601–5607 described above.

TITLE VI—TRANSPORTATION PLANNING AND PROJECT DELIVERY

Sec. 6001. Transportation Planning

This section creates a new chapter 52 in title 49 to address transportation planning and environmental review for transportation projects. Existing planning provisions for highway (sections 134 and 135 in title 23) and transit programs (sections 5303–5305 in title 49) are combined to form a unified planning title. Minor adjustments are made to eliminate inconsistencies and to reflect updated terminologies and practices.

The section also extends the update cycle of metropolitan long-range transportation plans from 3 years under current regulation to 4 years. It extends the update cycle of metropolitan transportation improvement programs (TIPs) from 2 years under current law to 4 years. It requires MPOs to include in their TIPs projects that are designed to meet the set-aside requirements (for a portion of a state's annual apportionments for NHS, CMAQ, STP, Interstate Maintenance, and Bridge programs) for congestion relief activities as mandated under section 139 of title 23.

The section similarly extends the update cycle of state transportation improvement programs from 2 years to 4 years. It requires the state transportation improvement program to reflect the priorities for congestion relief activities that are included in the metropolitan TIPs.

SUBCHAPTER A—GENERAL PROVISIONS

Sec. 5201. Definitions

Definitions would include definitions used in chapter 52.

SUBCHAPTER B—TRANSPORTATION PLANNING

Sec. 5211. Policy

This section is consistent with section 134 of title 23, United States Code and metropolitan planning provisions in sections 5303 and 5304 of title 49, United States Code.

Sec. 5212. Definitions

Definitions from section 101(a) of title 23 and section 5302 are applicable to this subchapter. In subsection (b) are six definitions used in this subchapter are listed. These include metropolitan planning area, metropolitan planning organization, non-metropolitan area, non-metropolitan local official, TIP, and urbanized area.

Sec. 5213. Metropolitan transportation planning

Subsection (a) describes the general requirements for metropolitan transportation planning. More specifically, it directs MPOs, in cooperation with States and public transportation operators, to develop long-range plans and transportation improvement programs. These plans and Transportation Improvement Programs (TIPs) will encompass all modes of transportation and will be intermodal in nature.

Subsection (b) specifies the method by which MPOs are designated. Every city with a population of more than 50,000 people will have an MPO either by agreement between the Governor and local officials representing at least 75 percent of the affected population or in accordance with State and local law. Each MPO will consist of local officials, officials of major local metropolitan transportation agencies and appropriate State officials. Once an MPO is designated, it will remain so designated until it is redesignated under the procedures outlined in Section 5213(b)(5) or (6).

Subsection (c) describes the methods for determining the boundaries of metropolitan planning areas that do not cross State lines. This subsection is consistent with section 134(c) of title 23, United States Code.

Subsection (d) outlines methods for coordinating the planning process between responsible parties in metropolitan areas spanning two or more states. The Secretary will encourage Governors and members of multi-state MPOs to partake in interstate compacts consenting to cooperate in efforts to mutually assist interstate activities as well as establishing joint transportation agencies. The requirements in current law section 134(d)(4) of title 23, United States Code, regarding coordination of the design and delivery of transportation services provided by recipients of assistance under

chapter 53, title 49 of current law or by government agencies or non-profit organizations are moved to subsection (e)(3).

Subsection (e) involves coordination and consultation between MPOs in the event of jurisdictional conflicts. This must occur in cases in which more than one MPO has jurisdiction over an area or an area is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act. Coordination between MPOs will also occur if a transportation improvement funded by the Highway Trust Fund (HTF) runs through more than one MPO.

Section 5213(e)(3) is a new provision that provides that, if a planned project has a substantial impact outside a single metropolitan planning area or State, or if the project is located in more than one area or State, it will be coordinated directly with the affected MPOs and States. Also, when planning new projects, the Secretary will encourage each MPO to consult with officials involved in planning activities that are affected by transportation in the area. These affected activities include such things as State and local planned growth, economic development, environmental protection, airport operations, and freight movements.

Section (f) outlines the goals and objectives MPOs should strive to attain when planning area transportation projects. Projects should support economic vitality, increase the safety and security of the transportation system, increase accessibility and mobility for both people and freight, protect and enhance the environment, promote integration between the various modes of transportation, as well as maintaining efficiency of the current transportation system. This subsection also states that failure to consider any and all of the objectives described in Section 5213(f)(1) may not be reviewed by any court.

Subsection (g) details the contents of transportation plans and the process MPOs must follow when developing such plans. 5213(g)(1), unlike current law, specifies that MPOs must prepare and update their transportation plans no less frequently than every 4 years. (The current law update cycle is "according to a schedule that the Secretary determines to be appropriate," which has been determined by regulation to be every 3 years in nonattainment or maintenance areas and every 5 years in attainment areas.)

Subsection (h) details the contents of metropolitan transportation improvement programs (TIPs) and the process MPOs must follow when developing TIPs. Included in each TIP should be a funding estimate, a priority project list, a description of each project, and a financial plan. TIPs will be published for public comment. Unlike current law 134(h)(1)(D), this subsection specifically details that TIPs must be updated at least every 4 years, as opposed to every 2 years under current law. Two portions of this subsection are new. The project descriptions 5213(h)(2)(C) and the inclusion of a listing of congestion relief activities 5213(h)(2)(D) as described in section 139(h) of title 23, United States Code.

Subsection (i) involves transportation management areas, which are defined as urbanized areas with a population over 200,000. The transportation plans in these areas are based on a continuing and comprehensive planning process carried out by the MPO. Congestion management is achieved through the use of travel demand reduction and operational management strategies. Congestion relief activities under section 139 of title 23 are also to be used. The Sec-

retary must certify that the planning process for each transportation management area is being carried out in accordance with Federal law no less than every 4 years. This is a change from current law, which mandates certification every 3 years. The Secretary has the authority to withhold up to 20% of the funds attributable to the MPO. 5213(i)(5)(C)(iii) concerning the feasibility of private enterprise participation.

Subsection (j) gives the Secretary the authority to provide an abbreviated transportation plan and a TIP for a metropolitan planning area if deemed appropriate, except if the metropolitan planning area is in nonattainment for ozone or carbon monoxide under the Clean Air Act.

Subsection 134(k) of current law concerning funds for highways and transit being transferred to the Secretary in accordance with title 23 has been deleted, because the transferability provisions contained in section 104(k) of title 23 already apply to all transfers of highway funds to transit, and to the transfer of transit funds to highways.

Subsection (k) is consistent with subsection 134(l) of current law, and states that a metropolitan planning area classified as nonattainment for ozone and carbon monoxide under the Clean Air Act may not receive funds for any highway project that will result in a significant increase in single-occupant vehicles. The only exception would be if the project were addressed through a congestion management process.

Subsection (l) is consistent with subsection 134(m) of current law. This section states that MPOs do not have the authority to impose legal requirements on any transportation facility, provider, or project not eligible under title 23, United States Code or chapter 53 of title 49, United States Code.

Subsection (m) is consistent with section 134(n) of title 23 and specifies that funding for the metropolitan transportation planning shall be provided section 104(f) of title 23 or and under 5338(c) of title 49, United States Code.

Subsection 134(n) is consistent with existing law subsection 5213(n). It restates current methods of review for projects included in plans and programs under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

Sec. 5214. Statewide transportation planning

Subsection 5214(b) is consistent with subsection 135(b) of title 23, but adds the phrase: "with Statewide trade and economic development planning activities and related multi-State planning efforts," after "areas of the State and" to recognize the importance of trade and economic development in each State and with other States; and adds a new paragraph "(2) develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.)

Subsection 5214(c) is a new subsection that allows States to enter into compacts or agreements for the purpose of formal planning cooperation and coordination, since some projects are multistate in nature.

Subsection 5214(d) regarding the scope of the planning process (under existing section 135(c)) is amended by adding the phrase "and implementing projects and services" would after "strategies"

to reflect the concept that not only projects, but also transportation services, are developed through the planning process. In section 5214(d)(1)(A), the term "non-metropolitan areas" is inserted into this factor after "States," to require States to consider economic vitality for rural areas. ("Non-metropolitan areas" have been defined in a recent amendment to the joint FHWA/FTA planning regulations.)

Subsection 5214(f) corresponds to 135(e) in title 23. In subsection 5214(f)(3)(A), after the phrase "users of public transportation" the sentence "representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled" is added to the list of interested parties.

Subsection 5214(g), regarding statewide transportation improvement programs, is consistent with subsection 135(f) of title 23, United States Code. This subsection has been reorganized and includes a few deletions. Section 135(f)(1)(B)(ii)(II) required that States submit to the Secretary, within one year of TEA–21's passage, the details of their consultation process with non-metropolitan officials. This requirement has been accomplished, so the provision has been eliminated. Subsection 5214(g)(4)(H) is a new portion concerning the transportation improvement program reflecting the priorities for congestion relief from section 139 of current law. Subsection 5214(g)(5) combines 135(f)(3)(A) and (B) of current law. This subsection, concerning project selection in areas with populations of less than 50,000 people, adds projects from state-managed public transportation programs authorized under sections 5310, 5311, 5316, and 5317 of title 49, United States Code to the list of projects to be selected from the TIP by the State in consultation with affected local metropolitan transportation officials. Subsection 5214(g)(6) states that the Secretary must approve a transportation improvement program at least every 4 years, as opposed to a biennial review mandated in current law.

In subsection (h), funding for statewide transportation planning is provided under subsection 104(i) of title 23 and under section 5338(c) of title 49, United States Code.

Subsections 5214(i) and 5214(j) are identical to existing law subsections 135(h) and 135(i), respectively.

Sec. 6002. Efficient environmental reviews for project decision-making

This Project Development Procedures section establishes comprehensive project development procedures for projects that require the approval of the U.S. Department of Transportation. These procedures must be followed for all projects that require preparation of an environmental impact statement (EIS) under NEPA and may be followed for any project that involves preparation of an environmental assessment (EA) or categorical exclusion (CE). The decision about whether to use these procedures for EA or CE projects is committed to the discretion of the Secretary of Transportation, acting in consultation with the project sponsor.

Sec. 6003. Policy on historic sites

This section amends section 303 of title 49 and section 138 of title 23 to provide that requirements under such section(s) are deemed to be satisfied if an agreement under section 106 of the Na-

tional Historic Preservation Act concludes that a transportation program or project will not have an adverse effect on an historic site, unless the Advisory Council on Historic Preservation determines that using the section 106 consultation procedure to satisfy the requirements of such sections is inconsistent with the objectives of such Act.

Sec. 6004. Exemption of interstate system

This section provides that the Interstate System itself shall not be considered a historic site for purposes of 23 U.S.C. §138 or 49 U.S.C. §303(c)—the laws commonly known as "Section 4(f)." This section allows individual elements of the Interstate System to be considered historic sites for purposes of Section 4(f), if those elements possess an independent feature of historic significance.

It clarifies that a state is able to carry out construction, maintenance, restoration, and rehabilitation activities for such elements after complying with section 303 of title 49 or section 138 of title 23, as applicable, and section 106 of the National Historic Preservation Act.-

TITLE VII—HAZARDOUS MATERIALS TRANSPORTATION

Sec. 7001. Amendment of Title 49, United States Code

This section establishes that any reference to a section or other provision shall be considered a section or provision of title 49, United States Code, unless otherwise specified.

Sec. 7002. Findings and purpose

This section establishes the Congressional findings of the hazardous materials title, and updates and clarifies the purpose of chapter 51.

Sec. 7003. Definitions

This section modifies the definition of "commerce" to include transportation on a U.S.-registered aircraft anywhere in the world. This section also defines the term "Secretary" as the Secretary of Transportation, except where otherwise indicated.

Sec. 7004. General regulatory authority

This section updates the terminology used to describe the materials the Secretary should designate as hazardous, as well as the terminology describing the transportation, and transportation-related, activities regulated by the DOT. This section amends current law to ensure that persons who design and inspect packages (or components of packages) are subject to the hazardous materials regulations. This section also clarifies that the hazardous materials regulations apply to persons who prepare or accept hazardous materials for transportation in commerce.

Sec. 7005. Chemical or biological materials

This section requires the Secretary to develop uniform standards governing the collection of information, transmission and review of the information for completing background checks on individuals transporting hazardous materials, and notification to those individuals of the results of the background checks. It also requires that

drivers from Canada and Mexico who are transporting hazardous materials in the U.S. undergo similar background checks as those conducted on U.S. drivers who transport hazardous materials.

Sec. 7006. Representation and tampering

This section updates the language in current law without changing the scope of the law.

Sec. 7007. Technical amendments

This section provides technical amendments to update the terminology in current law.

Sec. 7008. Training of certain employees

This section amends section 5107(f) of current law (redesignated in the bill as section 5107(g)) by deleting the reference to section 5108(a)–(g)(1) and (h), and section 5109, but retains the provision in current law that states that an action of the Secretary under subsections (a)–(d) of this section and section 5106 of this title is not an exercise of statutory authority, under section 4(b)(1) of the Occupational Safety and Health Act of 1970, to prescribe or enforce standards or regulations affecting occupational safety or health.

This section also codifies the existing practice of providing hazardous materials training to maintenance-of-way employees and railroad signalmen.

Sec. 7009. Registration

This section amends the current law to include those persons who design and inspect hazardous materials packages, or package components, as persons required to register with the Secretary. This change is consistent with the updated language in Section 7004 concerning persons who are subject to the hazardous materials regulations.

Section 5108(g) is amended to require the Secretary to establish and collect a registration fee sufficient to cover the costs of processing the registration and that the Secretary must collect a fee at least large enough to cover processing costs from all entities otherwise exempted from paying the registration fee. This section reduces the maximum fee the Secretary may assess from $5,000 to $3,000.

This section also requires the Administrator of RSPA to transmit the annual registration information required in section 5108 for motor carriers to the FMCSA. The Committee intends to ensure that FMCSA has the most up-to-date information on motor carriers that transport hazardous materials and expects the transmittal of information to be done as expeditiously as possible.

Sec. 7010. Providing shipping papers

This section requires that each person who prepares a shipping paper must make the disclosures that the Secretary prescribes by regulation.

This section amends section 5110 to extend the time period shippers and carriers are required to retain shipping papers. Under current law, shippers and carriers are required to retain the shipping papers for one year after the hazardous material is no longer in transportation. This section requires shippers and carriers to re-

tain shipping paper for two years after the shipping paper is prepared.

Sec. 7011. Rail tank cars

This section repeals section 5111, which permits a rail car built before January 1, 1971, to be used for hazardous materials transportation only if the air brake equipment support attachments of the car comply with the standard for attachments contained in 49 CFR 179.100–16 and 179.200–19.

Sec. 7012. Unsatisfactory safety ratings

This section amends section 5113 to provide that a motor carrier owner or operator transporting hazardous materials in commerce who, upon review of an unfavorable fitness determination, is determined by the Secretary to be "unfit" is subject to the civil penalties in section 5123 and the criminal penalties set forth in section 5124.

Sec. 7013. Training curriculum for the public sector

This section updates the training curriculum to include appropriate emergency response training and planning programs developed with all Federal assistance, not just those under Federal grant programs.

This section also makes the Secretary responsible for distribution and publication of the training curriculum.

Sec. 7014. Planning and training grants, monitoring, and review

This section amends section 5116(b)(4) to require the Secretary to consider the report established in section 7022 of this bill when determining a State or Indian tribes' emergency response funding needs.

This section also establishes the Secretary of Transportation as the lead for monitoring public sector emergency response planning and training. It also establishes a new account within the Treasury specifically for hazardous materials emergency preparedness.

This section also allows the Secretary to use funds collected from the annual registration fees to publish and distribute the Emergency Response Guidebook.

Sec. 7015. Special permits and exclusions

This section would clarify that the Secretary may issue a special permit to any person who performs a function regulated under section 5103(b)(1).

This section would increase the maximum renewal period of special permits from two years to four years, except that special permits issued related to highway routing of hazardous materials are only renewable for a two-year period.

Sec. 7016. Uniform forms and procedures

This section requires the Secretary to establish a working group to develop uniform forms and procedures for States to register and issue permits to persons who transport, or cause to be transported, hazardous materials in the State. The working group is required to develop a report of its recommendations for the Secretary to consider when issuing regulations to carry out a uniform State reg-

istration system. The working group is prohibited from proposing to limit any fee that a State may impose or collect.

Sec. 7017. International uniformity of standards and requirements

This section amends current law to reflect that the Secretary may have additional international requirements, in addition to current international standards, that need to be met.

Sec. 7018. Administrative

This section amends section 5121 to provide for enhanced authority to discover hidden shipments of hazardous materials and to clarify and enhance the inspection and enforcement authority of DOT officials and inspection personnel, thereby enabling them to more effectively identify hazardous materials shipments and to determine whether those shipments are made in accordance with the hazardous materials regulations. This proposal would expand DOT inspection authority to authorize a designated DOT officer or employee to: access, open, and examine a package (except for the packaging immediately adjacent to the hazardous materials contents) offered for or in transportation when the officer or employee has an objectively reasonable and articulable belief that the package may contain a hazardous material; remove from transportation a package or related packages in a shipment when the officer or employee has an objectively reasonable and articulable belief that the package or packages may pose an imminent hazard and contemporaneously documents that belief; gather information from the shipper, packaging manufacturer or retester, or others responsible for the package to determine the nature and hazards of the contents of the package; as necessary, order the shipper, packaging manufacturer or retester, or others responsible for the package to have the package transported to, opened, and the contents analyzed at an appropriate facility; and authorize properly qualified personnel to assist in the package opening and examination when safety might otherwise be compromised.

This section also amends current law to require the Secretary to develop procedures to assist in the safe resumption of transportation of the package and transport unit when an inspection or investigation does not result in discovery of an imminent hazard. This section directs the Secretary to develop expedited procedures for hazardous materials that are perishable.

The Committee believes strongly that DOT officials, law enforcement and inspection personnel must have the tools necessary to accurately determine whether hazardous materials are being transported safely and in accordance with the relevant law and regulations. To that end, the Committee supports the use of new technologies, such as the Hazmat Trucking Enforcer, that enable inspectors to conduct hazardous materials inspections in a more effective manner and to respond swiftly to any incident involving hazardous materials. The Committee notes that States must be in substantial compliance with a number of requirements under 49 U.S.C. 31102 as a condition of receiving MCSAP funding, including requirements to deploy technology to enhance the efficiency and effectiveness of commercial motor vehicle safety programs under 49 U.S.C 31102(b)(1)(A), as amended.

This section would also repeal a requirement that the Secretary maintain 30 hazardous materials safety inspectors more than the number authorized at the end of fiscal year 1990. The RSPA currently maintains inspectors in excess of this requirement.

Sec. 7019. Enforcement

This section amends section 5122 to clarify the types of judicial relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties, available to be granted in an action brought by the Attorney General. Subsection (b) is amended for clarity by changing the word "ameliorate" to "mitigate."

Sec. 7020. Civil penalty

This section amends section 5123 to increase the maximum civil penalty from $27,500 to $50,000 for each violation of a law or regulation under Chapter 51. In those cases resulting in death, serious illness, severe injury to any person, or substantial destruction of property, the Secretary would be able to increase the maximum penalty to $100,000.

Sec. 7021. Criminal penalty

Section 5124 would be revised to include a new "reckless" standard and to define the "knowing," "reckless," and "willful" mental-state standards necessary to establish a criminal violation. Section 5124(a) would be amended to provide that a person who knowingly, willfully, or recklessly violates chapter 51 or a regulation, order, special permit, or approval issued under that chapter, is subject to a fine imposed under title 18 and/or imprisonment of not more than 5 years. In cases where a violation involves the release of a hazardous material that results in death or bodily injury to any person, the maximum term of imprisonment is 10 years.

Section 5124(c) defines a "willful" violation as when the person has knowledge of the facts giving rise to the violation and the person has knowledge that the conduct was unlawful.

Section 5124(d) defines a "reckless" violation as when a person displays a deliberate indifference or conscious disregard for the consequences of his or her conduct.

Sec. 7022. Preemption

This section strikes section 5125(f) regarding judicial review. Judicial review is addressed by the revisions provided in section 7024 of this bill.

This section also adds language to ensure that when the preemption test required by this section is conducted, each requirement is independent in their application to the State or Indian tribe.

Sec. 7023. Relationship to other laws

This section updates the language in the current law without changing the scope.

Sec. 7024. Judicial review

This section adds a new section 5127 providing for judicial review of final actions taken by the Secretary under chapter 51. This provision establishes the appropriate judicial forum for review of

final agency actions in the areas of compliance, enforcement, civil penalties, rulemaking, and preemption.

Under this proposal, the U.S. Court of Appeals for the District of Columbia or the U.S. Court of Appeals for the U.S. circuit in which a person seeking review resides or has his or her principal place of business would review the final action. The petition for review must be filed within 60 days after issuance of the order. The section describes judicial procedures, the authority of the court, and a requirement for prior objection.

Sec. 7025. Authorization of appropriations

This section provides funding for the DOT to implement the programs and grants established and required in chapter 51 for fiscal years 2004 through 2007.

Sec. 7026. Determining amount of undeclared shipments of hazardous materials entering the United States

This section requires the GAO to conduct a study to propose methods to determine the amount of undeclared shipments of hazardous materials entering the United States.

Sec. 7027. Conforming amendments

This section provides conforming amendments necessary for the changes made in Title VII.

TITLE VIII—TRANSPORTATION DISCRETIONARY SPENDING GUARANTEE

Sec. 8001. Policy

This section retains the principles of guaranteed funding levels and budgetary firewalls for the federal-aid highways program, Federal Motor Carrier Safety Administration, the trust fund portion of the National Highway Traffic Safety Administration, and the general fund and trust fund portion of the Federal Transit Administration.

The Committee ordered the bill reported with the expectation that additional language would be proposed jointly by the Committee on Transportation and Infrastructure and the Committee on the Budget to address RABA and to propose a new approach to RABA that would prevent future wide fluctuations in adjustments each year.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

H.R. 3550 was introduced by Chairman Don Young, Ranking Minority Member Jim Oberstar, Subcommittee Chairman Tom Petri, and Subcommittee Ranking Minority Member William Lipinski and 69 cosponsors on November 20, 2003 and referred to the Committee on Transportation and Infrastructure. The Committee on Transportation and Infrastructure met on March 24, 2004 and adopted by voice vote, an amendment in the nature of a substitute offered by Subcommittee Chairman Tom Petri. Subsequently by unanimous voice vote, the Committee approved and ordered the bill favorably reported to the House.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each roll call vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report. Such a cost estimate will be included in a supplemental report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office that will be included in a supplemental report.
2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to provide for a safe, efficient, and improved surface transportation system.
3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee references the cost estimate for H.R. 3550 from the Director of the Congressional Budget Office that will be included in a supplemental report.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee will provide the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act in a supplemental report. (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 3550 does not preempt any state, local, or tribal law.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act. (Public Law 104–1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 23, UNITED STATES CODE

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HIGHWAYS

Chap. Sec.
1. Federal-Aid Highways 101

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[5. Research and Technology ..... 501]
5. Research, Technology, and Education 501
6. Infrastructure and Finance 601

CHAPTER 1—FEDERAL-AID HIGHWAYS

[SUBCHAPTER I—GENERAL PROVISIONS]

Sec.
101. Definitions and declaration of policy.

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139. Motor vehicle congestion relief.

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150. Deployment of intelligent transportation systems.

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165. Construction of ferry boats and ferry terminal facilities.
166. Transportation systems management and operations.
167. HOV facilities.

* * * * * * *

[SUBCHAPTER II—INFRASTRUCTURE FINANCE

[181. Definitions.
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[SUBCHAPTER I—GENERAL PROVISIONS]

§ 101. Definitions and declaration of policy

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

(1) * * *

* * * * * * *

(3) CONSTRUCTION.—The term "construction" means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a highway, including bond costs and other costs relating to the issuance in accordance with section 122 of bonds or other debt financing instruments and costs incurred by the State in performing Federal-aid project related audits that directly benefit the Federal-aid highway program. Such term includes—

(A) * * *

* * * * * * *

(G) improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; [and]

(H) capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses[.]*; and*

(I) surface transportation workforce development, training, and education.

* * * * * * *

(17) OPERATING COSTS FOR TRAFFIC MONITORING, MANAGEMENT, AND CONTROL.—The term "operating costs for traffic monitoring, management, and control" includes labor costs, administrative costs, costs of utilities and rent, and other costs associated with *transportation systems management and operations and* the continuous operation of traffic control, such as integrated traffic control systems, incident management programs, and traffic control centers.

(18) OPERATIONAL IMPROVEMENT.—The term "operational improvement"—

(A) means (i) a capital improvement for *transportation systems management and operations, including* installation of traffic surveillance and control equipment, computerized signal systems, motorist information systems, integrated traffic control systems, incident management programs, *equipment and programs for transportation response to natural disasters,* and transportation demand management facilities, strategies, and programs, and (ii) such other capital improvements to public roads as the Secretary may designate, by regulation; and

* * * * * * *

(30) SAFETY IMPROVEMENT PROJECT.—The term "safety improvement project" means a project that corrects or improves high hazard locations, eliminates roadside obstacles, improves highway signing and pavement marking, installs priority control systems for emergency vehicles at signalized intersections,

installs or replaces emergency motorist aid call boxes, *installs fluorescent, yellow-green signs at pedestrian or bicycle crossings or school zones,* or installs traffic control or warning devices at locations with high accident potential.

* * * * * * *

[(2)**]** *(38)* MOTOR VEHICLE.—The term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public *streets, roads, and* highways, but does not include a vehicle operated exclusively on a rail or rails.

(39) TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.—

(A) IN GENERAL.—The term "transportation systems management and operations" means an integrated program to optimize the performance of existing infrastructure through the implementation of multimodal and intermodal, cross-jurisdictional systems, services, and projects designed to preserve capacity and improve the security, safety, and reliability of Federal-aid highways.

(B) INCLUDED ACTIVITIES AND IMPROVEMENTS.—The term includes regional operations collaboration and coordination activities between transportation and public safety agencies and improvements such as traffic detection and surveillance, arterial management, freeway management, demand management, work zone management, emergency management, electronic toll collection, automated enforcement, traffic operations measures to improve capacity, traffic signal coordination, optimization of traffic signal timing, traffic incident management, roadway weather management, traveler information services, commercial vehicle operations, traffic control, freight management, and coordination of highway, rail, transit, bicycle, and pedestrian operations.

(b) It is hereby declared to be in the national interest to accelerate the construction of the Federal-aid highway systems, including the National System of Interstate and Defense Highways, since many of such highways, or portions thereof, are in fact inadequate to meet the needs of local and interstate commerce, for the national and civil defense.

* * * * * * *

[It is further declared that since the Interstate System is now in the final phase of completion it shall be the national policy that increased emphasis be placed on the construction and reconstruction of the other Federal-aid systems in accordance with the first paragraph of this subsection, in order to bring all of the Federal-aid systems up to standards and to increase the safety of these systems to the maximum extent.**]** *It is further declared that it is in the national interest to preserve and enhance the Dwight D. Eisenhower National System of Interstate and Defense Highways to meet the Nation's needs for the 21st century. The current urban and long distance personal travel and freight movement demands have surpassed the vision of the original Interstate System and travel demand patterns are expected to change. Continued planning for and investment in the Interstate System is critical to assure it adequately meets the changing travel demands of the future. Among the*

foremost needs that the Interstate System must provide are safe, efficient, and reliable (1) national and interregional personal mobility, (2) flow of interstate commerce, and (3) travel movements essential for national security. To the maximum extent, actions under this title should address congestion, safety, and freight transportation to provide for a strong and vigorous national economy. The Interstate System is hereby declared to be the Nation's premiere highway system, essential for the Nation's economic vitality, national security, and general welfare. The Secretary of Transportation is directed to take appropriate actions to preserve and enhance the Interstate System to meet the needs of the 21st century in accordance with this title.

* * * * * * *

§ 102. Program efficiencies

[(a) HOV PASSENGER REQUIREMENTS.—

[(1) IN GENERAL.—A State transportation department shall establish the occupancy requirements of vehicles operating in high occupancy vehicle lanes; except that no fewer than 2 occupants per vehicle may be required and, subject to section 163 of the Surface Transportation Assistance Act of 1982, motorcycles and bicycles shall not be considered single occupant vehicles.

[(2) EXCEPTION FOR INHERENTLY LOW-EMISSION VEHICLES.—Notwithstanding paragraph (1), before September 30, 2003, a State may permit a vehicle with fewer than 2 occupants to operate in high occupancy vehicle lanes if the vehicle is certified as an Inherently Low-Emission Vehicle pursuant to title 40, Code of Federal Regulations, and is labeled in accordance with, section 88.312–93(c) of such title. Such permission may be revoked by the State should the State determine it necessary.]

[(b)] *(a)* ACCESS OF MOTORCYCLES.—No State or political subdivision of a State may enact or enforce a law that applies only to motorcycles and the principal purpose of which is to restrict the access of motorcycles to any highway or portion of a highway for which Federal-aid highway funds have been utilized for planning, design, construction, or maintenance. Nothing in this subsection shall affect the authority of a State or political subdivision of a State to regulate motorcycles for safety.

[(c)] *(b)* ENGINEERING COST REIMBURSEMENT.—If on-site construction of, or acquisition of right-of-way for, a highway project is not commenced within [10 years (or such longer period as the State requests and the Secretary determines to be reasonable) after] *10 years (or such longer period as the State requests and the Secretary determines to be reasonable) after* the date on which Federal funds are first made available, out of the Highway Trust Fund (other than Mass Transit Account), for preliminary engineering of such project, the State shall pay an amount equal to the amount of Federal funds made available for such engineering. The Secretary shall deposit in such Fund all amounts paid to the Secretary under this section.

* * * * * * *

§ 103. Federal-aid systems

(a) * * *

(b) NATIONAL HIGHWAY SYSTEM.—

(1) * * *

* * * * * * *

(6) ELIGIBLE PROJECTS FOR NHS.—Subject to approval by the Secretary, funds apportioned to a State under section 104(b)(1) for the National Highway System may be obligated for any of the following:

(A) * * *

* * * * * * *

(Q) Capital, operating, and systems maintenance costs for transportation systems management and operations.

(c) INTERSTATE SYSTEM.—

(1) * * *

* * * * * * *

(5) EXEMPTION OF INTERSTATE SYSTEM.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Interstate System shall not be considered to be a historic site under section 303 of title 49 or section 138 of this title, regardless of whether the Interstate System or portions of the Interstate System are listed on, or eligible for listing on, the National Register of Historic Places.

(B) INDIVIDUAL ELEMENTS.—Subject to subparagraph (C), a portion of the Interstate System that possesses an independent feature of historic significance (such as a historic bridge or a highly significant engineering feature) that is listed on, or eligible for listing on, the National Register of Historic Places, shall be considered to be a historic site under section 303 of title 49 or section 138 of this title, as applicable.

(C) CONSTRUCTION, MAINTENANCE, RESTORATION, AND REHABILITATION ACTIVITIES.—Subparagraph (B) does not prohibit a State from carrying out construction, maintenance, restoration, or rehabilitation activities for a portion of the Interstate System referred to in subparagraph (B) upon compliance with section 303 of title 49 or section 138 of this title, as applicable, and section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f).

(d) TRANSFER OF INTERSTATE CONSTRUCTION FUNDS.—

(1) INTERSTATE CONSTRUCTION FUNDS NOT IN SURPLUS.—

(A) * * *

(B) EFFECT OF TRANSFER.—Upon transfer of an amount under subparagraph (A), the construction on which the amount is based, as included in the most recent Interstate System cost estimate, shall not be eligible for funding under section 104(b)(5)(A) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) or 118(c).

* * * * * * *

§ 104. Apportionment

(a) ADMINISTRATIVE EXPENSES.—

[(1) IN GENERAL.—Whenever an apportionment is made of the sums made available for expenditure on each of the surface transportation program under section 133, the bridge program under section 144, the congestion mitigation and air quality improvement program under section 149, the Interstate and National Highway System program, the minimum guarantee program under section 105, the Federal lands highway program under section 204, or the Appalachian development highway system program under section 14501 of title 40, the Secretary shall deduct a sum, in an amount not to exceed—

[(A) 1⅙ percent of all sums so made available, as the Secretary determines necessary—

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

[(ii) to make transfers of such sums as the Secretary determines to be appropriate to the Appalachian Regional Commission for administrative activities associated with the Appalachian development highway system; and

[(B) one-third of 1 percent of all sums so made available, as the Secretary determines necessary, to administer the provisions of law to be financed from appropriations for motor carrier safety programs and motor carrier safety research.

[(2) CONSIDERATION OF UNOBLIGATED BALANCES.—In making the determination described in paragraph (1), the Secretary shall take into account the unobligated balance of any sums deducted under this subsection in prior fiscal years.]

(1) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for purposes described in paragraph (2) $390,000,000 for fiscal year 2004, $395,000,000 for fiscal year 2005, $395,000,000 for fiscal year 2006, $395,000,000 for fiscal year 2007, $395,000,000 for fiscal year 2008, and $400,000,000 for fiscal year 2009.

(2) USE OF FUNDS.—The amounts authorized to be appropriated by paragraph (1) are authorized for the following purposes:

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

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

(3) AVAILABILITY.—The [sum deducted under] *amounts authorized to be appropriated by* paragraph (1) shall remain available until expended.

(4) LIMITATION ON TRANSFERABILITY.—Unless expressly authorized by law, the Secretary may not transfer any [sums deducted under] *amounts authorized to be appropriated by* para-

graph (1) to a Federal agency or entity other than the Federal Highway Administration [and the Federal Motor Carrier Safety Administration].

(b) APPORTIONMENTS.—On October 1 of each fiscal year, the Secretary, after making [the deduction authorized by subsection (a) and] the set-aside authorized by subsection (f), shall apportion the remainder of the sums authorized to be appropriated for expenditure on the Interstate and National Highway System program, the Congestion Mitigation and Air Quality Improvement program, and the Surface Transportation program for that fiscal year, among the several States in the following manner:

(1) NATIONAL HIGHWAY SYSTEM COMPONENT.—

(A) IN GENERAL.—For the National Highway System (excluding funds apportioned under paragraph (4)), [$36,400,000 for each fiscal year] *$40,000,000 for fiscal year 2004, $40,000,000 for fiscal year 2005, $40,000,000 for fiscal year 2006, $50,000,000 for fiscal year 2007, $50,000,000 for fiscal year 2008, and $50,000,000 for fiscal year 2009* to the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands, [$18,800,000 for each of fiscal years 1998 through 2002] *$20,000,000 for fiscal year 2004 and $30,000,000 for each of fiscal years 2005 through 2009* for the Alaska Highway, and the remainder apportioned as follows:

(i) * * *

* * * * * * *

(d) OPERATION LIFESAVER AND HIGH SPEED RAIL CORRIDORS.—

(1) OPERATION LIFESAVER.—Before making an apportionment under [subsection (b)(3) of this section] *section 130(f)* for a fiscal year, the Secretary shall set aside [$500,000] *$600,000* for such fiscal year for carrying out a public information and education program to help prevent and reduce motor vehicle accidents, injuries, and fatalities and to improve driver performance at railway-highway crossings.

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

(A) IN GENERAL.—Before making an apportionment of funds under subsection (b)(3) for a fiscal year, the Secretary shall set aside [$5,250,000] *$7,500,000 for each of fiscal years 2004 and 2005, $10,000,000 for each of fiscal years 2006 and 2007, and $15,000,000 for each of fiscal years 2008 and 2009* of the funds made available for the surface transportation program for the fiscal year for elimination of hazards of railway-highway crossings.

* * * * * * *

(E) CERTAIN IMPROVEMENTS.—[Not less than $250,000 of such set-aside] *Of such set-aside, not less than $875,000 for each of fiscal years 2004 and 2005, $1,500,000 for each of fiscal years 2006 and 2007, and $2,750,000 for each of fiscal years 2008 and 2009* shall be available [per fiscal year] for eligible improvements to the Minneapolis/St.

Paul-Chicago segment of the Midwest High Speed Rail Corridor.

* * * * * * *

(f) METROPOLITAN PLANNING.—

(1) SET-ASIDE.—On October 1 of each fiscal year, the Secretary[, after making the deduction authorized by subsection (a) of this section,] shall set aside not to exceed 1 percent of the [remaining] funds authorized to be appropriated for expenditure upon programs authorized under this title, for the purpose of carrying out the requirements of section 134 of this title.

* * * * * * *

(4) DISTRIBUTION OF FUNDS WITHIN STATES.—The distribution within any State of the planning funds made available to agencies under paragraph (3) of this subsection shall be in accordance with a formula developed by each State and approved by the Secretary which shall consider but not necessarily be limited to, population, status of planning, attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of section 134 and other applicable requirements of Federal law. *Such distribution of funds to metropolitan planning organizations shall be made within 30 days of the date of receipt of such funds from the Secretary.*

* * * * * * *

(h) RECREATIONAL TRAILS PROGRAM.—

(1) ADMINISTRATIVE COSTS.—Whenever an apportionment is made of the sums authorized to be appropriated to carry out the recreational trails program under section 206, the Secretary shall deduct an amount, not to exceed 1½ percent of the sums authorized, to cover the cost to the Secretary for administration of and [research and technical assistance under the recreational trails program and for administration of the National Recreational Trails Advisory Committee] *research, technical assistance, and training under the recreational trails program*. The Secretary may enter into contracts with for-profit organizations or contracts, partnerships, or cooperative agreements with other government agencies, institutions of higher learning, or nonprofit organizations to perform these tasks.

* * * * * * *

(i) AUDITS OF HIGHWAY TRUST FUND.—From administrative funds [deducted] *authorized to be appropriated* under subsection (a), the Secretary may reimburse the Office of Inspector General of the Department of Transportation for the conduct of annual audits of financial statements in accordance with section 3521 of title 31.

* * * * * * *

§ 105. Minimum guarantee

(a) GENERAL RULE.—For each of fiscal years [1998 through 2003] *2004 through 2009*, the Secretary shall allocate among the States amounts sufficient to ensure that each State's percentage of

the total apportionments for such fiscal year of Interstate maintenance, national highway system, bridge, congestion mitigation and air quality improvement, surface transportation, metropolitan planning, minimum guarantee[, high priority projects], Appalachian development highway system, [and recreational trails] *recreational trails, coordinated border infrastructure, freight intermodal connectors, safe routes to school, highway safety improvement, and high risk rural road safety improvement* programs shall equal the percentage listed for each State in subsection (b). The minimum amount allocated to a State under this section for a fiscal year shall be $1,000,000.

* * * * * * *

(c) TREATMENT OF FUNDS.—

(1) PROGRAMMATIC DISTRIBUTION.—The Secretary shall apportion the amounts made available under this section that exceed [$2,800,000,000] *$2,870,000,000 in fiscal year 2004, $2,941,750,000 in fiscal year 2005, $3,015,293,750 in fiscal year 2006, $3,090,676,094 in fiscal year 2007, $3,167,942,996 in fiscal year 2008, and $3,247,141,571 in fiscal year 2009* so that the amount apportioned to each State under this paragraph for each program referred to in subsection (a) (other than metropolitan planning, minimum guarantee[, high priority projects], Appalachian development highway system, [and recreational trails] *recreational trails, coordinated border infrastructure, freight intermodal connectors, safe routes to school, highway safety improvement, and high risk rural road safety improvement* programs) is equal to the amount determined by multiplying the amount to be apportioned under this paragraph by the ratio that—

(A) the amount of funds apportioned to each State for each program referred to in subsection (a) (other than metropolitan planning, minimum guarantee, high priority projects, Appalachian development highway system, [and recreational trails] *recreational trails, coordinated border infrastructure, freight intermodal connectors, safe routes to school, highway safety improvement, and high risk rural road safety improvement* programs) for a fiscal year; bears to

* * * * * * *

(d) AUTHORIZATION.—There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to carry out this section for each of fiscal years [1998 through 2003] *2004 through 2009*.

[(e) SPECIAL RULE.—If in any of fiscal years 1999 through 2003, the amount authorized under subsection (d) is more than 30 percent higher than the amount authorized under subsection (d) in fiscal year 1998, the Secretary shall use the apportionment factors under sections 104 and 144 as in effect on the date of enactment of this section.]

[(f)] *(e)* GUARANTEE [OF 90.5] *SPECIFIED* RETURN.—

(1) IN GENERAL.—Before making any apportionment under this title for each of fiscal years [1999 through 2003] *2004 through 2009*, the Secretary, subject to paragraph (2), shall adjust the percentages in the table in subsection (b) to reflect the

estimated percentage of estimated tax payments attributable to highway users in each State paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data is available, to ensure that no State's percentage return from such Trust Fund is less than 90.5 percent.

* * * * * * *

§ 106. Project approval and oversight

(a) * * *

* * * * * * *

(h) FINANCIAL PLAN.—A recipient of Federal financial assistance for a project under this title with an estimated total cost of [$1,000,000,000] *$500,000,000* or more shall submit to the Secretary an annual financial plan for the project. The plan shall be based on detailed annual estimates of the cost to complete the remaining elements of the project and on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project.

(i) USE OF EXCESS FUNDS.—

(1) AUDITS.—A State may audit projects funded with amounts apportioned under sections 104 and 144 to determine whether any amounts obligated for a project are excess funds.

(2) PLANS FOR USE OF EXCESS FUNDS.—If a State determines, after conducting an audit under paragraph (1), that funds obligated for a project are excess funds, the State may develop a plan for obligating the funds for the design and construction of one or more projects that are eligible for funding under the program for which the funds were originally apportioned.

(3) CERTIFICATION TO THE SECRETARY.—A State that has developed a plan under paragraph (2) shall transmit to the Secretary a certification that the State has conducted an audit under paragraph (1) and developed the plan in accordance with paragraph (2).

(4) IMPLEMENTATION OF PLANS.—After transmitting a certification to the Secretary with respect to a plan under paragraph (3), the State may carry out the plan.

(5) APPLICABILITY OF REQUIREMENTS.—Excess funds used to carry out a project under this section shall be subject to the requirements of this title that are applicable to the program for which the funds were originally apportioned.

(6) EXCESS FUNDS DEFINED.—In this subsection, the term "excess funds" means funds obligated for a project that remain available for the project after the project has been completed.

* * * * * * *

§ 109. Standards

(a) * * *

* * * * * * *

[(e) No funds]

(e) INSTALLATION OF SAFETY DEVICES.—

(1) HIGHWAY AND RAILROAD GRADE CROSSINGS AND DRAWBRIDGES.—No funds shall be approved for expenditure on any Federal-aid highway, or highway affected under chapter 2 of

this title, unless proper safety protective devices complying with safety standards determined by the Secretary at that time as being adequate shall be installed or be in operation at any highway and railroad grade crossing or drawbridge on that portion of the highway with respect to which such expenditures are to be made.

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

* * * * * * *

§ 110. Revenue aligned budget authority

(a) * * *

(b) GENERAL DISTRIBUTION.—The Secretary shall—

(1) determine the ratio that—

(A) the sums authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for each of the **[**for**]** Federal-aid highway and highway safety construction programs (other than the minimum guarantee program) and the motor carrier safety grant program for which funds are allocated from such Trust Fund by the Secretary under this title, the Transportation Equity Act for the 21st Century, and subchapter I of chapter 311 of title 49 for a fiscal year, bears to

* * * * * * *

§ 112. Letting of contracts

(a) * * *

(b) BIDDING REQUIREMENTS.—

(1) * * *

* * * * * * *

(3) DESIGN-BUILD CONTRACTING.—

(A) * * *

* * * * * * *

[(C) QUALIFIED PROJECTS.—A qualified project referred to in subparagraph (A) is a project under this chapter for which—

[(i) the Secretary has approved the use of design-build contracting described in subparagraph (A) under criteria specified in regulations issued by the Secretary; and

[(ii) the total costs are estimated to exceed—

[(I) in the case of a project that involves installation of an intelligent transportation system, $5,000,000; and

[(II) in the case of any other project, $50,000,000.**]**

(C) QUALIFIED PROJECTS.—A qualified project referred to in subparagraph (A) is a project under this chapter for which the Secretary has approved the use of design-build contracting under criteria specified in regulations issued by the Secretary.

(D) EXPERIMENTAL PROCUREMENT.—As part of any experimental program carried out under this section, the Secretary shall evaluate the use of procurement procedures under this paragraph where subjective evaluation criteria account for the majority of the selection determination.

(E) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as effecting the authority to carry out any experimental program concerning design-build contracting that is being carried out by the Secretary on the date of enactment of this subparagraph.

(F) REPORT.—Not later than 3 years after the date of enactment of this subparagraph, the Secretary shall transmit to Congress a report on the effectiveness of design-build contracting procedures in which the majority of the selection determinations are made based on subjective criteria in accordance with subparagraph (D).

[(D)**]** *(G)* DESIGN-BUILD CONTRACT DEFINED.—In this paragraph, the term "design-build contract" means an agreement that provides for design and construction of a project by a contractor, regardless of whether the agreement is in the form of a design-build contract, a franchise agreement, or any other form of contract approved by the Secretary.

* * * * * * *

[(f) The provisions of this section shall not be applicable to contracts for projects on the Federal-aid secondary system in those States where the Secretary has discharged his responsibility pursuant to section 117 of this title, except where employees of a political subdivision of a State are working on a project outside of such political subdivision.**]**

[(g)**]** *(f)* SELECTION PROCESS.—A State may procure, under a single contract, the services of a consultant to prepare any environmental impact assessments or analyses required for a project, including environmental impact statements, as well as subsequent engineering and design work on the project if the State conducts a review that assesses the objectivity of the environmental assessment, environmental analysis, or environmental impact statement prior to its submission to the Secretary.

(g) TEMPORARY TRAFFIC CONTROL DEVICES.—

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

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

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

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

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

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

* * * * * * *

§ 114. Construction

(a) CONSTRUCTION WORK IN GENERAL.—The construction of any highways or portions of highways located on a Federal-aid system shall be undertaken by the respective State transportation departments or under their direct supervision. [Except as provided in section 117 of this title, such] *Such* construction shall be subject to the inspection and approval of the Secretary. The construction work and labor in each State shall be performed under the direct supervision of the State transportation department and in accordance with the laws of that State and applicable Federal laws. Construction may be begun as soon as funds are available for expenditure pursuant to subsection (a) of section 118 of this title. After July 1, 1973, the State transportation department shall not erect on any project where actual construction is in progress and visible to highway users any informational signs other than official traffic control devices conforming with standards developed by the Secretary of Transportation.

* * * * * * *

(c) CONSTRUCTION WORK IN ALASKA.—

(1) IN GENERAL.—The Secretary shall ensure that a worker who is employed on a remote project for the construction of a highway or portion of a highway located on a Federal-aid system in the State of Alaska and who is not a domiciled resident of the locality shall receive meals and lodging.

(2) LODGING.—The lodging under paragraph (1) shall be in accordance with section 1910.142 of title 29, Code of Federal Regulations (relating to temporary labor camp requirements).

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

(A) REMOTE.—The term "remote", as used with respect to a project, means that the project is 75 miles or more from the United States Post Office in either Fairbanks, Anchorage, Juno, or Ketchikan, Alaska, or is inaccessible by road in a 2-wheel drive vehicle.

(B) RESIDENT.—The term "resident", as used with respect to a project, means a person living within 75 miles of the midpoint of the project for at least 12 months.

* * * * * * *

§ 116. Maintenance

(a) * * *

(b) In any State wherein the State transportation department is without legal authority to maintain a project constructed on the Federal-aid secondary system, or within a municipality, such [highway department] *transportation department* shall enter into a formal agreement for its maintenance with the appropriate officials of the county or municipality in which such project is located.

* * * * * * *

§ 117. High priority projects program

(a) AUTHORIZATION OF HIGH PRIORITY PROJECTS.—The Secretary is authorized to carry out high priority projects with funds made available to carry out the high priority projects program under this section. Of amounts made available to carry out this section, the Secretary, subject to subsection (b), shall make available to carry out each project described in section [1602 of the Transportation Equity Act for the 21st Century] *1701 of the Transportation Equity Act: A Legacy for Users* the amount listed for such project in such section. Any amounts made available to carry out such program that are not allocated for projects described in such section shall be available to the Secretary, subject to subsection (b), to carry out such other high priority projects as the Secretary determines appropriate.

(b) ALLOCATION PERCENTAGES.—For each project to be carried out with funds made available to carry out the high priority projects program under this section—

[(1) 11 percent of such amount shall be available for obligation beginning in fiscal year 1998;

[(2) 15 percent of such amount shall be available for obligation beginning in fiscal year 1999;

[(3) 18 percent of such amount shall be available for obligation beginning in fiscal year 2000;

[(4) 18 percent of such amount shall be available for obligation beginning in fiscal year 2001;

[(5) 19 percent of such amount shall be available for obligation beginning in fiscal year 2002; and

[(6) 19 percent of such amount shall be available for obligation beginning in fiscal year 2003.]

(1) 19.6 percent of such amount shall be available for obligation beginning in fiscal year 2004;

(2) 18.5 percent of such amount shall be available for obligation beginning in fiscal year 2005;

(3) 16.3 percent of such amount shall be available for obligation beginning in fiscal year 2006;

(4) 15.3 percent of such amount shall be available for obligation beginning in fiscal year 2007;

(5) 15.8 percent of such amount shall be available for obligation beginning in fiscal year 2008; and

(6) 14.5 percent of such amount shall be available for obligation beginning in fiscal year 2009.

(c) FEDERAL SHARE.—The Federal share payable on account of any project carried out with funds made available to carry out this section shall be 80 percent of the total cost thereof[; except that the Federal share on account of the project to be carried out under item 1419 of the table contained in section 1602 of the Transportation Equity Act for the 21st Century (112 Stat. 309), relating to reconstruction of a road and causeway in Shiloh Military Park in Hardin County, Tennessee, shall be 100 percent of the total cost thereof].

* * * * * * *

(e) ADVANCE CONSTRUCTION.—When a State which has been delegated responsibility for a project under this section—

(1) has obligated all funds allocated under this section and section [1602 of the Transportation Equity Act for the 21st Century] *1701 of the Transportation Equity Act: A Legacy for Users* for such project; and

(2) proceeds to construct such project without the aid of Federal funds in accordance with all procedures and all requirements applicable to such project, except insofar as such procedures and requirements limit the State to the construction of projects with the aid of Federal funds previously allocated to it;

the Secretary, upon the approval of the application of a State, shall pay to the State the Federal share of the cost of construction of the project when additional funds are allocated for such project under this section and section [1602 of the Transportation Equity Act for the 21st Century] *1701 of the Transportation Equity Act: A Legacy for Users*.

* * * * * * *

(g) AVAILABILITY OF OBLIGATION LIMITATION.—Obligation authority attributable to funds made available to carry out this section shall only be available for the purposes of this section and shall remain available until obligated pursuant to section 1102(g) of the [Transportation Equity Act for the 21st Century] *Transportation Equity Act: A Legacy for Users*.

* * * * * * *

§ 118. Availability of funds

(a) * * *

* * * * * * *

[(c) SET-ASIDES FOR INTERSTATE DISCRETIONARY PROJECTS.—

[(1) IN GENERAL.—Before any apportionment is made under section 104(b)(4), the Secretary shall set aside $50,000,000 in fiscal year 1998 and $100,000,000 in each of fiscal years 1999 through 2003 for obligation by the Secretary for projects for resurfacing, restoring, rehabilitating, and reconstructing any route or portion thereof on the Interstate System (other than any highway designated as a part of the Interstate System under section 139 (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century)) and any toll road on the Interstate System not subject

to an agreement under section 119(e) (as in effect on December 17, 1991).

[(2) SELECTION CRITERIA.—The amounts set aside under paragraph (1) shall be made available by the Secretary to any State applying for such funds if the Secretary determines that—

[(A) the State has obligated or demonstrates that it will obligate in the fiscal year all of its apportionments under section 104(b)(4) other than an amount that, by itself, is insufficient to pay the Federal share of the cost of a project for resurfacing, restoring, rehabilitating, and reconstructing the Interstate System that has been submitted by the State to the Secretary for approval; and

[(B) the applicant is willing and able to—

[(i) obligate the funds within 1 year of the date the funds are made available;

[(ii) apply the funds to a ready-to-commence project; and

[(iii) in the case of construction work, begin work within 90 days after obligation.

[(3) PRIORITY CONSIDERATION FOR CERTAIN PROJECTS.—In selecting projects to fund under paragraph (1), the Secretary shall give priority consideration to any project the cost of which exceeds $10,000,000 on any high volume route in an urban area or a high truck-volume route in a rural area.

[(4) PERIOD OF AVAILABILITY OF DISCRETIONARY FUNDS.—Sums made available pursuant to this subsection shall remain available until expended.]

[(d)] *(c)* EFFECT OF RELEASE OF FUNDS.—Any Federal-aid highway funds released by the final payment on a project, or by the modification of the project agreement, shall be credited to the same program funding category previously apportioned to the State and shall be immediately available for expenditure.

[(e)] *(d) SPECIAL RULES.*—Funds made available to the State of Alaska and the Commonwealth of Puerto Rico under this title may be expended for construction of access and development roads that will serve resource development, recreational, residential, commercial, industrial, or other like purposes.

* * * * * * *

§ 120. Federal share payable

(a) * * *

* * * * * * *

(e) EMERGENCY RELIEF.—The Federal share payable on account of any repair or reconstruction provided for by funds made available under section 125 of this title on account of any project on a Federal-aid highway, including the Interstate System, shall not exceed the Federal share payable on a project on [such system] *such highway* as provided in subsections (a) and (b) of this section; except that (1) the Federal share payable for eligible emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 180 days after the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the costs thereof; and (2) the Federal share payable on ac-

count of any repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads may amount to 100 percent of the cost thereof. The total cost of a project may not exceed the cost of repair or reconstruction of a comparable facility. As used in this section with respect to bridges and in section 144 of this title, "a comparable facility" shall mean a facility which meets the current geometric and construction standards required for the types and volume of traffic which such facility will carry over its design life.

* * * * * * *

(j) CREDIT FOR NON-FEDERAL SHARE.—

(1) ELIGIBILITY.—A State may use as a credit toward the non-Federal share requirement for any funds made available to carry out this title (other than the emergency relief program authorized by section 125 *and the Appalachian development highway system program under section 14501 of title 40*) or chapter 53 of title 49 toll revenues that are generated and used by public, quasi-public, and private agencies to build, improve, or maintain highways, bridges, or tunnels that serve the public purpose of interstate commerce. Such public, quasi-public, or private agencies shall have built, improved, or maintained such facilities without Federal funds.

* * * * * * *

§ 125. Emergency relief

(a) * * *

* * * * * * *

(c) FUNDING.—Subject to the following limitations, there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to establish the fund authorized by this section and to replenish it on an annual basis:

(1) Not more than **[**$100,000,000**]** *$120,000,000* is authorized to be obligated in any 1 fiscal year commencing after September 30, 1980, to carry out the provisions of this section; except that, if in any fiscal year the total of all obligations under this section is less than the amount authorized to be obligated in such fiscal year, the unobligated balance of such amount shall remain available until expended and shall be in addition to amounts otherwise available to carry out this section each year.

* * * * * * *

§ 126. Uniform transferability of Federal-aid highway funds

(a) GENERAL RULE.—Notwithstanding any other provision of law but subject to subsections (b) and (c), if at least 50 percent of a State's apportionment under section 104 or 144 for a fiscal year or at least 50 percent of the funds set-aside under section 133(d) from the State's apportionment *under* section 104(b)(3) may not be transferred to any other apportionment of the State under section 104 or 144 for such fiscal year, then the State may transfer not to exceed 50 percent of such apportionment or set aside to any other

of section 133(d)(1) or] to section 104(f) or to [section 133(d)(3)] *section 133(d)(2)*. The maximum amount that a State may transfer under this section of the State's set-aside under section 133(d)(1) [or 133(d)(2)] for a fiscal year may not exceed 25 percent of (1) the amount of such set-aside, less (2) the amount of the State's set-aside under such section for fiscal year 1997.

* * * * * * *

§ 127. Vehicle weight limitations—Interstate System

(a) IN GENERAL.—No funds shall be apportioned in any fiscal year under section 104(b)(1) of this title to any State which does not permit the use of the National System of Interstate and Defense Highways within its boundaries by vehicles with a weight of twenty thousand pounds carried on any one axle, including enforcement tolerances, or with a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances, or a gross weight of at least eighty thousand pounds for vehicle combinations of five axles or more. However, the maximum gross weight to be allowed by any State for vehicles using the National System of Interstate and Defense Highways shall be twenty thousand pounds carried on one axle, including enforcement tolerances, and a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances and with an overall maximum gross weight, including enforcement tolerances, on a group of two or more consecutive axles produced by application of the following formula:

* * * * * * *

where W equals overall gross weight on any group of two or more consecutive axles to the nearest five hundred pounds, L equals distance in feet between the extreme of any group of two or more consecutive axles, and N equals number of axles in group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles is (1) thirty-six feet or more, or (2) in the case of a motor vehicle hauling any tank trailer, dump trailer, or ocean transport container before September 1, 1989, is 30 feet or more: *Provided,* That such overall gross weight may not exceed eighty thousand pounds, including all enforcement tolerances, except for vehicles using Interstate Route 29 between Sioux City, Iowa, and the border between Iowa and South Dakota or vehicles using Interstate Route 129 between Sioux City, Iowa, and the border between Iowa and Nebraska, and except for those vehicles and loads which cannot be easily dismantled or divided and which have been issued special permits in accordance with applicable State laws, or the corresponding maximum weights permitted for vehicles using the public highways of such State under laws or regulations established by appropriate State authority in effect on July 1, 1956 except in the case of the overall gross weight of any group of two or more consecutive axles on any vehicle (other than a vehicle comprised of a motor vehicle hauling any tank trailer, dump trailer, or ocean transport container on or after September 1, 1989), on the date of enactment of the Federal-Aid Highway Amendments of 1974, whichever is the greater. Any amount which is withheld from apportionment to any State pursuant to the foregoing provi-

sions shall lapse if not released and obligated within the availability period specified in section [118(b)(1)] *118(b)(2)* of this title. This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof, other than vehicles or combinations subject to subsection (d) of this section, which the State determines could be lawfully operated within such State on July 1, 1956, except in the case of the overall gross weight of any group of two or more consecutive axles, on the date of enactment of the Federal-Aid Highway Amendments of 1974. With respect to State of Hawaii, laws or regulations in effect on February 1, 1960, shall be applicable for the purposes of this section in lieu of those in effect on July 1, 1956. With respect to the State of Colorado, vehicles designed to carry 2 or more precast concrete panels shall be considered a nondivisible load. With respect to the State of Michigan, laws or regulations in effect on May 1, 1982, shall be applicable for the purposes of this subsection. With respect to the State of Maryland, laws and regulations in effect on June 1, 1993, shall be applicable for the purposes of this subsection. The State of Louisiana may allow, by special permit, the operation of vehicles with a gross vehicle weight of up to 100,000 pounds for the hauling of sugarcane during the harvest season, not to exceed 100 days annually. With respect to Interstate Route 95 in the State of New Hampshire, State laws (including regulations) concerning vehicle weight limitations that were in effect on January 1, 1987, and are applicable to State highways other than the Interstate System, shall be applicable in lieu of the requirements of this subsection. With respect to that portion of the Maine Turnpike designated Interstate Route 95 and 495, and that portion of Interstate Route 95 from the southern terminus of the Maine Turnpike to the New Hampshire State line, laws (including regulations) of the State of Maine concerning vehicle weight limitations that were in effect on October 1, 1995, and are applicable to State highways other than the Interstate System, shall be applicable in lieu of the requirements of this subsection.

* * * * * * *

§ 130. Railway-highway crossings

(a) * * *

* * * * * * *

(e) FUNDS FOR PROTECTIVE DEVICES.—

(1) IN GENERAL.—At least ½ of the funds authorized for and expended under this section shall be available for the installation of protective devices at railway-highway crossings. Sums authorized to be appropriated to carry out this section shall be available for obligation in the same manner as funds apportioned under section 104(b)(1) of this title.

(2) SPECIAL RULE.—If a State demonstrates to the satisfaction of the Secretary that the State has met all its needs for installation of protective devices at railway-highway crossings, the State may use funds made available by this subsection for other purposes by this section.

[(f) APPORTIONMENT.—Twenty-five percent of the funds authorized to be appropriated to carry out this section shall be apportioned to the States in the same manner as sums are apportioned

under section 104(b)(2) of this title, 25 percent of such funds shall be apportioned to the States in the same manner as sums are apportioned under section 104(b)(6) of this title, and 50 percent of such funds shall be apportioned to the States in the ratio that total railway-highway crossings in each State bears to the total of such crossings in all States. The Federal share payable on account of any project financed with funds authorized to be appropriated to carry out this section shall be 90 percent of the cost thereof.**]**

(f) APPORTIONMENT.—

(1) FORMULA.—Fifty percent of the funds authorized to be appropriated to carry out this section shall be apportioned to the States in accordance with the formula set forth in section 104(b)(3)(A), and 50 percent of such funds shall be apportioned to the States in the ratio that total public railway-highway crossings in each State bears to the total of such crossings in all States.

(2) MINIMUM APPORTIONMENT.—Notwithstanding paragraph (1), each State shall receive a minimum of ½ of 1 percent of the funds apportioned under paragraph (1).

(3) FEDERAL SHARE.—The Federal share payable on account of any project financed with funds authorized to be appropriated to carry out this section shall be 90 percent of the cost thereof.

(g) ANNUAL REPORT.—Each State shall report to the Secretary not later than December 30 of each year on the progress being made to implement the railway-highway crossings program authorized by this section and the effectiveness of such improvements. Each State report shall contain an assessment of the costs of the various treatments employed and subsequent accident experience at improved locations. The Secretary shall submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives **[**not later than April 1 of each year,**]***, not later than April 1, 2005, and every 2 years thereafter,* on the progress being made by the State in implementing projects to improve railway-highway crossings. The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, nature of treatment, and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (d) and include recommendations for future implementation of the railroad highway crossings program.

* * * * * * *

(k) EXPENDITURE OF FUNDS.—Not more than 2 percent of funds apportioned to a State to carry out this section may be used by the State for compilation and analysis of data in support of activities carried out under subsection (g).

§ 131. Control of outdoor advertising

(a) * * *

* * * * * * *

(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not other-

wise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, not to exceed $20,000,000 for the fiscal year ending June 30, 1967, not to exceed $2,000,000 for the fiscal year ending June 30, 1970, not to exceed $27,000,000 for the fiscal year ending June 30, 1971, not to exceed $20,500,000 for the fiscal year ending June 30, 1972, and not to exceed $50,000,000 for the fiscal year ending June 30, 1973. The provisions of this chapter relating to the obligation, period of availability and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967. Subject to approval by the Secretary **[**in accordance with the program of projects approval process of section 105**]**, a State may use any funds apportioned to it under section 104 of this title for removal of any sign, display, or device lawfully erected which does not conform to this section.

* * * * * * *

§ 133. Surface transportation program

(a) * * *

(b) ELIGIBLE PROJECTS.—A State may obligate funds apportioned to it under section 104(b)(3) for the surface transportation program only for the following:

(1) * * *

* * * * * * *

[(13)**]** *(12)* Infrastructure-based intelligent transportation systems capital improvements.

[(14)**]** *(13)* Environmental restoration and pollution abatement projects (including the retrofit or construction of storm water treatment systems) to address water pollution or environmental degradation caused or contributed to by transportation facilities, which projects shall be carried out when the transportation facilities are undergoing reconstruction, rehabilitation, resurfacing, or restoration; except that the expenditure of funds under this section for any such environmental restoration or pollution abatement project shall not exceed 20 percent of the total cost of the reconstruction, rehabilitation, resurfacing, or restoration project.

(14) Regional transportation operations collaboration and coordination activities that are associated with regional improvements, including activities for traffic incident management, technology deployment, emergency management and response, traveler information, and regional congestion relief.

* * * * * * *

(d) ALLOCATIONS OF APPORTIONED FUNDS.—

[(1) FOR SAFETY PROGRAMS.—10 percent of the funds apportioned to a State under section 104(b)(3) for the surface transportation program for a fiscal year shall only be available for carrying out sections 130 and 152 of this title. Of the funds set aside under the preceding sentence, the State shall reserve in such fiscal year an amount of such funds for carrying out each such section which is not less than the amount of funds apportioned to the State in fiscal year 1991 under such section.**]**

[(2)] *(1)* FOR TRANSPORTATION ENHANCEMENT ACTIVITIES.—10 percent of the funds apportioned to a State under section 104(b)(3) for a fiscal year shall only be available for transportation enhancement activities.

[(3)] *(2)* DIVISION BETWEEN URBANIZED AREAS OF OVER 200,000 POPULATION AND OTHER AREAS.—

(A) GENERAL RULE.—Except as provided in subparagraphs (C) and (D), 62.5 percent of the remaining [80 percent] *90 percent* of the funds apportioned to a State under section 104(b)(3) for a fiscal year shall be obligated under this section—

(i) * * *

* * * * * * *

(B) SPECIAL RULE FOR AREAS OF LESS THAN 5,000 POPULATION.—Of the amounts required [tobe] *to be* obligated under subparagraph (A)(ii), the State shall obligate in areas of the State (other than urban areas with a population greater than 5,000) an amount which is not less than 110 percent of the amount of funds apportioned to the State for the Federal-aid secondary system for fiscal year 1991.

* * * * * * *

(D) NONCONTIGUOUS STATES EXEMPTION.—Subparagraph (A) shall not apply to Hawaii and Alaska.

[(4)] *(3)* APPLICABILITY OF PLANNING REQUIREMENTS.—Programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135 of this title.

[(5)] *(4)* APPLICABILITY OF CERTAIN REQUIREMENTS TO THIRD PARTY SELLERS.—

(A) * * *

* * * * * * *

(e) ADMINISTRATION.—

(1) * * *

* * * * * * *

(3) PAYMENTS.—

(A) * * *

(B) ADVANCE PAYMENT OPTION FOR TRANSPORTATION ENHANCEMENT ACTIVITIES.—

(i) IN GENERAL.—The Secretary may advance funds to the State for transportation enhancement activities funded from the allocation required by subsection [(d)(2)] *(d)(1)* for a fiscal year.

* * * * * * *

(5) TRANSPORTATION ENHANCEMENT ACTIVITIES.—

(A) CATEGORICAL EXCLUSIONS.—To the extent appropriate, the Secretary shall develop categorical exclusions from the requirement that an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) be prepared for transportation enhancement

activities funded from the allocation required by subsection [(d)(2)] *(d)(1)*.

(B) NATIONWIDE PROGRAMMATIC AGREEMENT.—The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation established under title II of the National Historic Preservation Act (16 U.S.C. 470i et seq.), shall develop a nationwide programmatic agreement governing the review of transportation enhancement activities funded from the allocation required by subsection [(d)(2)] *(d)(1)*, in accordance with—

(i) * * *

* * * * * * *

(f) OBLIGATION AUTHORITY.—

(1) IN GENERAL.—A State that is required to obligate in an urbanized area with an urbanized area population of over 200,000 individuals under subsection (d) funds apportioned to the State under section 104(b)(3) shall make available during the period of fiscal years [1998 through 2000] *2004 through 2006* and the period of fiscal years [2001 through 2003] *2007 through 2009* an amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction programs for use in the area that is equal to the amount obtained by multiplying—

(A) * * *

* * * * * * *

[§ 134. Metropolitan planning

[(a) GENERAL REQUIREMENTS.—

[(1) FINDINGS.—It is in the national interest to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and through urbanized areas, while minimizing transportation-related fuel consumption and air pollution.

[(2) DEVELOPMENT OF PLANS AND PROGRAMS.—To accomplish the objective stated in paragraph (1), metropolitan planning organizations designated under subsection (b), in cooperation with the State and public transit operators, shall develop transportation plans and programs for urbanized areas of the State.

[(3) CONTENTS.—The plans and programs for each metropolitan 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 area and as an integral part of an intermodal transportation system for the State and the United States.

[(4) 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.

[(b) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

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

[(A) by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities as defined by the Bureau of the Census); or

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

[(2) STRUCTURE.—Each policy board of a metropolitan planning organization that serves an area designated as a transportation management area, when designated or redesignated under this subsection, shall consist of—

[(A) local elected officials;

[(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area (including all transportation agencies included in the metropolitan planning organization as of June 1, 1991); 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 the date of the enactment of this section, of a public agency with multimodal transportation responsibilities to—

[(A) develop plans and programs for adoption by a metropolitan planning organization; and

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

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

[(5) REDESIGNATION.—

[(A) PROCEDURES.—A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities as defined by the Bureau of the Census) as appropriate to carry out this section.

[(B) CERTAIN REQUESTS TO REDESIGNATE.—A metropolitan planning organization shall be redesignated upon request of a unit or units of general purpose local government representing at least 25 percent of the affected population (including the central city or cities as defined by the Bureau of the Census) in any urbanized area (i) whose population is more than 5,000,000 but less than

10,000,000, or (ii) which is an extreme nonattainment area for ozone or carbon monoxide as defined under the Clean Air Act. Such redesignation shall be accomplished using procedures established by subparagraph (A).

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

[(c) 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; and

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

[(3) 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 this paragraph shall be retained, except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in the manner described in subsection (b)(5).

[(4) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—In the case of an urbanized area designated after the date of enactment of this paragraph as a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

[(A) shall be established in the manner described in subsection (b)(1);

[(B) shall encompass the areas described in paragraph (2)(A);

[(C) may encompass the areas described in paragraph (2)(B); and

[(D) may address any nonattainment area identified under the Clean Air Act (42 U.S.C. 7401 et seq.) for ozone or carbon monoxide.

[(d) COORDINATION IN MULTISTATE AREAS.—

[(1) IN GENERAL.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

[(2) INTERSTATE COMPACTS.—The consent of Congress is granted to any 2 or more States—

[(A) to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

[(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

[(3) LAKE TAHOE REGION.—

[(A) DEFINITION.—In this paragraph, the term "Lake Tahoe region" has the meaning given the term "region" in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96–551 (94 Stat. 3234).

[(B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

[(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

[(ii) coordinate the transportation planning process with the planning process required of State and local governments under this section, section 135, and chapter 53 of title 49.

[(C) INTERSTATE COMPACT.—

[(i) IN GENERAL.—Subject to clause (ii), notwithstanding subsection (b), to carry out the transportation planning process required by this section, the consent of Congress is granted to the States of California and Nevada to designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governors of the States of California and Nevada and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities (as defined by the Bureau of the Census)), or in accordance with procedures established by applicable State or local law.

[(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

[(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

[(II) FUNDING.—In addition to funds made available to the metropolitan planning organization under other provisions of this title and under chapter 53 of title 49, not more than 1 percent of the funds allocated under section 202 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, be funded using funds allocated under section 202.

[(4) RECIPIENTS OF OTHER ASSISTANCE.—The Secretary shall encourage each metropolitan planning organization to coordinate, to the maximum extent practicable, the design and delivery of transportation services within the metropolitan planning area that are provided—

[(A) by recipients of assistance under chapter 53 of title 49; and

[(B) by 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.

[(e) COORDINATION OF MPOS.—

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

[(2) PROJECT LOCATED IN MULTIPLE MPOS.—If a project is located within the boundaries of more than 1 metropolitan planning organization, the metropolitan planning organizations shall coordinate plans regarding the project.

[(f) SCOPE OF PLANNING PROCESS.—

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

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

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

[(C) increase the accessibility and mobility options available to people and for freight;

[(D) protect and enhance the environment, promote energy conservation, and improve quality of life;

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

[(F) promote efficient system management and operation; and

[(G) emphasize the preservation of the existing transportation system.

[(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transpor-

tation plan, a transportation improvement plan, a project or strategy, or the certification of a planning process.

[(g) DEVELOPMENT OF LONG-RANGE TRANSPORTATION PLAN.—

[(1) IN GENERAL.—Each metropolitan planning organization shall prepare, and update periodically, according to a schedule that the Secretary determines to be appropriate, a long-range transportation plan for its metropolitan area in accordance with the requirements of this subsection.

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

[(A) An identification of transportation facilities (including but not necessarily limited to major roadways, transit, and multimodal and intermodal facilities) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions. In formulating the long-range transportation plan, the metropolitan planning organization shall consider factors described in subsection (f) as such factors relate to a 20-year forecast period.

[(B) A financial plan that demonstrates how the adopted long-range transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted long-range transportation plan if reasonable additional resources beyond those identified in the financial plan were available. For the purpose of developing the long-range transportation plan, the metropolitan planning organization and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

[(C) Assess capital investment and other measures necessary to—

[(i) ensure the preservation of the existing metropolitan transportation system, including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit facilities; and

[(ii) make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods.

[(D) Indicate as appropriate proposed transportation enhancement activities.

[(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas which are in nonattainment for ozone or carbon monoxide under the Clean Air Act, the metropolitan planning organization shall coordinate the development of a long-range transportation plan with the process for development of the

transportation control measures of the State implementation plan required by the Clean Air Act.

[(4) PARTICIPATION BY INTERESTED PARTIES.—Before approving a long-range transportation plan, each metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the long-range transportation plan, in a manner that the Secretary deems appropriate.

[(5) PUBLICATION OF LONG-RANGE TRANSPORTATION PLAN.—Each long-range transportation plan prepared by a metropolitan planning organization shall be—

[(i) published or otherwise made readily available for public review; and

[(ii) submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

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

[(h) METROPOLITAN TRANSPORTATION IMPROVEMENT PROGRAM.—

[(1) DEVELOPMENT.—

[(A) IN GENERAL.—In cooperation with the State and any affected public transit operator, the metropolitan planning organization designated for a metropolitan area shall develop a transportation improvement program for the area for which the organization is designated.

[(B) OPPORTUNITY FOR COMMENT.—In developing the program, the metropolitan planning organization, in cooperation with the State and any affected public transit operator, shall provide citizens, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the proposed program.

[(C) FUNDING ESTIMATES.—For the purpose of developing the transportation improvement program, the metropolitan planning organization, public transit agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

[(D) UPDATING AND APPROVAL.—The program shall be updated at least once every 2 years and shall be approved by the metropolitan planning organization and the Governor.

[(2) CONTENTS.—The transportation improvement program shall include—

[(A) a priority list of proposed federally supported projects and strategies to be carried out within each 3-year

period after the initial adoption of the transportation improvement program; and

[(B) a financial plan that—

[(i) demonstrates how the transportation improvement program can be implemented;

[(ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;

[(iii) identifies innovative financing techniques to finance projects, programs, and strategies; and

[(iv) may include, for illustrative purposes, additional projects that would be included in the approved transportation improvement program if reasonable additional resources beyond those identified in the financial plan were available.

[(3) INCLUDED PROJECTS.—

[(A) PROJECTS UNDER THIS CHAPTER AND CHAPTER 53 OF TITLE 49.—A transportation improvement program developed under this subsection for a metropolitan area shall include the projects and strategies within the area that are proposed for funding under this chapter and chapter 53 of title 49.

[(B) PROJECTS UNDER CHAPTER 2.—

[(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

[(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

[(C) CONSISTENCY WITH LONG-RANGE TRANSPORTATION PLAN.—Each project shall be consistent with the long-range transportation plan developed under subsection (g) for the area.

[(D) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

[(4) NOTICE AND COMMENT.—Before approving a transportation improvement program, a metropolitan planning organization shall, in cooperation with the State and any affected public transit operator, provide citizens, affected public agencies,

representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with reasonable notice of and an opportunity to comment on the proposed program.

[(5) SELECTION OF PROJECTS.—

[(A) IN GENERAL.—Except as otherwise provided in subsection (i)(4) and in addition to the transportation improvement program development required under paragraph (1),

the selection of federally funded projects in metropolitan areas shall be carried out, from the approved transportation improvement program—

[(i) by—

[(I) in the case of projects under this chapter, the State; and

[(II) in the case of projects under chapter 53 of title 49, the designated transit funding recipients; and

[(ii) in cooperation with the metropolitan planning organization.

[(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved transportation improvement program in place of another project in the program.

[(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

[(A) NO REQUIRED SELECTION.—Notwithstanding paragraph (2)(B)(iv), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv).

[(B) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv) for inclusion in an approved transportation improvement program.

[(7) PUBLICATION.—

[(A) PUBLICATION OF TRANSPORTATION IMPROVEMENT PROGRAMS.—A transportation improvement program involving Government participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.

[(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—An annual listing of projects for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the metropolitan planning organization for public review. The listing shall be consistent with the categories identified in the transportation improvement program.

[(i) TRANSPORTATION MANAGEMENT AREAS.—

[(1) DESIGNATION.—

[(A) REQUIRED DESIGNATIONS.—The Secretary shall designate as a transportation management area each urbanized area with a population of over 200,000 individuals.

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

[(2) TRANSPORTATION PLANS AND PROGRAMS.—Within a transportation management area, transportation plans and programs shall be based on a continuing and comprehensive transportation planning process carried out by the metropoli-

tan planning organization in cooperation with the State and transit operators.

[(3) CONGESTION MANAGEMENT SYSTEM.—Within a transportation management area, the transportation planning process under this section shall include a congestion management system that provides for effective management of new and existing transportation facilities eligible for funding under this title and chapter 53 of title 49 through the use of travel demand reduction and operational management strategies. The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section.

[(4) SELECTION OF PROJECTS.—

[(A) IN GENERAL.—All federally funded projects carried out within the boundaries of a transportation management area under this title (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) or under chapter 53 of title 49 shall be selected for implementation from the approved 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 carried out within the boundaries of a transportation management area on the National Highway System and projects carried out within such boundaries under the bridge program or the Interstate maintenance program 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 in each transportation management area is being carried out in accordance with applicable provisions of Federal law; and

[(ii) subject to subparagraph (B), certify, not less often than once every 3 years, that the requirements of this paragraph are met with respect to the transportation management area.

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

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

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

[(C) EFFECT OF FAILURE TO CERTIFY.—

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

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

[(iii) FEASIBILITY OF PRIVATE ENTERPRISE PARTICIPATION.—The Secretary shall not withhold certification under this paragraph based on the policies and criteria established by a metropolitan planning organization or transit grant recipient for determining the feasibility of private enterprise participation in accordance with section 5306(a) of title 49.

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

[(j) ABBREVIATED PLANS AND PROGRAMS 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 long-range transportation plan and transportation improvement program for the metropolitan area that the Secretary determines is appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems in the area.

[(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans or programs 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.).

[(k) TRANSFER OF FUNDS.—Funds made available for a highway project under chapter 53 of title 49 shall be transferred to and administered by the Secretary in accordance with the requirements of this title. Funds made available for a transit project under the Federal-Aid Highway Act of 1991 shall be transferred to and administered by the Secretary in accordance with the requirements of chapter 53 of title 49. The provisions of title 23, United States Code, regarding the non-Federal share shall apply to title 23 funds used for transit projects and the provisions of chapter 53 of title 49 regarding non-Federal share shall apply to chapter 53 funds used for highway projects.

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

[(1) IN GENERAL.—Notwithstanding any other provisions of this title or chapter 53 of title 49, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be programmed in such area for any highway project that will result in a significant increase in carrying capacity for single-occupant vehicles unless the project is part of an approved congestion management system.

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

[(m) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any

transportation facility, provider, or project not eligible under this title or chapter 53 of title 49.

[(n) FUNDING.—

[(1) IN GENERAL.—Funds set aside under section 104(f) of this title to carry out sections 5303 through 5305 of title 49 shall be available to carry out this section.

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

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

[§ 135. Statewide planning

[(a) GENERAL REQUIREMENTS.—

[(1) FINDINGS.—It is in the national interest to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and through urbanized areas, while minimizing transportation-related fuel consumption and air pollution.

[(2) DEVELOPMENT OF PLANS AND PROGRAMS.—Subject to section 134 of this title and sections 5303 through 5305 of title 49, each State shall develop transportation plans and programs for all areas of the State.

[(3) CONTENTS.—The plans and programs 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.

[(4) 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.

[(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—In carrying out planning under this section, a State shall coordinate such planning with the transportation planning activities carried out under section 134 of this title and sections 5303 through 5305 of title 49 for metropolitan areas of the State and shall carry out its responsibilities for the development of the transportation portion of the State implementation plan to the extent required by the Clean Air Act.

[(c) SCOPE OF PLANNING PROCESS.—

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

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

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

[(C) increase the accessibility and mobility options available to people and for freight;

[(D) protect and enhance the environment, promote energy conservation, and improve quality of life;

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

[(F) promote efficient system management and operation; and

[(G) emphasize the preservation of the existing transportation system.

[(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title, 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.

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

[(1) with respect to nonmetropolitan areas, the concerns of local elected officials representing units of general purpose local government;

[(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

[(3) coordination of transportation plans, programs, and planning activities with related planning activities being carried out outside of metropolitan planning areas.

[(e) LONG-RANGE TRANSPORTATION PLAN.—

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

[(2) CONSULTATION WITH GOVERNMENTS.—

[(A) METROPOLITAN AREAS.—With respect to each metropolitan area in the State, the long-range transportation plan shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134 of this title and section 5303 of title 49.

[(B) NONMETROPOLITAN AREAS.—With respect to each nonmetropolitan area, the long-range transportation plan shall be developed in consultation with affected local officials with responsibility for transportation.

[(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the long-range transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

[(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the long-range transportation plan, the State shall—

[(A) provide citizens, affected public agencies, representatives of transportation agency employees, freight shippers, private providers of transportation, representatives of users of public transit, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed plan; and

[(B) identify transportation strategies necessary to efficiently serve the mobility needs of people.

[(4) FINANCIAL PLAN.—The long-range transportation plan may include a financial plan that demonstrates how the adopted long-range transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

[(5) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (4), a State shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (4).

[(f) STATE TRANSPORTATION IMPROVEMENT PROGRAM.—

[(1) DEVELOPMENT.—

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

[(B) CONSULTATION WITH GOVERNMENTS.—

[(i) METROPOLITAN AREAS.—With respect to each metropolitan area in the State, the program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134 of this title and section 5303 of title 49.

[(ii) NONMETROPOLITAN AREAS.—

[(I) IN GENERAL.—With respect to each nonmetropolitan area in the State, the program shall be developed in consultation with affected local officials with responsibility for transportation.

[(II) REVIEW.—Not later than 1 year after the date of enactment of this subclause, the State shall submit to the Secretary the details of the consultative planning process developed by the State for nonmetropolitan areas under subclause (I). The Secretary shall not review or approve such process.

[(iii) 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.

[(C) PARTICIPATION BY INTERESTED PARTIES.—In developing the program, the Governor shall provide citizens, affected public agencies, representatives of transportation agency employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the proposed program.

[(2) INCLUDED PROJECTS.—

[(A) IN GENERAL.—A transportation improvement program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

[(B) CHAPTER 2 PROJECTS.—

[(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

[(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

[(C) CONSISTENCY WITH LONG-RANGE TRANSPORTATION PLAN.—Each project shall be—

[(i) consistent with the long-range transportation plan developed under this section for the State;

[(ii) identical to the project as described in an 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 such Act.

[(D) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

[(E) FINANCIAL PLAN.—The transportation improvement program may include a financial plan that demonstrates how the approved transportation improvement program can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

[(F) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

[(i) NO REQUIRED SELECTION.—Notwithstanding subparagraph (E), a State shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (E).

[(ii) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (E) for inclusion in an approved transportation improvement program.

[(G) PRIORITIES.—The program shall reflect the priorities for programming and expenditures of funds, including transportation enhancement activities, required by this title.

[(3) PROJECT SELECTION FOR AREAS OF LESS THAN 50,000 POPULATION.—

[(A) IN GENERAL.—Projects carried out in areas with populations of less than 50,000 individuals (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) shall be selected, from the approved statewide transportation improvement program, by the State in cooperation with the affected local officials.

[(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects carried out in areas described in subparagraph (A) on the National Highway System and projects carried out in such areas under the bridge program or the Interstate maintenance program shall be selected, from the approved statewide transportation improvement program, by the State in consultation with the affected local officials.

[(4) BIENNIAL REVIEW AND APPROVAL.—A transportation improvement program developed under this subsection shall be reviewed and, on a finding that the planning process through which the program was developed is consistent with this section, section 134, and sections 5303 through 5305 of title 49, approved not less frequently than biennially by the Secretary.

[(5) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved statewide transportation improvement program in place of another project in the program.

[(g) FUNDING.—Funds set aside pursuant to section 307(c)(1) of title 23, United States Code, shall be available to carry out the requirements of this section.]

§ 134. Metropolitan planning

Metropolitan transportation planning programs funded under section 104(f) shall be carried out in accordance with the metropolitan planning provisions of chapter 52, title 49, United States Code.

§ 135. Statewide planning.

Statewide transportation planning programs funded under section 104(f) shall be carried out in accordance with the statewide planning provisions of chapter 52, title 49, United States Code.

* * * * * * *

§ 138. Preservation of parklands

(a) POLICY.—It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project (other than any project for a park road or parkway under section 204 of this title) which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.

(b) SPECIAL RULES FOR HISTORIC SITES.—

(1) IN GENERAL.—The requirements of this section are deemed to be satisfied in any case in which the treatment of a historic site has been agreed upon in accordance with section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and the agreement includes a determination that the program or project will not have an adverse effect on the historic site.

(2) LIMITATION ON APPLICABILITY.—This subsection does not apply in any case in which the Advisory Council on Historic Preservation determines, concurrent with or prior to the conclusion of section 106 consultation, that allowing section 106 compliance to satisfy the requirements of this section would be inconsistent with the objectives of the National Historic Preservation Act. The Council shall make such a determination if petitioned to do so by a section 106 consulting party, unless the Council affirmatively finds that the views of the requesting party have been adequately considered and that section 106 compliance will adequately protect historic properties.

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

(A) SECTION 106 CONSULTATION.—The term "section 106 consultation" means the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

(B) ADVERSE EFFECT.—The term "adverse effect" means altering, directly or indirectly, any of the characteristics of

a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

(c) STUDIES.—In carrying out the national policy declared in this section the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas.

§ 139. Motor vehicle congestion relief

(a) IN GENERAL.—Each State that has an urbanized area with an urbanized area population of over 200,000 individuals shall obligate in each of fiscal years 2004 through 2009 a portion of the State's apportionments under section 104(b) in such fiscal year, as calculated under subsection (b), for congestion relief activities in such urbanized areas in accordance with this section.

(b) CALCULATION OF AMOUNT.—The portion of a State's apportionments for a fiscal year to be obligated for congestion relief activities under subsection (a) shall be determined by multiplying—

(1) the total of amounts apportioned to the State under each of paragraphs (1), (2), (3), and (4) of section 104(b) in such fiscal year; by

(2) 10 percent; by

(3) the percentage of the State's population residing in urbanized areas of the State with an urbanized area population of over 200,000 individuals.

(c) ALLOCATION BETWEEN UNDER ONE AND UNDER THREE CONGESTION RELIEF ACTIVITIES.—Of the total amount of a State's apportionments to be obligated for congestion relief activities for a fiscal year as calculated under subsection (b)—

(1) 40 percent shall be obligated for under one congestion relief activities;

(2) 35 percent shall be obligated for under three congestion relief activities; and

(3) 25 percent shall be obligated at the discretion of the State department of transportation for 1 or more of the following:

(A) Under one congestion relief activities.

(B) Under three congestion relief activities.

(C) Capital costs for transit projects that are eligible for assistance under chapter 53 of title 49.

(D) Demand relief projects and activities that shift demand to non-peak hours or to other modes of transportation or that reduce the overall level of demand for roads through such means as telecommuting, ridesharing, alternative work hour programs, and value pricing.

(d) OBLIGATION OF AMOUNTS.—

(1) IN GENERAL.—In complying with the requirements of this section, the amounts obligated by a State for congestion relief activities under subsection (a) shall be allocated among the individual programs for which funds are apportioned under sections 104(b)(1), 104(b)(2), 104(b)(3), and 104(b)(4).

(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed as requiring a State to obligate proportional or equal amounts under sections 104(b)(1), 104(b)(2), 104(b)(3), and 104(b)(4) for any congestion relief activity under this section.

(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as altering or otherwise affecting the applicability of the requirements of this chapter (including requirements relating to the eligibility of a project for assistance under the program, the location of the project, and the Federal-share payable on account of the project) to amounts apportioned to a State for a program under section 104(b) that are obligated by the State for congestion relief activities under subsection (a).

(f) JOINT RESPONSIBILITY.—Each State, each affected metropolitan planning organization, and the Secretary shall jointly ensure compliance with this section.

(g) TRANSFERS.—

(1) IN GENERAL.—A State may transfer a portion of the amount that the State must obligate for under one congestion relief activities in a fiscal year under this section to the amount the State must obligate for under three congestion relief activities under this section if the State certifies to the Secretary that there are no under one congestion relief activities for which such portion can be obligated in such fiscal year and the Secretary does not disapprove such transfer within 30 days after the date of such certification.

(2) LIMITATION.—The amount that a State may transfer in a fiscal year under this subsection may not reduce the amount the State must obligate for under one congestion relief activities to less than 10 percent of the total amount of the State's apportionments to be obligated for congestion relief activities for such fiscal year as calculated under subsection (b).

(3) TREATMENT.—Amounts transferred by a State under this subsection for a fiscal year shall be included in the amount of the State's apportionments allocated for under three congestion relief activities for such fiscal year under subsection (c)(2).

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

(1) CONGESTION RELIEF ACTIVITIES.—

(A) IN GENERAL.—The term "congestion relief activity" means any activity, project, or program that has as its primary purpose, as determined by the State transportation department, the relief of motor vehicle congestion.

(B) INCLUSIONS.—Such term includes the following:

(i) Relief of motor vehicle congestion through additional capacity, construction of additional lanes, improvements to interchanges, improved access to major terminals, construction of parallel roads, construction of truck only lanes, and major arterial improvements.

(ii) Transportation systemwide operational improvements targeted at increasing motor vehicle travel reliability through such means as incident management programs, traffic monitoring and surveillance, and traveler information initiatives.

(iii) Maximizing efficient use of existing motor vehicle travel capacity through such means as reversible

lanes, coordinated traffic signalization, and managed lanes or other lane management strategies.

(C) EXCLUSIONS.—Such term does not include demand relief projects and activities that shift demand to non-peak hours or to other modes of transportation or that reduce the overall level of demand for roads through such means as telecommuting, ridesharing, alternative work hour programs, and value pricing.

(2) UNDER ONE CONGESTION RELIEF ACTIVITIES.—The term "under one congestion relief activity" means a congestion relief activity that—

(A) will be completed within one year after the date of commencement of onsite improvements;

(B) has a total projected cost of less than $1,000,000; and

(C) will improve conditions in the applicable urbanized area or is an element of the congestion management system of the applicable metropolitan planning organization.

(3) UNDER THREE CONGESTION RELIEF ACTIVITIES.—The term "under three congestion relief activities" means congestion relief activities that—

(A) will be completed within 3 years after the date of commencement of onsite improvements; and

(B) will improve conditions in the applicable urbanized area or is an element of the congestion management system of the applicable metropolitan planning organization.

§ 140. Nondiscrimination

(a) Prior to approving any [programs for projects as provided for in subsection (a) of section 105 of this title] *project under this chapter*, the Secretary shall require assurances from any State desiring to avail itself of the benefits of this chapter that employment in connection with proposed projects will be provided without regard to race, color, creed, national origin, or sex. He shall require that each State shall include in the advertised specifications, notification of the specific equal employment opportunity responsibilities of the successful bidder. In approving programs for projects on any of the Federal-aid systems, the Secretary shall, where he considers it necessary to assure equal employment opportunity, require certification by any State desiring to avail itself of the benefits of this chapter that there are in existence and available on a regional, statewide, or local basis, apprenticeship, skill improvement or other upgrading programs, registered with the Department of Labor or the appropriate State agency, if any, which provide equal opportunity for training and employment without regard to race, color, creed, national origin, or sex. In implementing such programs, a State may reserve training positions for persons who receive welfare assistance from such State; except that the implementation of any such program shall not cause current employees to be displaced or current positions to be supplanted or preclude workers that are participating in an apprenticeship, skill improvement, or other upgrading program registered with the Department of Labor or the appropriate State agency from being referred to, or hired on, projects funded under this title without regard to the length of time of their participation in such program. The Secretary shall periodically obtain from the Secretary of Labor and the respective State

transportation departments information which will enable him to judge compliance with the requirements of this section and the Secretary of Labor shall render to the Secretary such assistance and information as he shall deem necessary to carry out the equal employment opportunity program required hereunder.

* * * * * * *

(c) The Secretary, in cooperation with any other department or agency of the Government, State agency, authority, association, institution, Indian tribal governments, corporation (profit or nonprofit), or any other organization or person, is authorized to develop, conduct, and administer training programs and assistance programs in connection with any program under this title in order that minority businesses may achieve proficiency to compete, on an equal basis, for contracts and subcontracts. Whenever apportionments are made under [subsection 104(b)(3) of this title] *section 104(b)(3)*, the Secretary shall deduct such sums as he may deem necessary, not to exceed $10,000,000 per fiscal year, for the administration of this subsection. The provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), shall not be applicable to contracts and agreements made under the authority herein granted to the Secretary notwithstanding the provisions of section 302(e) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(e)).

* * * * * * *

§ 143. Highway use tax evasion projects

(a) * * *

(b) PROJECTS.—

(1) * * *

(2) ALLOCATION OF FUNDS.—Funds made available to carry out this section may be allocated to the Internal Revenue Service and the States at the discretion of the Secretary*; except that of funds so made available for each of fiscal years 2004 through 2009, $2,000,000 shall be available only to carry out intergovernmental enforcement efforts, including research and training*.

(3) CONDITIONS ON FUNDS ALLOCATED TO INTERNAL REVENUE SERVICE.—[The] *Except as otherwise provided in this section, the* Secretary shall not impose any condition on the use of funds allocated to the Internal Revenue Service under this subsection.

(4) LIMITATION ON USE OF FUNDS.—Funds made available to carry out this section shall be used only—

(A) * * *

* * * * * * *

(F) to reimburse State expenses that supplement existing fuel tax compliance efforts; [and]

(G) to analyze and implement programs to reduce tax evasion associated with other highway use taxes[.]*;*

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

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

* * * * * * *

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

(c) EXCISE FUEL REPORTING SYSTEM.—

(1) IN GENERAL.—Not later than [August 1, 1998,] *90 days after the date of enactment of the Transportation Equity Act: A Legacy for Users,* the Secretary shall enter into a memorandum of understanding with the Commissioner of the Internal Revenue Service for the purposes of the [development] *completion, operation,* and maintenance by the Internal Revenue Service of [an excise fuel reporting system (in this subsection referred to as the "system")] *an excise summary terminal activity reporting system*.

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

(A) the Internal Revenue Service shall [develop] *complete* and maintain [the system] *the excise summary terminal activity reporting system* through contracts;

(B) the system shall be under the control of the Internal Revenue Service; [and]

(C) the system shall be made available for use by appropriate State and Federal revenue, tax, and law enforcement authorities, subject to section 6103 of the Internal Revenue Code of 1986[.]*; and*

(D) the Commissioner of the Internal Revenue Service shall submit and the Secretary shall approve a budget and project plan for the completion, operation, and maintenance of the system.

[(3) FUNDING PRIORITY.—Of the amounts made available to carry out this section for each of fiscal years 1998 through 2003, and prior to funding any other activity under this section, the Secretary shall make available sufficient funds to the Internal Revenue Service to establish and operate an automated fuel reporting system.]

(3) FUNDING.—Of the amounts made available to carry out this section for each of fiscal years 2004 through 2009, the Secretary shall make available to the Internal Revenue Service such funds as may be necessary to complete, operate, and maintain the excise summary terminal activity reporting system in accordance with this subsection.

(d) PIPELINE, VESSEL, AND BARGE REGISTRATION SYSTEM.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this subsection, the Secretary shall enter into a memorandum of understanding with the Commissioner of the Internal Revenue Service for the purposes of the development, operation, and maintenance of a registration system for pipelines, vessels, and barges, and operators of such pipelines, vessels, and barges, that make bulk transfers of taxable fuel.

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

(A) the Internal Revenue Service shall develop and maintain the registration system through contracts;

(B) the Commissioner of the Internal Revenue Service shall submit and the Secretary shall approve a budget and project plan for development, operation, and maintenance of the registration system;

(C) the registration system shall be under the control of the Internal Revenue Service; and

(D) the registration system shall be made available for use by appropriate State and Federal revenue, tax, and law enforcement authorities, subject to section 6103 of the Internal Revenue Code of 1986.

(3) FUNDING.—Of the amounts made available to carry out this section for each of fiscal years 2004 through 2009, the Secretary shall make available to the Internal Revenue Service such funds as may be necessary to complete, operate, and maintain a registration system for pipelines, vessels, and barges, and operators of such pipelines, vessels, and barges, that make bulk transfers of taxable fuel in accordance with this subsection.

(e) HEAVY VEHICLE USE TAX PAYMENT DATABASE.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this subsection, the Secretary shall enter into a memorandum of understanding with the Commissioner of the Internal Revenue Service for the purposes of the establishment, operation, and maintenance of an electronic database of heavy vehicle highway use tax payments.

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

(A) the Internal Revenue Service shall establish and maintain the electronic database through contracts;

(B) the Commissioner of the Internal Revenue Service shall submit and the Secretary shall approve a budget and project plan for establishment, operation, and maintenance of the electronic database;

(C) the electronic database shall be under the control of the Internal Revenue Service; and

(D) the electronic database shall be made available for use by appropriate State and Federal revenue, tax, and law enforcement authorities, subject to section 6103 of the Internal Revenue Code of 1986.

(3) FUNDING.—Of the amounts made available to carry out this section for each of fiscal years 2004 through 2009, the Secretary shall make available to the Internal Revenue Service such funds as may be necessary to establish, operate, and maintain an electronic database of heavy vehicle highway use tax payments in accordance with this subsection.

(f) REPORTS.—Not later than March 30 and September 30 of each year, the Commissioner of the Internal Revenue Service shall provide reports to the Secretary on the status of the Internal Revenue Service projects funded under this section related to the excise summary terminal activity reporting system, the pipeline, vessel, and barge registration system, and the heavy vehicle use tax electronic database.

§ 144. Highway bridge replacement and rehabilitation program

(a) * * *

* * * * * * *

[(d) Whenever any State or States make application to the Secretary for assistance in replacing or rehabilitating a highway bridge which the priority system established under subsection (b) and (c) of this section shows to be eligible, the Secretary may approve Federal participation in replacing such bridge with a comparable facility or in rehabilitating such bridge. Whenever any State makes application to the Secretary for assistance in painting and seismic retrofit, or applying calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or installing scour countermeasures to, the structure of a highway bridge, the Secretary may approve Federal participation in the painting or seismic retrofit of, or application of such acetate or sodium acetate/formate or such anti-icing or de-icing composition or installation of such countermeasures to, such structure. The Secretary shall determine the eligibility of highway bridges for replacement or rehabilitation for each State based upon the unsafe highway bridges in such State, except that a State may carry out a project for seismic retrofit of a bridge under this section without regard to whether the bridge is eligible for replacement or rehabilitation under this section. In approving projects (other than projects for bridge structure painting or seismic retrofit or application of such acetate or sodium acetate/formate or such anti-icing or de-icing composition or installation of such countermeasures) under this section, the Secretary shall give consideration to those projects which will remove from service those highway bridges most in danger of failure.]

(d) APPLICATIONS FOR AND APPROVAL OF ASSISTANCE.—

(1) BRIDGE REPLACEMENT OR REHABILITATION.—Whenever any State or States make application to the Secretary for assistance in replacing or rehabilitating a highway bridge which the priority system established under subsections (b) and (c) shows to be eligible, the Secretary may approve Federal participation in replacing such bridge with a comparable facility or in rehabilitating such bridge.

(2) PREVENTIVE MAINTENANCE, SCOUR MEASURES, AND APPLICATIONS OF CERTAIN COMPOSITIONS.—Whenever any State makes application to the Secretary for assistance in painting, seismic retrofit, or preventive maintenance of, or installing scour countermeasures or applying calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions to, the structure of a highway bridge, the Secretary may approve Federal participation in the painting, seismic retrofit, or preventive maintenance of, or installation of scour countermeasures or application of acetate or sodium acetate/formate or such anti-icing or de-icing composition to, such structure.

(3) ELIGIBILITY.—The Secretary shall determine the eligibility of highway bridges for replacement or rehabilitation for each State based upon the unsafe highway bridges in such State; except that a State may carry out a project for preventive mainte-

nance on a bridge, seismic retrofit of a bridge, or installing scour countermeasures to a bridge under this section without regard to whether the bridge is eligible for replacement or rehabilitation under this section.

* * * * * * *

(g) SET ASIDES.—

(1) DISCRETIONARY BRIDGE PROGRAM.—

(A) * * *

* * * * * * *

(D) FISCAL YEARS 2004 THROUGH 2009.—Of the amounts authorized to be appropriated to carry out the bridge program under this section for each of the fiscal years 2004 through 2009, all but $100,000,000 shall be apportioned as provided in subsection (e). Such $100,000,000 shall be available at the discretion of the Secretary.

* * * * * * *

(3) OFF-SYSTEM BRIDGES.—Not less than [15 percent] *20 percent* nor more than 35 percent of the amount apportioned to each State in each of fiscal years [1987] *2004* through [2003] *2009* and in the period of October 1, 2003, through April 30, 2004, shall be expended for projects to replace, rehabilitate, paint*, perform systematic preventive maintenance,* or seismic retrofit, or apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures*,* to highway bridges located on public roads, other than those on a Federal-aid highway. The Secretary, after consultation with State and local officials, may, with respect to such State, reduce the requirement for expenditure for bridges not on a Federal-aid highway when the Secretary determines that such State has inadequate needs to justify such expenditure.

* * * * * * *

(i) INVENTORIES AND REPORTS.—The Secretary shall—

(1) * * *

* * * * * * *

Such reports shall be submitted to such committees biennially [at the same time as the report required by section 307(f) of this title is submitted to Congress].

* * * * * * *

§ 145. Federal-State relationship

(a) * * *

(b) PURPOSE OF PROJECTS.—The projects described in *section 1702 of the Transportation Equity Act: A Legacy for Users,* section 1602 of the Transportation Equity Act for the 21st Century, sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2027 et seq.), and section 149(a) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (101 Stat. 181 et seq.) are intended to establish eligibility for Federal-aid highway funds made available for such projects by *section 1101(a)(17) of the Transportation Equity Act: A*

Legacy for Users, section 1101(a)(13) of the Transportation Equity Act for the 21st Century, [117 of title 23, United States Code,] *section 117 of this title,* sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991, and subsections (b), (c), and (d) of section 149 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, respectively, and are not intended to define the scope or limits of Federal action in a manner inconsistent with subsection (a).

* * * * * * *

§ 149. Congestion mitigation and air quality improvement program

(a) * * *

(b) ELIGIBLE PROJECTS.—Except as provided in subsection (c), a State may obligate funds apportioned to it under section 104(b)(2) for the congestion mitigation and air quality improvement program only for a transportation project or program if the project or program is for an area in the State that is or was designated as a nonattainment area for ozone, carbon monoxide, or particulate matter under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) and classified pursuant to section 181(a), 186(a), 188(a), or 188(b) of the Clean Air Act (42 U.S.C. 7511(a), 7512(a), 7513(a), or 7513(b)) or is or was designated as a nonattainment area under such section 107(d) after December 31, 1997, and—

(1) * * *

* * * * * * *

(5) if the program or project improves traffic flow, including projects to improve signalization, construct high occupancy vehicle lanes, improve intersections, *improve transportation systems management and operations,* and implement intelligent transportation system strategies and such other projects that are eligible for assistance under this section on the day before the date of enactment of this paragraph.

* * * * * * *

§ 150. Deployment of intelligent transportation systems

(a) IN GENERAL.—In each of fiscal years 2004 through 2009, each State shall obligate a portion of the funds apportioned to the State under sections 104(b)(1), 104(b)(2), 104(b)(3), and 104(b)(4) for such fiscal year, calculated under subsection (b), for projects described in subsection (c) that support deployment of intelligent transportation systems in the State.

(b) CALCULATION OF AMOUNT.—The portion of a State's apportionments to be obligated under subsection (a) for projects described in subsection (c) in a fiscal year shall be determined by multiplying $500,000,000 by the ratio that—

(1) the aggregate of amounts apportioned to the State for such fiscal year under sections 104(b)(1), 104(b)(2), 104(b)(3), and 104(b)(4); bears to

(2) the aggregate of amounts apportioned to all States for such fiscal year under such sections.

(c) INTELLIGENT TRANSPORTATION SYSTEMS DEPLOYMENT PROJECTS.—Projects for which funds must be obligated under this section include the following:

(1) PERFORMANCE.—Establishment and implementation of operations systems and services that improve performance in the areas of traffic operations, emergency response to surface transportation incidents, surface transportation incident management, weather event response management by State and local authorities, surface transportation network and facility management, construction and work zone management, and traffic flow information.

(2) NETWORKS.—Conducting activities that support the creation of networks that link metropolitan and rural surface transportation systems into an integrated data network, capable of collecting, sharing, and archiving transportation system traffic condition and performance information.

(3) SAFETY.—Implementation of intelligent transportation system technologies that improve highway safety through linkages connecting the vehicle, the infrastructure, and information to the driver.

(4) OPERATION AND MANAGEMENT.—Provision of services necessary to ensure the efficient operation and management of intelligent transportation systems infrastructure, including costs associated with communications, utilities, rent, hardware, software, labor, administrative costs, training, and technical services.

(5) INTERAGENCY SUPPORT.—Provision of support for institutional relationships between transportation agencies, police, emergency medical services, private emergency operators, freight operators, and shippers.

(6) PLANNING.—Conducting cross-jurisdictional planning and deployment of regional transportation systems operations and management approaches.

(d) OBLIGATION OF AMOUNTS.—

(1) IN GENERAL.—In complying with the requirements of this section, the amounts obligated by a State for projects under subsection (c) that support deployment of intelligent transportation systems in such State under subsection (a) shall be allocated among the individual programs for which funds are apportioned under sections 104(b)(1), 104(b)(2), 104(b)(3), and 104(b)(4).

(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed as requiring a State to obligate proportional or equal amounts under sections 104(b)(1), 104(b)(2), 104(b)(3), and 104(b)(4) for any congestion relief activity under this section.

(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as altering or otherwise affecting the applicability of the requirements of this chapter (including requirements relating to the eligibility of a project for assistance under the program, the location of the project, and the Federal-share payable on account of the project) to amounts apportioned to a State for a program under section 104(b) that are obligated by the State for projects under this section.

(f) JOINT RESPONSIBILITY.—Each State, each affected metropolitan planning organization, and the Secretary shall jointly ensure compliance with this section.

* * * * * * *

§ 152. Hazard elimination program

(a) IN GENERAL.—

(1) PROGRAM.—Each State shall conduct and systematically maintain an engineering survey of all public roads to identify hazardous locations, sections, and elements, including roadside obstacles and unmarked or poorly marked roads, which may constitute a danger to motorists, bicyclists, **[**and**]** pedestrians, *and the disabled, identify roadway safety improvement needs for such locations, sections, and elements,* assign priorities for the correction of such locations, sections, and elements, and establish and implement a schedule of projects for their improvement.

(2) HAZARDS.—In carrying out paragraph (1), a State may, at its discretion—

(A) identify, through a survey, hazards to motorists, bicyclists, pedestrians, *the disabled,* and users of highway facilities; and

* * * * * * *

(b) The Secretary may approve as a project under this section any safety improvement project, including a project described in subsection (a) *that reduces the likelihood of crashes involving road departures, intersections, pedestrians, the disabled, bicyclists, older drivers, or construction work zones*.

(c) Funds authorized to carry out this section shall be available for expenditure on—

(1) * * *

(2) any public surface transportation facility or any publicly owned bicycle or pedestrian pathway or trail; **[**or**]**

(3) any traffic calming measure**[**.**]***;*

(4) police assistance for traffic and speed management in construction work zones;

(5) installation of barriers between construction work zones and traffic lanes for the safety of motorists and workers; and

(6) compilation and analysis of data under subsections (f) and (g) if the funds used for this purpose by a State do not exceed 2 percent of the amount apportioned to such State to carry out this section.

[(d) The Federal share payable on account of any project under this section shall be 90 percent of the cost thereof.**]**

(d) APPORTIONMENT.—

(1) FORMULA.—Funds authorized to be appropriated to carry out this section shall be apportioned to the States in accordance with the formula set forth in section 104(b)(3)(A).

(2) MINIMUM APPORTIONMENT.—Notwithstanding paragraph (1), each State shall receive a minimum of ½ of 1 percent of the funds apportioned under paragraph (1).

(3) FEDERAL SHARE.—The Federal share payable on account of any project financed with funds authorized to be appro-

priated to carry out this section shall be 90 percent of the cost thereof.

* * * * * * *

(g) Each State shall report to the Secretary of Transportation not later than December 30 of each year, on the progress being made to implement safety improvement projects for hazard elimination and the effectiveness of such improvements. Each State report shall contain an assessment of the cost of, and safety benefits derived from, the various means and methods used to mitigate or eliminate hazards and the previous and subsequent accident experience at these locations. [The Secretary of Transportation shall submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives not later than April 1 of each year on the progress being made by the States in implementing the hazard elimination program (including but not limited to any projects for pavement marking). The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, means and methods used, and the previous and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (a) and include recommendations for future implementation of the hazard elimination program.]

* * * * * * *

(i) BIENNIAL REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this subsection, and every 2 years thereafter, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the program under this section. The report shall include, at a minimum, the following:

(1) A summary of State projects completed under this section categorized by the types of hazards and a statement of the cost of such projects.

(2) An analysis of the effectiveness of such categories of projects in reducing the number and severity of crashes at high hazard locations.

(3) An assessment of the adequacy of authorized funding for the program and State use of such funding to address the national need for such projects.

(4) Recommendations for funding and program improvements to reduce the number of high hazard locations.

(5) An analysis and evaluation of each State program, an identification of any State found not to be in compliance with the schedule of improvements required by subsection (a), and recommendations for future implementation of the hazard elimination program.

§ 153. Use of safety belts and motorcycle helmets

(a) * * *

* * * * * * *

(h) PENALTY.—

(1) * * *

(2) [THEREAFTER] *FISCAL YEARS 1995–2003*.—If, at any time in a fiscal year beginning after September 30, 1994, *and ending before October 1, 2003,* a State does not have in effect a law described in subsection (a)(2), the Secretary shall transfer 3 percent of the funds apportioned to the State for the succeeding fiscal year under each of subsections (b)(1), (b)(2), and (b)(3) of section 104 of this title to the apportionment of the State under section 402 of this title.

(3) FISCAL YEAR 2004 AND THEREAFTER.—On October 1, 2003, and each October 1 thereafter, if a State does not have in effect a law described in subsection (a)(2), the Secretary shall transfer from the funds apportioned to the State on that date under each of subsections (b)(1), (b)(2), and (b)(3) of section 104 to the apportionment of the State under section 402 an amount equal to 3 percent of the funds apportioned to the State under such subsections for fiscal year 2003.

[(3)] *(4)* FEDERAL SHARE.—The Federal share of the cost of any project carried out under section 402 with funds transferred to the apportionment of section 402 shall be 100 percent.

[(4)] *(5)* TRANSFER OF OBLIGATION AUTHORITY.—If the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 for a fiscal year, the Secretary shall allocate an amount of obligation authority distributed for such fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out only projects under section 402 [which is determined by multiplying] *which, for fiscal year 2004 and each fiscal year thereafter, is determined by multiplying—*

(A) * * *

(B) the ratio of the amount of obligation authority distributed for [such fiscal year] *fiscal year 2003* to the State for Federal-aid highways and highway safety construction programs to the total of the sums apportioned to the State for Federal-aid highways and highway safety construction (excluding sums not subject to any obligation limitation) for [such fiscal year] *fiscal year 2003*.

[(5)] *(6)* LIMITATION ON APPLICABILITY OF HIGHWAY SAFETY OBLIGATIONS.—Notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs carried out by the Federal Highway Administration under section 402 shall apply to funds transferred under this subsection to the apportionment of section 402.

(i) DEFINITIONS.—For the purposes of this section, the following definitions apply:

(1) * * *

[(2) MOTOR VEHICLE.—The term "motor vehicle" has the meaning such term has under section 154 of this title.]

[(3)] *(2)* PASSENGER VEHICLE.—The term "passenger vehicle" means a motor vehicle which is designed for transporting 10 individuals or less, including the driver, except that such term does not include a vehicle which is constructed on a truck chassis, a motorcycle, a trailer, or any motor vehicle which is not required on the date of the enactment of this section under a

Federal motor vehicle safety standard to be equipped with a belt system.

[(4)] *(3)* SAFETY BELT.—The term "safety belt" means—

(A) * * *

* * * * * * *

§ 154. Open container requirements

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

(1) * * *

[(3)] *(2)* OPEN ALCOHOLIC BEVERAGE CONTAINER.—The term "open alcoholic beverage container" means any bottle, can, or other receptacle—

(A) * * *

* * * * * * *

[(4)] *(3)* PASSENGER AREA.—The term "passenger area" shall have the meaning given the term by the Secretary by regulation.

* * * * * * *

(c) TRANSFER OF FUNDS.—

(1) * * *

(2) FISCAL YEAR 2003 [AND FISCAL YEARS THEREAFTER].—On October 1, 2002, [and each October 1 thereafter,] if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).

(3) FISCAL YEAR 2004 AND THEREAFTER.—On October 1, 2003, and each October 1 thereafter, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall transfer from the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) an amount equal to 3 percent of the funds apportioned to the State under such paragraphs for fiscal year 2003 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).

[(3)] *(4)* USE FOR HAZARD ELIMINATION PROGRAM.—A State may elect to use all or a portion of the funds transferred under [paragraph (1) or (2)] *paragraph (1), (2), or (3)* for activities eligible under section 152.

[(4)] *(5)* FEDERAL SHARE.—The Federal share of the cost of a project carried out with funds transferred under [paragraph (1) or (2)] *paragraph (1), (2), or (3)*, or used under [paragraph (3)] *paragraph (4)*, shall be 100 percent.

[(5)] *(6)* DERIVATION OF AMOUNT TO BE TRANSFERRED.—The amount to be transferred under [paragraph (1) or (2)] *paragraph (1), (2), or (3)* may be derived from 1 or more of the following:

(A) * * *

* * * * * * *

[(6)] *(7)* TRANSFER OF OBLIGATION AUTHORITY.—

(A) * * *

(B) AMOUNT.—[The amount] *For fiscal year 2004 and each fiscal year thereafter, the amount* of obligation authority referred to in subparagraph (A) shall be determined by multiplying—

(i) * * *

(ii) the ratio that—

(I) the amount of obligation authority distributed for [the fiscal year] *fiscal year 2003* to the State for Federal-aid highways and highway safety construction programs; bears to

(II) the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for [the fiscal year] *fiscal year 2003*.

[(7)] *(8)* LIMITATION ON APPLICABILITY OF OBLIGATION LIMITATION.—Notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs under section 402 shall apply to funds transferred under this subsection to the apportionment of a State under such section.

* * * * * * *

§ 157. Safety incentive grants for use of seat belts

(a) * * *

* * * * * * *

(g) FUNDING.—

(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $82,000,000 for fiscal year 1999, $92,000,000 for fiscal year 2000, $102,000,000 for fiscal year 2001, $112,000,000 for fiscal year 2002, $112,000,000 for [fiscal year 2003] *each of fiscal years 2003 and 2004*, $65,333,333 for the period of October 1, 2003, through April 30, 2004.

* * * * * * *

§ 163. Safety incentives to prevent operation of motor vehicles by intoxicated persons

(a) * * *

* * * * * * *

(e) PENALTY.—

(1) IN GENERAL.—On October 1, 2003, and October 1 of each fiscal year thereafter, if a State has not enacted or is not enforcing a law described in subsection (a), the Secretary shall withhold from amounts apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) an amount equal to the amount specified in paragraph (2).

(2) AMOUNT TO BE WITHHELD.—If a State is subject to a penalty under paragraph (1), the Secretary shall withhold for a fiscal year from the apportionments of the State described in paragraph (1) an amount equal to a percentage of the funds appor-

tioned to the State under paragraphs (1), (3), and (4) of section 104(b) for fiscal year 2003. The percentage shall be as follows:

(A) For fiscal year 2004, 2 percent.

(B) For fiscal year 2005, 4 percent.

(C) For fiscal year 2006, 6 percent.

(D) For fiscal year 2007, and each fiscal year thereafter, 8 percent.

(3) FAILURE TO COMPLY.—If, within 4 years from the date that an apportionment for a State is withheld in accordance with this subsection, the Secretary determines that the State has enacted and is enforcing a law described in subsection (a), the apportionment of the State shall be increased by an amount equal to the amount withheld. If, at the end of such 4-year period, any State has not enacted or is not enforcing a law described in subsection (a) any amounts so withheld from such State shall lapse.

[(e)] *(f)* AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $55,000,000 for fiscal year 1998, $65,000,000 for fiscal year 1999, $80,000,000 for fiscal year 2000, $90,000,000 for fiscal year 2001, $100,000,000 for fiscal year 2002, $110,000,000 for [fiscal year 2003] *each of fiscal years 2003 and 2004*, and $70,000,000 for the period of October 1, 2003, through April 30, 2004.

* * * * * * *

§ 164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence

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

(1) * * *

* * * * * * *

(4) MOTOR VEHICLE.—The term "motor vehicle" [means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or] *does not include* a commercial vehicle.

(5) REPEAT INTOXICATED DRIVER LAW.—The term "repeat intoxicated driver law" means a State law that provides, as a minimum penalty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall—

[(A) receive a driver's license suspension for not less than 1 year;]

(A) receive (i) a driver's license suspension for not less than 1 year, or (ii) a combination of suspension of all driving privileges of an individual for the first 45 days of the suspension period followed by a reinstatement of limited driving privileges for the propose of getting to and from work, school, or an alcohol treatment program if an igni-

tion interlock device is installed on each of the motor vehicles owned or operated, or both, by the individual;

* * * * * * *

(b) TRANSFER OF FUNDS.—

(1) * * *

(2) FISCAL YEAR 2003 [AND FISCAL YEARS THEREAFTER].—On October 1, 2002, [and each October 1 thereafter,] if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).

(3) FISCAL YEAR 2004 AND THEREAFTER.—On October 1, 2003, and each October 1 thereafter, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer from the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) an amount equal to 3 percent of the funds apportioned to the State under such paragraphs for fiscal year 2003 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).

[(3)] *(4)* USE FOR HAZARD ELIMINATION PROGRAM.—A State may elect to use all or a portion of the funds transferred under [paragraph (1) or (2)] *paragraph (1), (2), or (3)* for activities eligible under section 152.

[(4)] *(5)* FEDERAL SHARE.—The Federal share of the cost of a project carried out with funds transferred under [paragraph (1) or (2)] *paragraph (1), (2), or (3)*, or used under [paragraph (3)] *paragraph (4)*, shall be 100 percent.

[(5)] *(6)* DERIVATION OF AMOUNT TO BE TRANSFERRED.—The amount to be transferred under [paragraph (1) or (2)] *paragraph (1), (2), or (3)* may be derived from 1 or more of the following:

(A) * * *

* * * * * * *

[(6)] *(7)* TRANSFER OF OBLIGATION AUTHORITY.—

(A) * * *

(B) AMOUNT.—[The amount] *For fiscal year 2004 and each fiscal year thereafter, the amount* of obligation authority referred to in subparagraph (A) shall be determined by multiplying—

(i) * * *

(ii) the ratio that—

(I) the amount of obligation authority distributed for [the fiscal year] *fiscal year 2003* to the State for Federal-aid highways and highway safety construction programs; bears to

(II) the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for [the fiscal year] *fiscal year 2003*.

[(7)] *(8)* LIMITATION ON APPLICABILITY OF OBLIGATION LIMITATION.—Notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs under section 402 shall apply to funds transferred under this subsection to the apportionment of a State under such section.

§ 165. Construction of ferry boats and ferry terminal facilities

(a) IN GENERAL.—The Secretary shall carry out a program for construction of ferry boats and ferry terminal facilities in accordance with section 129(c).

(b) FEDERAL SHARE.—The Federal share payable for construction of ferry boats and ferry terminal facilities under this section shall be 80 percent of the cost thereof.

(c) AVAILABILITY OF AMOUNTS.—Amounts made available to carry out this section shall remain available until expended.

(d) SET-ASIDE FOR PROJECTS ON NHS.—

(1) IN GENERAL.—$20,000,000 of the amount made available to carry out this section for each of fiscal years 2004 through 2009 shall be obligated for the construction or refurbishment of ferry boats and ferry terminal facilities and approaches to such facilities within marine highway systems that are part of the National Highway System.

(2) ALASKA.—$10,000,000 of the $20,000,000 for a fiscal year made available under paragraph (1) shall be made available to the State of Alaska.

(3) NEW JERSEY.—$5,000,000 of the $20,000,000 for a fiscal year made available under paragraph (1) shall be made available to the State of New Jersey.

(4) WASHINGTON.—$5,000,000 of the $20,000,000 for a fiscal year made available under paragraph (1) shall be made available to the State of Washington.

(e) APPLICABILITY.—All provisions of this chapter that are applicable to the National Highway System, other than provisions relating to apportionment formula and Federal share, shall apply to funds made available to carry out this section, except as determined by the Secretary to be inconsistent with this section.

§ 166. Transportation systems management and operations

(a) AUTHORITY.—The Secretary may—

(1) encourage transportation system managers, operators, public safety officials, and transportation planners within an urbanized area, who are actively engaged in and responsible for conducting activities relating to day-to-day management, operations, public safety, and planning of transportation facilities and services, to collaborate and coordinate on a regional level in a continuous and sustained manner for improved transportation systems management and operations, including, at a minimum—

(A) developing a regional concept of operations that defines a regional strategy shared by all transportation and public safety participants for how the region's systems should be managed, operated, and measured;

(B) sharing of information among operators, service providers, public safety officials, and the general public; and

(C) guiding, in a regionally-coordinated manner, the implementation of regional transportation system management and operations initiatives, including emergency evacuation and response, traffic incident management, technology deployment, and traveler information systems delivery, in a manner consistent with and integrated into the ongoing metropolitan and statewide transportation planning processes and regional intelligent transportation system architecture, if required; and

(2) encourage States to establish a system of basic real-time monitoring capability for the surface transportation system and provide the capability and means to share that data among agencies (including highway, transit, and public safety agencies), jurisdictions (including States, cities, counties, and areas represented by metropolitan planning organizations), private-sector entities, and the traveling public.

(b) EXECUTION.—To support the successful execution of transportation systems management and operations activities, the Secretary may undertake the following activities:

(1) Assist and cooperate with other Federal departments and agencies, State and local governments, metropolitan planning organizations, private industry representatives, and other interested parties to improve regional collaboration and real-time information sharing between transportation system managers and operators, public safety officials, emergency managers, and the general public to increase the security, safety, and reliability of Federal-aid highways.

(2) Issue, if necessary, new guidance or regulations for the procurement of transportation system management and operations facilities, equipment, and services, including equipment procured in preparation for natural disasters and emergencies, system hardware, software, and software integration services.

§ 167. HOV facilities

(a) IN GENERAL.—

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

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

(b) EXCEPTIONS.—Notwithstanding the occupancy requirements of subsection (a)(2), the following exceptions shall apply with respect to a State agency operating a HOV facility:

(1) MOTORCYCLES AND BICYCLES.——

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

(B) SAFETY EXCEPTION.—A State agency may restrict use of the HOV facility by motorcycles or bicycles (or both) if the agency certifies to the Secretary that such use would create a safety hazard and the Secretary accepts the certification. The Secretary may accept a certification under this subparagraph only after the Secretary publishes notice of

the certification in the Federal Register and provides an opportunity for public comment.

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

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

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

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

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

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

(C) establishes policies and procedures to—

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

(ii) enforce violations of use of the facility; and

(iii) permit low-income individuals to pay reduced tolls.

(4) LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—

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

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

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

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

(C) AMOUNT OF TOLLS.—Tolls charged under subparagraph (B) may be less than tolls charged under paragraph (3).

(c) REQUIREMENTS APPLICABLE TO TOLLS.——

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

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

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

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

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

(A) Establishing, managing, and supporting a performance monitoring, evaluation, and reporting program for the facility that provides for continuous monitoring, assessment, and reporting on the impacts that such vehicles may have on the operation of the facility and adjacent highways.

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

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

(2) DEGRADED FACILITY.——

(A) IN GENERAL.—For purposes of paragraph (1), the operation of a HOV facility shall be considered to be degraded if vehicles operating on the facility are failing to maintain a minimum average operating speed 90 percent of the time over a consecutive 6-month period during morning or evening weekday peak hour periods (or both).

(B) MINIMUM AVERAGE OPERATING SPEED DEFINED.—In subparagraph (A), the term "minimum average operating speed" means—

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

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

(e) CERTIFICATION OF LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—Not later than 6 months after the date of enactment of this section, the Administrator of the Environmental Protection Agency shall issue a final rule establishing requirements for certification of vehicles as low emission and energy-efficient vehicles for purposes of this section and requirements for the labeling of such vehicles.

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

(1) ALTERNATIVE FUEL VEHICLE.—The term "alternative fuel vehicle" means a vehicle that operates on—

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

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

(C) natural gas;

(D) liquefied petroleum gas;

(E) hydrogen;

(F) coal derived liquid fuels;

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

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

(I) any other fuel that the Secretary prescribes by regulation that is not substantially petroleum and that would yield substantial energy security and environmental benefits.

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

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

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

(B)(i) has been certified by the Administrator to have a 45-mile-per-gallon or greater fuel economy highway rating; or

(ii) is an alternative fuel vehicle.

(4) PUBLIC TRANSPORTATION VEHICLE.—The term "public transportation vehicle" means a vehicle that provides public transportation (as defined in section 5302(a) of title 49).

(5) STATE AGENCY.—The term "State agency", as used with respect to a HOV facility, means an agency of a State or local government having jurisdiction over the operation of the facility and includes a State transportation department.

[SUBCHAPTER II—INFRASTRUCTURE FINANCE**]**

Chapter 2.—OTHER HIGHWAYS

* * * * * * *

§ 202. Allocations

(a) On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for forest development roads and trails according to the relative needs of the various national forests. Such allocation shall be consistent with the renewable resource and land use planning for the various national forests*; except that the Secretary may use up to 3 percent of such funds for making grants to Indian tribes for the purpose of financing transportation debt for individual Indian reservation roads subject to all requirements governing Federal assistance for Indian roads under this section and section 204.*

* * * * * * *

(d) INDIAN RESERVATION ROADS.—

(1) * * *

(2) FISCAL YEAR 2000 AND THEREAFTER.—

(A) * * *

* * * * * * *

(E) ALASKA NATIVE ROAD INVENTORY.—

(i) IN GENERAL.—For fiscal year 2004 and each fiscal year thereafter, any allocation of sums authorized to be appropriated for Indian reservation roads in Alaska shall be based on an inventory of roads within the exterior boundaries of village corporation land selected pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that includes all routes previously included in such an inventory. The Secretary of Transportation and the Secretary of the Interior may include, in the inventory of roads, those proposed for inclusion by tribal village governments from among community streets within the village and those proposed primary access routes for inclusion by tribal village governments, including roads and trails between villages (including links over water), roads and trails to landfills, roads and trails to drinking water sources, roads and trails to natural resources identified for economic development, and roads and trails that provide access to intermodal termini, such as airports, harbors, or boat landings.

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

[(3) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.—

[(A) IN GENERAL.—Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available under this title for Indian reservation roads and for highway bridges located on Indian reservation roads to pay for the costs of programs, services, functions, and activities, or portions thereof, that are specifically or functionally related to the cost of planning, research, engineering, and construction of any highway, road, bridge, parkway, or transit facility that provides access to or is located within the reservation or community of an Indian tribe shall be made available, upon request of the Indian tribal government, to the Indian tribal government for contracts and agreements for such planning, research, engineering, and construction in accordance with the Indian Self-Determination and Education Assistance Act.

[(B) EXCLUSION OF AGENCY PARTICIPATION.—Funds for programs, functions, services, or activities, or portions thereof, including supportive administrative functions that are otherwise contractible to which subparagraph (A) applies, shall be paid in accordance with subparagraph (A) without regard to the organizational level at which the Department of the Interior that has previously carried out such programs, functions, services, or activities.]

(3) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.—

(A) IN GENERAL.—Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available to an Indian tribal government under this title for a highway, road, bridge, parkway, or transit facility project that is lo-

cated on an Indian reservation or provides access to the reservation or a community of the Indian tribe shall be made available, on the request of the Indian tribal government, to the Indian tribal government for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), contracts and agreements for the planning, research, engineering, and construction relating to such project.

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

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

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

(E) ELIGIBILITY.—An Indian tribal government may receive funding under subparagraph (A) for a project in a fiscal year if the Indian tribal government demonstrates to the satisfaction of the Secretary financial stability and financial management capability as demonstrated in the annual auditing required under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and, during the preceding fiscal year, had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe's self-determination contracts or self-governance funding agreements with any Federal agency.

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

(G) POWERS.—An Indian tribal government receiving funding under subparagraph (A) for a project shall have all powers that the Secretary of the Interior would have exercised in administering the funds transferred to the In-

dian tribal government for such project under this section if such funds had not been transferred, except to the extent that such powers are powers that inherently cannot be legally transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.).

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

* * * * * * *

§ 206. Recreational trails program

(a) * * *

* * * * * * *

(d) USE OF APPORTIONED FUNDS.—

(1) * * *

* * * * * * *

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

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

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

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

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

[(i) permissible under other law;

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

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

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

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

[(F) payment of costs to the State incurred in administering the program, but in an amount not to exceed 7 percent of the apportionment made to the State for the fiscal year to carry out this section; and

[(G) operation of educational programs to promote safety and environmental protection as those objectives relate to the use of recreational trails, but in an amount not to exceed 5 percent of the apportionment made to the State for the fiscal year.]

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

(A) maintenance and restoration of existing recreational trails;

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

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

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

(i) permissible under other law;

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

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

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

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

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

(G) operation of educational programs to promote safety and environmental protection as those objectives relate to the use of recreational trails, but in an amount not to exceed 5 percent of the apportionment made to the State for the fiscal year; and

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

(3) USE OF APPORTIONMENTS.—

(A) * * *

* * * * * * *

[(C) WAIVER AUTHORITY.—A State recreational trail advisory committee established under subsection (c)(2) may waive, in whole or in part, the requirements of clauses (ii) and (iii) of subparagraph (A) if the State recreational trail advisory committee determines and notifies the Secretary that the State does not have sufficient projects to meet the requirements of clauses (ii) and (iii) of subparagraph (A).]

[(D)] *(C)* STATE ADMINISTRATIVE COSTS.—State administrative costs eligible for funding under paragraph [(2)(F)] *(2)(H)* shall be exempt from the requirements of subparagraph (A).

* * * * * * *

(f) FEDERAL SHARE.—

(1) IN GENERAL.—Subject to the other provisions of this subsection, the Federal share of the cost of a project *and the Federal share of the administrative costs of a State* under this section shall [not exceed 80 percent] *be determined in accordance with section 120(b)*.

(2) FEDERAL AGENCY PROJECT SPONSOR.—Notwithstanding any other provision of law, a Federal agency that sponsors a project under this section may contribute additional Federal funds toward the cost of a project, except that—

(A) the share attributable to the Secretary of Transportation may not exceed [80 percent of] *the amount determined in accordance with section 120(b) for* the cost of a project under this section; and

(B) the share attributable to the Secretary and the Federal agency *sponsoring the project* may not exceed 95 percent of the cost of a project under this section.

* * * * * * *

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

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

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

[(4)] *(5)* PROGRAMMATIC NON-FEDERAL SHARE.—A State may allow adjustments to the non-Federal share of an individual project for a fiscal year under this section if the Federal share of the cost of all projects carried out by the State under the program (excluding projects funded under paragraph (2) or (3)) using funds apportioned to the State for the fiscal year does not exceed [80 percent] *the Federal share as determined in accordance with section 120(b)*.

[(5) STATE ADMINISTRATIVE COSTS.—The Federal share of the administrative costs of a State under this subsection shall be determined in accordance with section 120(b).]

* * * * * * *

(h) PROJECT ADMINISTRATION.—

(1) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, SERVICES, OR NEW RIGHT-OF-WAY.—

(A) * * *

* * * * * * *

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

* * * * * * *

Chapter 4.—HIGHWAY SAFETY

Sec.
401. Authority of the Secretary.
* * * * * * *
412. State traffic safety information system improvements.
* * * * * * *

§ 402. Highway safety programs

(a) Each State shall have a highway safety program approved by the Secretary, designed to reduce traffic accidents and deaths, injuries, and property damage resulting therefrom. Such programs shall be in accordance with uniform guidelines promulgated by the Secretary. Such uniform guidelines shall be expressed in terms of performance criteria. In addition, such uniform guidelines shall include programs (1) to reduce injuries and deaths resulting from motor vehicles being driven in excess of posted speed limits, (2) to encourage the proper use of occupant protection devices (including the use of safety belts and child restraint systems) by occupants of motor vehicles and to increase public awareness of the benefit of motor vehicles equipped with airbags, (3) to reduce deaths and injuries resulting from persons driving motor vehicles while impaired by alcohol or a controlled substance, (4) to prevent accidents and reduce deaths and injuries resulting from accidents involving motor vehicles and motorcycles, (5) to reduce injuries and deaths resulting from accidents involving school buses, [and] (6) to improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures. The Secretary shall establish a highway safety program for the collection and reporting of data on traffic-related deaths and injuries by the States. Under such program, the States shall collect and report such data as the Secretary may require. The purposes of the program are to ensure national uniform data on such deaths and injuries and to allow the Secretary to make determinations for use in developing programs to reduce such deaths and injuries and making recommendations

to Congress concerning legislation necessary to implement such programs. The program shall provide for annual reports to the Secretary on the efforts being made by the States in reducing deaths and injuries occurring at highway construction sites and the effectiveness and results of such efforts. The Secretary shall establish minimum reporting criteria for the program. Such criteria shall include, but not be limited to, criteria on deaths and injuries resulting from police pursuits, school bus accidents, and speeding, on traffic-related deaths and injuries at highway construction sites and on the configuration of commercial motor vehicles involved in motor vehicle accidents. Such uniform guidelines shall be promulgated by the Secretary so as to improve driver performance (including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles, driver examinations (both physical and mental) and driver licensing) and to improve pedestrian performance, and bicycle safety. In addition such uniform guidelines shall include, but not be limited to provisions for an effective record system of accidents (including injuries and deaths resulting therefrom), accident investigations to determine the probable causes of accidents, injuries, and deaths, vehicle registration, operation, and inspection, highway design and maintenance (including lighting, markings, and surface treatment), traffic control, vehicle codes and laws, surveillance of traffic for detection and correction of high or potentially high accident locations, enforcement of light transmission standards of window glazing for passenger motor vehicles and light trucks as necessary to improve highway safety, and emergency services. Such guidelines as are applicable to State highway safety programs shall, to the extent determined appropriate by the Secretary, be applicable to federally administered areas where a Federal department or agency controls the highways or supervises traffic operations*; and (7) to reduce deaths and injuries resulting from persons driving motor vehicles while fatigued*.

* * * * * * *

§ 405. Occupant protection incentive grants

(a) GENERAL AUTHORITY.—

(1) * * *

(2) 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 programs described in paragraph (1) at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of the **[**Transportation Equity Act for the 21st Century**]** *Transportation Equity Act: A Legacy for Users*.

(3) MAXIMUM PERIOD OF ELIGIBILITY.—No State may receive grants under this section in more than 6 fiscal years beginning after September 30, **[**1997**]** *2003*.

(4) FEDERAL SHARE.—The Federal share of the cost of implementing and enforcing, as appropriate, in a fiscal year a program adopted by a State pursuant to paragraph (1) shall not exceed—

(A) in each of the first and second fiscal years *beginning after September 30, 2003,* in which the State receives a grant under this section, 75 percent;

(B) in each of the third and fourth fiscal years *beginning after September 30, 2003,* in which the State receives a grant under this section, 50 percent; and

(C) in each of the fifth and sixth fiscal years *beginning after September 30, 2003,* in which the State receives a grant under this section, 25 percent.

(b) GRANT ELIGIBILITY.—**[**A State shall become eligible**]** *A State shall be eligible for a grant under this section if the State has a seat belt usage rate of 85 percent or greater as of the date of the grant, as determined by the Secretary. A State shall also become eligible* for a grant under this section by adopting or demonstrating to the satisfaction of the Secretary at least 4 of the following:

(1) * * *

* * * * * * *

(c) GRANT AMOUNTS.—The amount of a grant for which a State qualifies under this section for a fiscal year shall equal up to **[**25 percent**]** *100 percent* of the amount apportioned to the State for fiscal year **[**1997**]** *2003* under section 402.

* * * * * * *

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

(1) * * *

[(2) MOTOR VEHICLE.—The term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.**]**

[(3)**]** *(2)* MULTIPURPOSE PASSENGER VEHICLE.—The term "multipurpose passenger vehicle" means a motor vehicle with motive power (except a trailer), designed to carry not more than 10 individuals, that is constructed either on a truck chassis or with special features for occasional off-road operation.

[(4)**]** *(3)* PASSENGER CAR.—The term "passenger car" means a motor vehicle with motive power (except a multipurpose passenger vehicle, motorcycle, or trailer) designed to carry not more than 10 individuals.

[(5)**]** *(4)* PASSENGER MOTOR VEHICLE.—The term "passenger motor vehicle" means a passenger car or a multipurpose passenger motor vehicle.

[(6)**]** *(5)* SAFETY BELT.—The term "safety belt" means—

(A) * * *

* * * * * * *

§ 410. Alcohol-impaired driving countermeasures

(a) GENERAL AUTHORITY.—

(1) * * *

(2) 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 alcohol traffic safety programs at or above the average level of such expenditures

in its 2 fiscal years preceding the date of enactment of the [Transportation Equity Act for the 21st Century] *Transportation Equity Act: A Legacy for Users*.

(3) MAXIMUM PERIOD OF ELIGIBILITY.—No State may receive grants under this section in more than 7 fiscal years beginning after September 30, [1997] *2003*.

(4) FEDERAL SHARE.—The Federal share of the cost of implementing and enforcing in a fiscal year a program adopted by a State pursuant to paragraph (1) shall not exceed—

(A) in each of the first and second fiscal years *beginning after September 30, 2003,* in which the State receives a grant under this section, 75 percent;

(B) in each of the third and fourth fiscal years *beginning after September 30, 2003,* in which the State receives a grant under this section, 50 percent; and

(C) in each of the fifth, sixth, and seventh fiscal years *beginning after September 30, 2003,* in which the State receives a grant under this section, 25 percent.

(b) BASIC GRANT ELIGIBILITY.—

(1) BASIC GRANT A.—[A State shall become eligible] *A State shall be eligible for a grant under this paragraph if the State has an alcohol-related fatality rate per 100,000,000 vehicle miles traveled of 0.5 or less as of the date of the grant, as determined by the Secretary using the Fatality Analysis Reporting System of the National Highway Traffic Safety Administration. A State shall also become eligible* for a grant under this paragraph by adopting or demonstrating to the satisfaction of the Secretary [at least 5 of] *at least 6 of* the following:

(A) ADMINISTRATIVE LICENSE REVOCATION.—An administrative driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol that requires that—

(i) in the case of an individual who, in any 5-year period beginning after the date of enactment of the Transportation Equity Act for the 21st Century, is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or is determined to have refused to submit to such a test as proposed by a law enforcement officer, the State agency responsible for administering drivers' licenses, upon receipt of the report of the law enforcement officer—

(I) * * *

(II) shall suspend the driver's license of such individual for a period of not less than 1 year, or revoke such license, if such individual is a repeat offender in such 5-year period; [and]

(ii) the suspension and revocation referred to under clause (i) shall take effect not later than 30 days after the day on which the individual refused to submit to a chemical test or received notice of having been determined to be driving under the influence of alcohol, in accordance with the procedures of the State[.]*; and*

(iii) the suspension referred to under clause (i)(I) may allow an individual to operate a motor vehicle, after

the 15-day period beginning on the date of the suspension, to and from employment, school, or an alcohol treatment program if an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the individual; and

(iv) the suspension and revocation referred to under clause (i)(II) may allow an individual to operate a motor vehicle, after the 45-day period beginning on the date of the suspension or revocation, to and from employment, school, or an alcohol treatment program if an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the individual.

(B) UNDERAGE DRINKING PROGRAM.—An effective system, as determined by the Secretary, for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages and for preventing persons from making alcoholic beverages available to individuals under age 21. Such system [may include the issuance] *may include—*

(i) the issuance of drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals age 21 or older and the issuance of drivers' licenses that are tamper resistant[.]*; and*

(ii) a program provided by a nonprofit organization for training point of sale personnel concerning, at a minimum, the following:

(I) the clinical effects of alcohol;

(II) methods of preventing second party sales of alcohol;

(III) recognizing signs of intoxication;

(IV) methods to prevent underage drinking;

(V) Federal, State, and local laws that are relevant to such personnel.

* * * * * * *

[(F) YOUNG ADULT DRINKING PROGRAMS.—Programs to reduce driving while under the influence of alcohol by individuals age 21 through 34. Such programs may include awareness campaigns; traffic safety partnerships with employers, colleges, and the hospitality industry; assessments of first-time offenders; and incorporation of treatment into judicial sentencing.]

(F) OUTREACH PROGRAM.—A judicial and prosecutorial education, training, and outreach program that provides information on the appropriateness and effectiveness of sentencing options.

* * * * * * *

(H) SELF-SUSTAINING DRUNK DRIVING PREVENTION PROGRAM.—A self-sustaining drunk driving prevention program under which a significant portion of the fines or surcharges collected from individuals apprehended and fined for operating a motor vehicle while under the influence of alcohol are returned to those communities that have com-

prehensive programs for the prevention of such operations of motor vehicles.

(I) PROGRAMS FOR EFFECTIVE ALCOHOL REHABILITATION.—A program for effective inpatient and outpatient alcohol rehabilitation based on mandatory assessment and appropriate treatment for repeat offenders described in subparagraph (A)(i)(II).

[(2) BASIC GRANT B.—A State shall become eligible for a grant under this paragraph by adopting or demonstrating to the satisfaction of the Secretary each of the following:

[(A) FATAL IMPAIRED DRIVER PERCENTAGE REDUCTION.—The percentage of fatally injured drivers with 0.10 percent or greater blood alcohol concentration in the State has decreased in each of the 3 most recent calendar years for which statistics for determining such percentages are available.

[(B) FATAL IMPAIRED DRIVER PERCENTAGE COMPARISON.—The percentage of fatally injured drivers with 0.10 percent or greater blood alcohol concentration in the State has been lower than the average percentage for all States in each of the calendar years referred to in subparagraph (A).]

(2) BASIC GRANT B.—A State shall become eligible for a grant under this paragraph if the State—

(A) has an alcohol-related fatality rate per 100,000,000 vehicle miles traveled of 0.8 or more as of the date of the grant, as determined by the Secretary using the Fatality Analysis Reporting System of the National Highway Traffic Safety Administration; and

(B) establishes, subject to such requirements as the Secretary may prescribe, a task force to evaluate and recommend changes to the State's drunk driving programs.

(3) BASIC GRANT AMOUNT.—The amount of a basic grant made to a State for a fiscal year under this subsection shall equal up to [25 percent] *100 percent* of the amount apportioned to the State for fiscal year [1997] *2003* under section 402.

[(c) SUPPLEMENTAL GRANTS.—

[(1) IN GENERAL.—Upon receiving an application from a State, the Secretary may make supplemental grants to the State for meeting 1 or more of the following criteria:

[(A) VIDEO EQUIPMENT FOR DETECTION OF DRUNK DRIVERS.—The State provides for a program to acquire video equipment to be used in detecting persons who operate motor vehicles while under the influence of alcohol and in prosecuting those persons, and to train personnel in the use of that equipment.

[(B) SELF-SUSTAINING DRUNK DRIVING PREVENTION PROGRAM.—The State provides for a self-sustaining drunk driving prevention program under which a significant portion of the fines or surcharges collected from individuals apprehended and fined for operating a motor vehicle while under the influence of alcohol are returned to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

[(C) REDUCING DRIVING WITH A SUSPENDED LICENSE.—The State enacts and enforces a law to reduce driving with a suspended license. Such law, as determined by the Secretary, may require a "zebra" stripe that is clearly visible on the license plate of any motor vehicle owned and operated by a driver with a suspended license.

[(D) USE OF PASSIVE ALCOHOL SENSORS.—The State provides for a program to acquire passive alcohol sensors to be used by police officers in detecting persons who operate motor vehicles while under the influence of alcohol, and to train police officers in the use of that equipment.

[(E) EFFECTIVE DWI TRACKING SYSTEM.—The State demonstrates an effective driving while intoxicated (DWI) tracking system. Such a system, as determined by the Secretary, may include data covering arrests, case prosecutions, court dispositions and sanctions, and provide for the linkage of such data and traffic records systems to appropriate jurisdictions and offices within the State.

[(F) OTHER PROGRAMS.—The State provides for other innovative programs to reduce traffic safety problems resulting from individuals driving while under the influence of alcohol or controlled substances, including programs that seek to achieve such a reduction through legal, judicial, enforcement, educational, technological, or other approaches.

[(2) ELIGIBILITY.—A State shall be eligible to receive a grant under this subsection in a fiscal year only if the State is eligible to receive a grant under subsection (b) in such fiscal year.

[(3) FUNDING.—Of the amounts made available to carry out this section in a fiscal year, not to exceed 10 percent shall be available for making grants under this subsection.]

(c) ALLOCATION FOR BASIC GRANTS B.—Not more than $16,000,000 per fiscal year of amounts made available to carry out this section shall be available for making grants under subsection (b)(2).

* * * * * * *

§ 412. State traffic safety information system improvements

(a) GENERAL AUTHORITY.—

(1) AUTHORITY TO MAKE GRANTS.—Subject to the requirements of this section, the Secretary shall make grants to States that adopt and implement effective programs to—

(A) 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;

(B) evaluate the effectiveness of efforts to make such improvements;

(C) link these State data systems, including traffic records, with other data systems within the State, such as systems that contain medical, roadway, and economic data; and

(D) 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.

(2) USE OF GRANTS.—A State may use a grant received under this section only to implement such programs.

(3) MODEL DATA ELEMENTS.—The Secretary, in consultation with States and other appropriate parties, shall determine the model data elements necessary to observe and analyze State and national trends in crash occurrences, rates, outcomes, and circumstances. In order to become eligible for a grant under this section, a State shall certify to the Secretary the State's adoption and use of such model data elements.

(4) 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 ensuring 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 in the 2 fiscal years preceding the date of enactment of this section.

(5) FEDERAL SHARE.—The Federal share of the cost of implementing in a fiscal year a program of a State pursuant to paragraph (1) shall not exceed 80 percent.

(b) FIRST-YEAR GRANTS.—To be eligible for a first-year grant under this section, a State shall demonstrate to the satisfaction of the Secretary that the State has—

(1) established a highway safety data and traffic records coordinating committee with a multidisciplinary membership that includes, among others, managers, collectors, and users of traffic records and public health and injury control data systems; and

(2) developed a multiyear highway safety data and traffic records system strategic plan that addresses existing deficiencies in the State's highway safety data and traffic records system and is approved by the highway safety data and traffic records coordinating committee and—

(A) specifies how existing deficiencies in the State's highway safety data and traffic records system were identified;

(B) prioritizes, based on 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 described in subsection (a)(1);

(C) identifies performance-based measures by which progress toward those goals will be determined;

(D) specifies how the grant funds and any other funds of the State will be used to address needs and goals identified in the multiyear plan; and

(E) includes a current report on the progress in implementing the multiyear plan that documents progress toward the specified goals.

(c) SUCCEEDING-YEAR GRANTS.—

(1) ELIGIBILITY.—A State shall be eligible for a grant under this section 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) submits an updated multiyear plan that meets the requirements of subsection (b)(2);

(B) certifies that its highway safety data and traffic records coordinating committee continues to operate and supports the multiyear plan;

(C) specifies how the grant funds and any other funds of the State will be used to address needs and goals identified in the multiyear plan;

(D) demonstrates measurable progress toward achieving the goals and objectives identified in the multiyear plan; and

(E) includes a current report on the progress in implementing the multiyear plan.

(d) GRANT AMOUNTS.—

(1) IN GENERAL.—The amount of a grant made to a State for a fiscal year under this section shall equal an amount determined by multiplying—

(A) the amount appropriated to carry out this section for such fiscal year; by

(B) the ratio that the funds apportioned to the State under section 402 for fiscal year 2003 bears to the funds apportioned to all States under section 402 for fiscal year 2003.

(2) MINIMUM AMOUNT.—Notwithstanding subparagraph (A)—

(A) a State eligible for a first-year grant under this section shall not receive less than $300,000; and

(B) a State eligible for a succeeding-year grant under this section shall not receive less than $500,000.

(e) ADMINISTRATIVE EXPENSES.—Funds authorized to be appropriated to carry out this section in a fiscal year shall be subject to a deduction not to exceed 5 percent for the necessary costs of administering the provisions of this section.

(f) APPLICABILITY OF CHAPTER 1.—The provisions contained in section 402(d) shall apply to this section.

[CHAPTER 5—RESEARCH AND TECHNOLOGY]

CHAPTER 5—RESEARCH, TECHNOLOGY, AND EDUCATION

Sec.
501. Definitions.

* * * * * * *

[507. Surface transportation-environment cooperative research program.]
507. Surface transportation environment and planning cooperative research program.

* * * * * * *

509. National cooperative freight transportation research program.
510. Future strategic highway research program.

* * * * * * *

§ 502. Surface transportation research

(a) BASIC PRINCIPLES GOVERNING RESEARCH AND TECHNOLOGY INVESTMENTS.—

(1) COVERAGE.—Surface transportation research and technology development shall include all activities leading to tech-

nology development and transfer, as well as the introduction of new and innovative ideas, practices, and approaches, through such mechanisms as field applications, education and training, and technical support.

(2) FEDERAL RESPONSIBILITY.—Funding and conducting surface transportation research and technology transfer activities shall be considered a basic responsibility of the Federal Government when the work—

(A) is of national significance;

(B) supports research in which there is a clear public benefit and private sector investment is less than optimal;

(C) supports a Federal stewardship role in assuring that State and local governments use national resources efficiently; or

(D) presents the best means to support Federal policy goals compared to other policy alternatives.

(3) ROLE.—Consistent with these Federal responsibilities, the Secretary shall—

(A) conduct research;

(B) support and facilitate research and technology transfer activities by State highway agencies;

(C) share results of completed research; and

(D) support and facilitate technology and innovation deployment.

(4) PROGRAM CONTENT.—A surface transportation research program shall include—

(A) fundamental, long-term highway research;

(B) research aimed at significant highway research gaps and emerging issues with national implications; and

(C) research related to policy and planning.

(5) STAKEHOLDER INPUT.—Federally sponsored surface transportation research and technology development activities shall address the needs of partners and stakeholders, and provide for stakeholder input in preparation of a strategic plan for surface transportation research and technology development.

(6) COMPETITION.—To the greatest extent possible, investment decisions for surface transportation research and technology development activities shall be based on the well established principles of competition and merit review.

(7) PERFORMANCE REVIEW.—Surface transportation research and technology development activities shall include a component of performance measurement.

[(a)] *(b)* GENERAL AUTHORITY.—

(1) RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.—The Secretary may carry out research, development, and technology transfer activities with respect to—

(A) * * *

(B) all phases of transportation planning and development (including construction, operation, *transportation system management and operations,* modernization, development, design, maintenance, safety, financing, and traffic conditions); and

* * * * * * *

[(3) COOPERATION, GRANTS, AND CONTRACTS.—The Secretary may carry out this section—

[(A) independently;

[(B) in cooperation with other Federal departments, agencies,

[(C) by making grants to, or entering into contracts, cooperative agreements, and other transactions with, the National Academy of Sciences, the American Association of State Highway and Transportation Officials, or any Federal laboratory, State agency, authority, association, institution, for-profit or nonprofit corporation, organization, foreign country, or person.]

(3) COOPERATION, GRANTS, AND CONTRACTS.—The Secretary may carry out research, development, and technology transfer activities related to transportation—

(A) independently;

(B) in cooperation with other Federal departments, agencies, and instrumentalities and Federal laboratories; or

(C) by making grants to, or entering into contracts, cooperative agreements, and other transactions with one or more of the following: the National Academy of Sciences, the American Association of State Highway and Transportation Officials, any Federal laboratory, Federal agency, State agency, authority, association, institution, for-profit or nonprofit corporation, organization, foreign country, any other person.

* * * * * * *

(6) POOLED FUNDING.—

(A) COOPERATION.—To promote effective utilization of available resources, the Secretary may cooperate with a State and an appropriate agency in funding research, development, and technology transfer activities of mutual interest on a pooled funds basis.

(B) SECRETARY AS AGENT.—The Secretary may enter into contracts, cooperative agreements, grants, and other transactions as agent for all participating parties in carrying out such research, development, or technology transfer.

[(b)] *(c)* COLLABORATIVE RESEARCH AND DEVELOPMENT.—

(1) * * *

[(2) AGREEMENTS.—In carrying out this subsection, the Secretary may enter into cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)).]

(2) COOPERATION, GRANTS, CONTRACTS, AND AGREEMENTS.—Notwithstanding any other provision of law, the Secretary may directly initiate contracts, cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)), and other transactions to fund, and accept funds from, the Transportation Research Board of the National Research Council of the National Academy of Sciences, State departments of transportation, cities, counties, and their agents to conduct joint transportation research and technology efforts.

* * * * * * *

[(c)] *(d)* CONTENTS OF RESEARCH PROGRAM.—The Secretary shall include in surface transportation research, technology development,

and technology transfer programs carried out under this title coordinated activities in the following areas:

(1) * * *

* * * * * * *

(5) Dynamic simulation models of surface transportation systems for—

(A) * * *

* * * * * * *

(C) testing the strengths and weaknesses of proposed revisions to surface transportation *system management and* operations programs.

* * * * * * *

(12) Investigation and development of various operational methodologies to reduce the occurrence and impact of recurrent congestion and nonrecurrent congestion and increase transportation system reliability.

(13) Investigation of processes, procedures, and technologies to secure container and hazardous material transport, including the evaluation of regulations and the impact of good security practices on commerce and productivity.

(14) Research, development, and technology transfer related to asset management.

[(d) ADVANCED RESEARCH.—

[(1) IN GENERAL.—The Secretary shall establish an advanced research program, consistent with the surface transportation research and technology development strategic plan developed under section 508, that addresses longer-term, higher-risk research that shows potential benefits for improving the durability, efficiency, environmental impact, productivity, and safety (including bicycle and pedestrian safety) of highway and intermodal transportation systems. In carrying out the program, the Secretary shall strive to develop partnerships with the public and private sectors.

[(2) RESEARCH AREAS.—In carrying out the program, the Secretary may make grants and enter into cooperative agreements and contracts in such areas as the Secretary determines appropriate, including the following:

[(A) Characterization of materials used in highway infrastructure, including analytical techniques, microstructure modeling, and the deterioration processes.

[(B) Diagnostics for evaluation of the condition of bridge and pavement structures to enable the assessment of risks of failure, including from seismic activity, vibration, and weather.

[(C) Design and construction details for composite structures.

[(D) Safety technology-based problems in the areas of pedestrian and bicycle safety, roadside hazards, and composite materials for roadside safety hardware.

[(E) Environmental research, including particulate matter source apportionment and model development.

[(F) Data acquisition techniques for system condition and performance monitoring.

[(G) Human factors, including prediction of the response of travelers to new technologies.

[(e) LONG-TERM PAVEMENT PERFORMANCE PROGRAM.—

[(1) AUTHORITY.—The Secretary shall complete the long-term pavement performance program tests initiated under the strategic highway research program established under section 307(d) (as in effect on the day before the date of enactment of this section) and continued by the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1914 et seq.) through the midpoint of a planned 20-year life of the long-term pavement performance program.

[(2) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—Under the program, the Secretary shall make grants and enter into cooperative agreements and contracts to—

[(A) monitor, material-test, and evaluate highway test sections in existence as of the date of the grant, agreement, or contract;

[(B) analyze the data obtained in carrying out subparagraph (A); and

[(C) prepare products to fulfill program objectives and meet future pavement technology needs.]

(e) EXPLORATORY ADVANCED RESEARCH.—

(1) IN GENERAL.—The Secretary shall establish an exploratory advanced research program, consistent with the surface transportation research and technology development strategic plan developed under section 508 that involves and draws upon basic research results to provide a better understanding of problems and develop innovative solutions. In carrying out the program, the Secretary shall strive to develop partnerships with public and private sector entities.

(2) RESEARCH AREAS.—In carrying out the program, the Secretary may make grants and enter into cooperative agreements and contracts in such areas of surface transportation research and technology as the Secretary determines appropriate, including the following:

(A) Characterization of materials used in highway infrastructure, including analytical techniques, microstructure modeling, and the deterioration processes.

(B) Assessment of the effects of transportation decisions on human health.

(C) Development of surrogate measures of safety.

(D) Environmental research.

(E) Data acquisition techniques for system condition and performance monitoring.

(F) System performance data and information processing needed to assess the day-to-day operational performance of the system in support of hour-to-hour operational decision-making.

(f) LONG-TERM PAVEMENT PERFORMANCE PROGRAM.—

(1) AUTHORITY.—The Secretary shall complete the 20-year long-term pavement performance program tests initiated under the strategic highway research program established under section 307(d) (as in effect on June 8, 1998).

(2) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—Under the program, the Secretary shall make grants and enter into cooperative agreements and contracts to—

(A) monitor, material-test, and evaluate highway test sections in existence as of the date of the grant, agreement, or contract;

(B) analyze the data obtained under subparagraph (A); and

(C) prepare products to fulfill program objectives and meet future pavement technology needs.

[(f)] *(g)* SEISMIC RESEARCH PROGRAM.—

(1) * * *

* * * * * * *

[(g)] *(h)* INFRASTRUCTURE INVESTMENT NEEDS REPORT.—

(1) * * *

* * * * * * *

(i) TURNER-FAIRBANK HIGHWAY RESEARCH CENTER.—

(1) IN GENERAL.—The Secretary shall operate in the Federal Highway Administration a Turner-Fairbank Highway Research Center.

(2) USES OF THE CENTER.—The Turner-Fairbank Highway Research Center shall support—

(A) the conduct of highway research and development related to new highway technology;

(B) the development of understandings, tools, and techniques that provide solutions to complex technical problems through the development of economical and environmentally sensitive designs, efficient and quality-controlled construction practices, and durable materials; and

(C) the development of innovative highway products and practices.

(j) LONG-TERM BRIDGE PERFORMANCE PROGRAM.—

(1) AUTHORITY.—The Secretary shall establish a 20-year long-term bridge performance program.

(2) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—Under the program, the Secretary shall make grants and enter into cooperative agreements and contracts to—

(A) monitor, material-test, and evaluate test bridges;

(B) analyze the data obtained under subparagraph (A); and

(C) prepare products to fulfill program objectives and meet future bridge technology needs.

§ 503. Technology deployment

(a) TECHNOLOGY DEPLOYMENT [INITIATIVES AND PARTNERSHIPS] PROGRAM.—

[(1) ESTABLISHMENT.—The Secretary shall develop and administer a national technology deployment initiatives and partnerships program.]

(1) ESTABLISHMENT.—The Secretary shall develop and administer a national technology deployment program.

* * * * * * *

[(7) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—Under the program, the Secretary may make grants and enter into cooperative agreements and contracts to foster alliances and support efforts to stimulate advances in transportation technology, including—

[(A) the testing and evaluation of products of the strategic highway research program;

[(B) the further development and implementation of technology in areas such as the Superpave system and the use of lithium salts and other alternatives to prevent and mitigate alkali silica reactivity;

[(C) the provision of support for long-term pavement performance product implementation and technology access; and

[(D) other activities to achieve the goals established under paragraph (3).

[(8) REPORTS.—Not later than 18 months after the date of enactment of this section, and biennially thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the progress and results of activities carried out under this section.]

(7) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—

(A) IN GENERAL.—Under the program, the Secretary shall make grants to, and enter into cooperative agreements and contracts with, States, other Federal agencies, universities and colleges, private sector entities, and nonprofit organizations to pay the Federal share of the cost of research, development, and technology transfer activities concerning innovative materials.

(B) APPLICATIONS.—To receive a grant under this subsection, an entity described in subparagraph (A) shall submit an application to the Secretary. The application shall be in such form and contain such information as the Secretary may require. The Secretary shall select and approve an application based on whether the project that is the subject of the grant meets the purpose of the program described in paragraph (2).

(8) TECHNOLOGY AND INFORMATION TRANSFER.—The Secretary shall ensure that the information and technology resulting from research conducted under paragraph (7) is made available to State and local transportation departments and other interested parties as specified by the Secretary.

* * * * * * *

(b) INNOVATIVE BRIDGE RESEARCH AND CONSTRUCTION PROGRAM.—

[(1) IN GENERAL.—The Secretary shall establish and carry out a program to demonstrate the application of innovative material technology in the construction of bridges and other structures.

[(2) GOALS.—The goals of the program shall include—

[(A) the development of new, cost-effective innovative material highway bridge applications;

[(B) the reduction of maintenance costs and life-cycle costs of bridges, including the costs of new construction, replacement, or rehabilitation of deficient bridges;

[(C) the development of construction techniques to increase safety and reduce construction time and traffic congestion;

[(D) the development of engineering design criteria for innovative products and materials for use in highway bridges and structures;

[(E) the development of cost-effective and innovative techniques to separate vehicle and pedestrian traffic from railroad traffic;

[(F) the development of highway bridges and structures that will withstand natural disasters, including alternative processes for the seismic retrofit of bridges; and

[(G) the development of new nondestructive bridge evaluation technologies and techniques.]

(1) IN GENERAL.—The Secretary shall establish and carry out a program to promote, demonstrate, evaluate, and document the application of innovative designs, materials, and construction methods in the construction, repair, and rehabilitation of bridges and other highway structures.

(2) GOALS.—The goals of the program shall include—

(A) the development of new, cost-effective, innovative highway bridge applications;

(B) the development of construction techniques to increase safety and reduce construction time and traffic congestion;

(C) the development of engineering design criteria for innovative products, materials, and structural systems for use in highway bridges and structures;

(D) the reduction of maintenance costs and life-cycle costs of bridges, including the costs of new construction, replacement, or rehabilitation of deficient bridges;

(E) the development of highway bridges and structures that will withstand natural disasters;

(F) the documentation and wide dissemination of objective evaluations of the performance and benefits of these innovative designs, materials, and construction methods;

(G) the effective transfer of resulting information and technology; and

(H) the development of improved methods to detect bridge scour and economical bridge foundation designs that will withstand bridge scour.

* * * * * * *

(c) INNOVATIVE PAVEMENT RESEARCH AND DEPLOYMENT PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish and implement a program to promote, demonstrate, support, and document the application of innovative pavement technologies, practices, performance, and benefits.

(2) GOALS.—The goals of the innovative pavement research and deployment program shall include—

(A) the deployment of new, cost-effective, innovative designs, materials, and practices to extend pavement life and performance and to improve customer satisfaction;

(B) the reduction of initial costs and life-cycle costs of pavements, including the costs of new construction, replacement, maintenance, and rehabilitation;

(C) the deployment of accelerated construction techniques to increase safety and reduce construction time and traffic disruption and congestion;

(D) the deployment of engineering design criteria and specifications for innovative practices, products, and materials for use in highway pavements;

(E) the deployment of new nondestructive and real-time pavement evaluation technologies and techniques;

(F) the evaluation, refinement, and documentation of the performance and benefits of innovative technologies deployed to improve life, performance, cost effectiveness, safety, and customer satisfaction;

(G) effective technology transfer and information dissemination to accelerate implementation of innovative technologies and to improve life, performance, cost effectiveness, safety, and customer satisfaction; and

(H) the development of designs and materials to reduce storm water runoff.

(3) RESEARCH TO IMPROVE NHS PAVEMENT.—The Secretary shall obligate not less than $2,000,000 for fiscal year 2004 and $6,000,000 for each of fiscal years 2005 through 2009 from funds made available to carry out this subsection to conduct research to improve asphalt pavement, concrete pavement, and aggregates used in highways on the National Highway System.

(d) SAFETY INNOVATION DEPLOYMENT PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish and implement a program to demonstrate the application of innovative technologies in highway safety.

(2) GOALS.—The goals of the program shall include—

(A) the deployment and evaluation of safety technologies and innovations at State and local levels; and

(B) the deployment of best practices in training, management, design, and planning.

(3) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—

(A) IN GENERAL.—Under the program, the Secretary shall make grants to, and enter into cooperative agreements and contracts with, States, other Federal agencies, universities and colleges, private sector entities, and nonprofit organizations for research, development, and technology transfer for innovative safety technologies.

(B) APPLICATIONS.—To receive a grant under this subsection, an entity described in subparagraph (A) shall submit an application to the Secretary. The application shall be in such form and contain such information as the Secretary may require. The Secretary shall select and approve the applications based on whether the project that is the subject of the application meets the goals of the program described in paragraph (2).

(4) TECHNOLOGY AND INFORMATION TRANSFER.—The Secretary shall take such action as is necessary to ensure that the information and technology resulting from research conducted under paragraph (3) is made available to State and local trans-

portation departments and other interested parties as specified by the Secretary.

(e) PROMOTIONAL AUTHORITY.—Funds authorized to be appropriated for necessary expenses for administration and operation of the Federal Highway Administration shall be available to purchase promotional items of nominal value for use in the recruitment of individuals and to promote the programs of the Federal Highway Administration.

§ 504. Training and education

(a) NATIONAL HIGHWAY INSTITUTE.—

(1) * * *

* * * * * * *

[(3) COURSES.—The Institute may develop and administer courses in modern developments, techniques, methods, regulations, management, and procedures relating to surface transportation, environmental mitigation and compliance, acquisition of rights-of-way, relocation assistance, engineering, safety, construction, maintenance and operations, contract administration, motor carrier safety activities, inspection, and highway finance.]

(3) COURSES.—The Institute may develop and administer courses in modern developments, techniques, methods, regulations, management, and procedures in areas, including surface transportation, environmental mitigation, compliance, stewardship, and streamlining, acquisition of rights-of-way, relocation assistance, engineering, safety, transportation system management and operations, construction, maintenance, contract administration, inspection, and highway finance.

* * * * * * *

(b) LOCAL TECHNICAL ASSISTANCE PROGRAM.—

(1) * * *

* * * * * * *

(3) FEDERAL SHARE.—

(A) GRANTS.—A grant under this subsection may be used to pay up to 50 percent of local technical assistance program costs. Funds available for technology transfer and training purposes under this title and title 49 may be used to cover the remaining 50 percent of the program costs.

(B) TRIBAL TECHNICAL ASSISTANCE CENTERS.—The Federal share of the cost of activities carried out by the tribal technical assistance centers under paragraph (2)(D)(ii) shall be 100 percent.

* * * * * * *

(d) GARRETT A. MORGAN TECHNOLOGY AND TRANSPORTATION FUTURES PROGRAM.—The Secretary shall carry out a program, to be known as the "Garrett A. Morgan Technology and Transportation Futures Program", for the following purposes:

(1) To attract young people in all levels of education, from elementary school through college, to careers in transportation, with a special emphasis on attracting minorities, women, and other underrepresented groups.

(2) To enhance the math, science, and technology skills of young people to prepare them for careers in transportation.

(e) SURFACE TRANSPORTATION WORKFORCE DEVELOPMENT, TRAINING, AND EDUCATION.—

(1) FUNDING.—Subject to project approval by the Secretary, a State may obligate funds apportioned to the State under sections 104(b)(1), 104(b)(2), 104(b)(3), 104(b)(4), and 144(e) for surface transportation workforce development, training and education, including—

(A) tuition and direct educational expenses, excluding salaries, in connection with the education and training of employees of State and local transportation agencies;

(B) employee professional development;

(C) student internships;

(D) university or community college support; and

(E) education activities, including outreach, to develop interest and promote participation in surface transportation careers.

(2) FEDERAL SHARE.—The Federal share of the cost of activities carried out in accordance with this subsection shall be 100 percent.

(3) SURFACE TRANSPORTATION WORKFORCE DEVELOPMENT, TRAINING, AND EDUCATION DEFINED.—In this subsection, the term "surface transportation workforce development, training, and education" means activities associated with surface transportation career awareness, student transportation career preparation, and training and professional development for surface transportation workers, including activities for women and minorities.

(f) FREIGHT CAPACITY BUILDING PROGRAM.—

(1) ESTABLISHMENT.—The Secretary shall establish a freight planning capacity building initiative to support enhancements in freight transportation planning in order to—

(A) better target investments in freight transportation systems to maintain efficiency and productivity; and

(B) strengthen the decisionmaking capacity of State transportation departments and local transportation agencies with respect to freight transportation planning and systems.

(2) AGREEMENTS.—The Secretary shall enter into agreements to support and carry out administrative and management activities relating to the governance of the freight planning capacity initiative.

(3) STAKEHOLDER INVOLVEMENT.—In carrying out this section, the Secretary shall consult with the Association of Metropolitan Planning Organizations, the American Association of State Highway and Transportation Officials, and other freight planning stakeholders, including the other Federal agencies, State transportation departments, local governments, nonprofit entities, academia, and the private sector.

(4) ELIGIBLE ACTIVITIES.—The freight planning capacity building initiative shall include research, training, and education in the following areas:

(A) The identification and dissemination of best practices in freight transportation.

(B) Providing opportunities for freight transportation staff to engage in peer exchange.

(C) Refinement of data and analysis tools used in conjunction with assessing freight transportation needs.

(D) Technical assistance to State transportation departments and local transportation agencies reorganizing to address freight transportation issues.

(E) Facilitating relationship building between governmental and private entities involved in freight transportation.

(F) Identifying ways to target the capacity of State transportation departments and local transportation agencies to address freight considerations in operations, security, asset management, and environmental excellence in connection with long-range multimodal transportation planning and project implementation.

(5) FUNDING.—

(A) FEDERAL SHARE.—The Federal share of the cost of an activity carried out under this section shall be up to 100 percent, and such funds shall remain available until expended.

(B) USE OF NON-FEDERAL FUNDS.—Funds made available for the program established under this subsection may be used for research, program development, information collection and dissemination, and technical assistance. The Secretary may use such funds independently or make grants to, or enter into contracts, cooperative agreements, and other transactions with, a Federal agency, State agency, local agency, Federally recognized Indian tribal government or tribal consortium, authority, association, nonprofit or for-profit corporation, or institution of higher education, to carry out the purposes of this subsection.

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[§ 507. Surface transportation-environment cooperative research program

[(a) IN GENERAL.—The Secretary shall establish and carry out a surface transportation-environment cooperative research program.

[(b) CONTENTS.—The program to be carried out under this section shall include research designed—

[(1) to develop more accurate models for evaluating transportation control measures and transportation system designs that are appropriate for use by State and local governments, including metropolitan planning organizations, in designing implementation plans to meet Federal, State, and local environmental requirements;

[(2) to improve understanding of the factors that contribute to the demand for transportation, including transportation system design, demographic change, land use planning, and communications and other information technologies;

[(3) to develop indicators of economic, social, and environmental performance of transportation systems to facilitate analysis of potential alternatives;

[(4) to study the relationship between highway density and ecosystem integrity, including the impacts of highway density

on habitat integrity and overall ecosystem health, and develop a rapid assessment methodology for use by transportation and regulatory agencies in determining the relationship between highway density and ecosystem integrity; and

[(5) to meet additional priorities as determined by the advisory board established under subsection (c), including recommendations of the National Research Council in the report entitled "Environmental Research Needs in Transportation".

[(c) ADVISORY BOARD.—

[(1) ESTABLISHMENT.—In consultation with the Secretary of Energy, the Administrator of the Environmental Protection Agency, and the heads of other appropriate Federal departments and agencies, the Secretary shall establish an advisory board to recommend environmental and energy conservation research, technology, and technology transfer activities related to surface transportation.

[(2) MEMBERSHIP.—The advisory board shall include—

[(A) representatives of State transportation and environmental agencies;

[(B) transportation and environmental scientists and engineers; and

[(C) representatives of metropolitan planning organizations, transit operating agencies, and environmental organizations.

[(d) NATIONAL ACADEMY OF SCIENCES.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities relating to the research, technology, and technology transfer activities described in subsection (b) as the Secretary determines appropriate.]

§ 507. Surface transportation environment and planning cooperative research program

(a) ESTABLISHMENT.—The Secretary shall establish and carry out a collaborative, public-private surface transportation environment and planning cooperative research program.

(b) AGREEMENT.—The Secretary shall enter into an agreement with the National Academy of Sciences to carry out administrative and management activities relating to the governance of the surface transportation environment and planning cooperative research program.

(c) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Secretary shall establish a committee that will be responsible for program oversight and project selection.

(2) MEMBERSHIP.—The members of the committee shall be appointed by the Secretary and shall be composed of—

(A) representatives of State, regional, and local transportation agencies, including transit agencies;

(B) representatives of State environmental agencies and other environmental organizations;

(C) representatives of the transportation private sector;

(D) transportation and environmental scientists and engineers; and

(E) representatives of the Federal Highway Administration, Federal Transit Administration, Environmental Pro-

tection Agency, United States Fish and Wildlife Service, Corps of Engineers, American Association of State Highway and Transportation Officials, and American Public Transportation Association, who shall serve in an ex officio capacity.

(3) BALANCE.—The majority of the committee's voting members shall be representatives of government transportation agencies.

(4) MEETINGS.—The National Academy of Sciences shall convene meetings of the committee.

(d) GOVERNANCE.—The program established under this section shall include the following administrative and management elements:

(1) NATIONAL RESEARCH AGENDA.—The advisory committee, in consultation with interested parties, shall develop, recommend, and periodically update a national research agenda for the program. The national research agenda shall include a multiyear strategic plan.

(2) INVOLVEMENT.—Interested parties may—

(A) submit research proposals;

(B) participate in merit reviews of research proposals and peer reviews of research products; and

(C) receive research results.

(3) OPEN COMPETITION AND PEER REVIEW OF RESEARCH PROPOSALS.—The National Academy of Sciences may award under the program research contracts and grants through open competition and merit review conducted on a regular basis.

(4) EVALUATION OF RESEARCH.—

(A) PEER REVIEW.—Research contracts and grants may allow peer review of the research results.

(B) PROGRAMMATIC EVALUATIONS.—The National Academy of Sciences may conduct periodic programmatic evaluations on a regular basis.

(5) DISSEMINATION OF RESEARCH FINDINGS.—The National Academy of Sciences shall disseminate research findings to researchers, practitioners, and decisionmakers, through conferences and seminars, field demonstrations, workshops, training programs, presentations, testimony to government officials, World Wide Web, and publications for the general public.

(e) CONTENTS.—The national research agenda for the program required under subsection (d)(1) shall include research in the following areas for the purposes described:

(1) HUMAN HEALTH.—Human health to establish the links between transportation activities and human health; substantiate the linkages between exposure to concentration levels, emissions, and health impacts; examine the potential health impacts from the implementation and operation of transportation infrastructure and services; develop strategies for avoidance and reduction of these impacts; and develop strategies to understand the economic value of health improvements and for incorporating health considerations into valuation methods.

(2) ECOLOGY AND NATURAL SYSTEMS.—Ecology and natural systems to measure transportation's short- and long-term impact on natural systems; develop ecologically based performance measures; develop insight into both the spatial and temporal

issues associated with transportation and natural systems; study the relationship between highway density and ecosystem integrity, including the impacts of highway density on habitat integrity and overall ecosystem health; develop a rapid assessment methodology for use by transportation and regulatory agencies in determining the relationship between highway density and ecosystem integrity; and develop ecologically based performance techniques to evaluate the success of highway project mitigation and enhancement measures.

(3) ENVIRONMENTAL AND SOCIOECONOMIC RELATIONSHIPS.—Environmental and socioeconomic relationships to understand differences in mobility, access, travel behavior, and travel preferences across socioeconomic groups; develop improved planning approaches that better reflect and respond to community needs; improve evaluation methods for examining the incidence of benefits and costs; examine the differential impacts of current methods of finance and explore alternatives; understand the socioeconomic implications of emerging land development patterns and new transportation technologies; develop cost-effective applications of technology that improve the equity of the transport system; and develop improved methods for community involvement, collaborative planning, and conflict resolution.

(4) EMERGING TECHNOLOGIES.—Emerging technologies to assist in the transition to environmentally benign fuels and vehicles for passengers and freight; develop responses to and demand for new technologies that could offer improved environmental performance; identify possible applications of intelligent transportation systems technologies for environmental benefit; develop policy instruments that would encourage the development of beneficial new technologies in a cost-effective manner; and respond to the impact of new technologies.

(5) LAND USE.—Land use to assess land consumption trends and contributing factors of transportation investment, housing policies, school quality, and consumer preferences; incorporate impacts of transportation investments on location decision and land use; identify the costs and benefits of current development patterns and their transportation implications; determine the effect of the built environment on people's willingness to walk, drive, or take public transportation; determine the roles of public policy and institutional arrangements in current and prospective land use and transportation choices; and develop improved data, methods, and processes for considering land use, transportation, and the environment in an integrated, systematic fashion.

(6) PLANNING AND PERFORMANCE MEASURES.—Planning and performance measures to improve understanding of travel needs and preferences; improve planning methods for system analysis, forecasting, and decisionmaking; expand information on consumer choice processes and travel and activity patterns for both local and long-distance trips and both passenger and freight transportation analysis of social, environmental, and economic benefits and cost of various transport options; develop tools for measuring and forecasting complex transportation decisions for all modes and users; and develop performance measures and

policy analysis approaches that can be used to determine effectiveness.

(7) OTHER RESEARCH AREAS.—Other research areas to identify and address the emerging and future surface transportation research needs related to planning and environment.

(f) FUNDING.—

(1) FEDERAL SHARE.—The Federal share of the cost of an activity carried out under this section shall be up to 100 percent, and such funds shall remain available until expended.

(2) USE OF NON-FEDERAL FUNDS.—In addition to using funds authorized to be appropriated to carry out this section, the National Academy of Sciences may seek and accept additional funding sources to carry out this section from public and private entities capable of attracting and accepting funding from the Department of Transportation, Environmental Protection Agency, Department of Energy, United States Fish and Wildlife Service, and other Federal environmental agencies, States, local governments, nonprofit foundations, and the private sector.

§ 508. Surface transportation research strategic planning

(a) * * *

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(c) SURFACE TRANSPORTATION RESEARCH AND TECHNOLOGY DEVELOPMENT STRATEGIC PLAN.—

(1) * * *

* * * * * * *

(3) NATIONAL RESEARCH COUNCIL REVIEW.—The Secretary shall enter into an agreement for the review by the National Research Council of the details of each—

(A) * * *

* * * * * * *

(C) program performance report required under section 1116 *of title 31*,

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§ 509. National cooperative freight transportation research program

(a) ESTABLISHMENT.—The Secretary shall establish and support a national cooperative freight transportation research program.

(b) AGREEMENT.—The Secretary shall enter into an agreement with the National Academy of Sciences to support and carry out administrative and management activities relating to the governance of the national cooperative freight transportation research program.

(c) ADVISORY COMMITTEE.—The National Academy of Sciences shall select an advisory committee consisting of a representative cross-section of freight stakeholders, including the Department of Transportation, other Federal agencies, State transportation departments, local governments, nonprofit entities, academia, and the private sector.

(d) GOVERNANCE.—The national cooperative freight transportation research program established under this section shall include the following administrative and management elements:

(1) NATIONAL RESEARCH AGENDA.—The advisory committee, in consultation with interested parties, shall recommend a national research agenda for the program. The agenda shall include a multiyear strategic plan.

(2) INVOLVEMENT.—Interested parties may—

(A) submit research proposals to the advisory committee;

(B) participate in merit reviews of research proposals and peer reviews of research products; and

(C) receive research results.

(3) OPEN COMPETITION AND PEER REVIEW OF RESEARCH PROPOSALS.—The National Academy of Sciences may award research contracts and grants under the program through open competition and merit review conducted on a regular basis.

(4) EVALUATION OF RESEARCH.—

(A) PEER REVIEW.—Research contracts and grants under the program may allow peer review of the research results.

(B) PROGRAMMATIC EVALUATIONS.—The National Academy of Sciences may conduct periodic programmatic evaluations on a regular basis of research contracts and grants.

(5) DISSEMINATION OF RESEARCH FINDINGS.—The National Academy of Sciences shall disseminate research findings to researchers, practitioners, and decisionmakers, through conferences and seminars, field demonstrations, workshops, training programs, presentations, testimony to government officials, World Wide Web, publications for the general public, and other appropriate means.

(e) CONTENTS.—The national research agenda required under subsection (d)(1) shall include research in the following areas:

(1) Techniques for estimating and quantifying public benefits derived from freight transportation projects.

(2) Alternative approaches to calculating the contribution of truck and rail traffic to congestion on specific highway segments.

(3) The feasibility of consolidating origins and destinations for freight movement.

(4) Methods for incorporating estimates of international trade into landside transportation planning.

(5) The use of technology applications to increase capacity of highway lanes dedicated to truck-only traffic.

(6) Development of physical and policy alternatives for separating car and truck traffic.

(7) Ways to synchronize infrastructure improvements with freight transportation demand.

(8) The effect of changing patterns of freight movement on transportation planning decisions relating to rest areas.

(9) Other research areas to identify and address the emerging and future research needs related to freight transportation by all modes.

(f) FUNDING.—

(1) FEDERAL SHARE.—The Federal share of the cost of an activity carried out under this section shall be up to 100 percent, and such funds shall remain available until expended.

(2) USE OF NON-FEDERAL FUNDS.—In addition to using funds authorized for this section, the National Academy of Sciences may seek and accept additional funding sources from public

and private entities capable of accepting funding from the Department of Transportation, States, local governments, nonprofit foundations, and the private sector.

§ 510. Future strategic highway research program

(a) ESTABLISHMENT.—The Secretary, in consultation with the American Association of State Highway and Transportation Officials, shall establish and carry out, acting through the National Research Council of the National Academy of Sciences, the future strategic highway research program.

(b) COOPERATIVE AGREEMENTS.—The Secretary may make grants to, and enter into cooperative agreements with, the American Association of State Highway and Transportation Officials and the National Academy of Sciences to carry out such activities under this subsection as the Secretary determines are appropriate.

(c) PERIOD OF AVAILABILITY.—Funds made available to carry out this section shall remain available for the fiscal year in which such funds are made available and the 3 succeeding fiscal years.

(d) PROGRAM PRIORITIES.—

(1) PROGRAM ELEMENTS.—The program established under this section shall be based on the National Research Council Special Report 260, entitled "Strategic Highway Research: Saving Lives, Reducing Congestion, Improving Quality of Life" and the results of the detailed planning work subsequently carried out in 2002 and 2003 to identify the research areas through National Cooperative Research Program Project 20–58. The research program shall include an analysis of the following:

(A) Renewal of aging highway infrastructure with minimal impact to users of the facilities.

(B) Driving behavior and likely crash causal factors to support improved countermeasures.

(C) Reducing highway congestion due to nonrecurring congestion.

(D) Planning and designing new road capacity to meet mobility, economic, environmental, and community needs.

(2) DISSEMINATION OF RESULTS.—The research results of the program, expressed in terms of technologies, methodologies, and other appropriate categorizations, shall be disseminated to practicing engineers for their use, as soon as practicable.

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

(1) projects and researchers are selected to conduct research for the program on the basis of merit and open solicitation of proposals and review by panels of appropriate experts;

(2) State department of transportation officials and other stakeholders, as appropriate, are involved in the governance of the program at the overall program level and technical level through the use of expert panels and committees;

(3) the Council acquires a qualified, permanent core staff with the ability and expertise to manage the program and multiyear budget; and

(4) there is no duplication of research effort between the program and any other research effort of the Department.

(f) REPORT ON IMPLEMENTATION OF RESULTS.—

(1) REPORT.—The Transportation Research Board of the National Research Council shall complete a report on the strategies and administrative structure to be used for implementation of the results of the future strategic highway research program.

(2) COMPONENTS.—The report under paragraph (1) shall include with respect to the program—

(A) an identification of the most promising results of research under the program (including the persons most likely to use the results);

(B) a discussion of potential incentives for, impediments to, and methods of, implementing those results;

(C) an estimate of costs of implementation of those results; and

(D) recommendations on methods by which implementation of those results should be conducted, coordinated, and supported in future years, including a discussion of the administrative structure and organization best suited to carry out those recommendations.

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

(A) the Federal Highway Administration;

(B) the National Highway Traffic Safety Administration; and

(C) the American Association of State Highway and Transportation Officials.

(4) SUBMISSION.—Not later than February 1, 2009, the report shall be submitted to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(g) LIMITATION OF REMEDIES.—

(1) SAME REMEDY AS IF UNITED STATES.—The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for injury, loss of property, personal injury, or death shall apply to any claim against the National Academy of Sciences for money damages for injury, loss of property, personal injury, or death caused by any negligent or wrongful act or omission by employees and individuals described in paragraph (3) arising from activities conducted under or in connection with this section. Any such claim shall be subject to the limitations and exceptions which would be applicable to such claim if such claim were against the United States. With respect to any such claim, the Secretary shall be treated as the head of the appropriate Federal agency for purposes of sections 2672 and 2675 of title 28.

(2) EXCLUSIVENESS OF REMEDY.—The remedy referred to in paragraph (1) shall be exclusive of any other civil action or proceeding for the purpose of determining liability arising from any such act or omission without regard to when the act or omission occurred.

(3) TREATMENT.—Employees of the National Academy of Sciences and other individuals appointed by the president of the National Academy of Sciences and acting on its behalf in connection with activities carried out under this section shall be treated as if they are employees of the Federal Government

under section 2671 of title 28 for purposes of a civil action or proceeding with respect to a claim described in paragraph (1). The civil action or proceeding shall proceed in the same manner as any proceeding under chapter 171 of title 28 or action against the United States filed pursuant to section 1346(b) of title 28 and shall be subject to the limitations and exceptions applicable to such a proceeding or action.

(4) SOURCES OF PAYMENTS.—Payment of any award, compromise, or settlement of a civil action or proceeding with respect to a claim described in paragraph (1) shall be paid first out of insurance maintained by the National Academy of Sciences, second from funds made available to carry out this section, and then from sums made available under section 1304 of title 31. For purposes of such section, such an award, compromise, or settlement shall be deemed to be a judgment, award, or settlement payable under section 2414 or 2672 of title 28. The Secretary may establish a reserve of funds made available to carry out this section for making payments under this paragraph.

(h) FUNDING.—

(1) FEDERAL SHARE.—The Federal share of the cost of an activity carried out using amounts made available under a grant or cooperative agreement under this section shall be 100 percent, and such funds shall remain available until expended.

(2) ADVANCE PAYMENTS.—The Secretary may make advance payments as necessary to carry out the program under this section.

CHAPTER 6—INFRASTRUCTURE FINANCE

Sec.
601. Generally applicable provisions.
602. Determination of eligibility and project selection.
603. Secured loans.
604. Lines of credit.
605. Program administration.
606. State and local permits.
607. Regulations.
608. Funding.
609. State infrastructure bank program.

[§ 181. Definitions]

§ 601. Generally applicable provisions

[In this subchapter] *(A) DEFINITIONS.—In this chapter*, the following definitions apply:

(1) * * *

(2) FEDERAL CREDIT INSTRUMENT.—The term "Federal credit instrument" means a secured loan, loan guarantee, or line of credit authorized to be made available under [this subchapter] *chapter* with respect to a project.

(3) INVESTMENT-GRADE RATING.—The term "investment-grade rating" means a rating [category] of BBB minus, Baa3, or higher assigned by a rating agency to project obligations [offered into the capital markets].

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(5) LINE OF CREDIT.—The term "line of credit" means an agreement entered into by the Secretary with an obligor under section [184] *604* to provide a direct loan at a future date upon the occurrence of certain events.

* * * * * * *

[(7) LOCAL SERVICER.—The term "local servicer" means—

[(A) a State infrastructure bank established under this title; or

[(B) a State or local government or any agency of a State or local government that is responsible for servicing a Federal credit instrument on behalf of the Secretary.]

[(8)] *(7)* OBLIGOR.—The term "obligor" means a party primarily liable for payment of the principal of or interest on a Federal credit instrument, which party may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

[(9)] *(8)* PROJECT.—The term "project" means—

(A) * * *

(B) a project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible[.]*;*

* * * * * * *

[(10)] *(9)* PROJECT OBLIGATION.—The term "project obligation" means any note, bond, debenture, or other debt obligation issued by an obligor in connection with the financing of a project, other than a Federal credit instrument.

[(11)] *(10)* RATING AGENCY.—The term "rating agency" means a [bond] *credit* rating agency identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization.

[(12)] *(11)* SECURED LOAN.—The term "secured loan" means a direct loan or other debt obligation issued by an obligor and funded by the Secretary in connection with the financing of a project under section [183] *603*.

[(13)] *(12)* STATE.—The term "State" has the meaning given the term in section 101.

[(14)] *(13)* SUBSIDY AMOUNT.—The term "subsidy amount" means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

[(15)] *(14)* SUBSTANTIAL COMPLETION.—The term "substantial completion" means the opening of a project to vehicular or passenger traffic.

(b) TREATMENT OF CHAPTER.—For purposes of this title, this chapter shall be treated as being part of chapter 1.

§ [182] *602*. Determination of eligibility and project selection

(a) ELIGIBILITY.—To be eligible to receive financial assistance under [this subchapter] *chapter*, a project shall meet the following criteria:

[(1) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—The project—

[(A) shall be included in the State transportation plan required under section 135; and

[(B) at such time as an agreement to make available a Federal credit instrument is entered into under this subchapter, shall be included in the approved State transportation improvement program required under section 134.

[(2) APPLICATION.—A State, a local servicer identified under section 185(a), or the entity undertaking the project shall submit a project application to the Secretary.]

(1) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—The project shall satisfy the applicable planning and programming requirements of sections 134 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under this subchapter.

(2) APPLICATION.—A State, a local government, public authority, public-private partnership, or any other legal entity undertaking the project and authorized by the Secretary, shall submit a project application to the Secretary.

(3) ELIGIBLE PROJECT COSTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), to be eligible for assistance under [this subchapter] *chapter*, a project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of—

(i) [$100,000,000] *$50,000,000*; or

* * * * * * *

(B) INTELLIGENT TRANSPORTATION SYSTEM PROJECTS.—In the case of a project principally involving the installation of an intelligent transportation system, eligible project costs shall be reasonably anticipated to equal or exceed [$30,000,000] *$15,000,000*.

(4) DEDICATED REVENUE SOURCES.—[Project financing] *The Federal credit instrument* shall be repayable, in whole or in part, from tolls, user fees, or other dedicated revenue sources *that also secure the project obligations*.

* * * * * * *

(b) SELECTION AMONG ELIGIBLE PROJECTS.—

(1) ESTABLISHMENT.—The Secretary shall establish criteria for selecting among projects that meet the eligibility [criteria] *requirements* specified in subsection (a).

(2) SELECTION CRITERIA.—

(A) IN GENERAL.—The selection criteria shall include the following:

(i) * * *

* * * * * * *

(iii) The extent to which assistance under [this subchapter] *chapter* would foster innovative public-pri-

vate partnerships and attract private debt or equity investment.

(iv) The likelihood that assistance under [this subchapter] *chapter* would enable the project to proceed at an earlier date than the project would otherwise be able to proceed.

* * * * * * *

(vi) The amount of budget authority required to fund the Federal credit instrument made available under [this subchapter] *chapter*.

* * * * * * *

(viii) The extent to which assistance under this chapter *and chapter 1* would reduce the contribution of Federal grant assistance to the project.

(B) PRELIMINARY RATING OPINION LETTER.—For purposes of subparagraph (A)(ii), the Secretary shall require each project applicant to provide a preliminary rating opinion letter from at least 1 rating agency indicating that the project's senior obligations*, which may be the Federal credit instrument,* have the potential to achieve an investment-grade rating.

(c) FEDERAL REQUIREMENTS.—In addition to the requirements of this title for highway projects, chapter 53 of title 49 for transit projects, and section 5333(a) of title 49 for rail projects, the following provisions of law shall apply to funds made available under [this subchapter] *chapter* and projects assisted with the funds:

(1) * * *

* * * * * * *

§ [183] *603*. Secured loans

(a) IN GENERAL.—

(1) AGREEMENTS.—Subject to paragraphs (2) through (4), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used—

(A) to finance eligible project costs *of any project selected under section 602*; or

(B) to refinance interim construction financing of eligible project costs[;

[of any project selected under section 182] *of any project selected under section 602*.

* * * * * * *

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section [182(b)(2)(B)] *602(b)(2)(B)*, shall determine an appropriate capital reserve subsidy amount for each secured loan, taking into account such letter.

(4) INVESTMENT-GRADE RATING REQUIREMENT.—[The funding] *The execution* of a secured loan under this section shall be contingent on the project's senior obligations receiving an investment-grade rating[, except that—

[(A) the Secretary may fund an amount of the secured loan not to exceed the capital reserve subsidy amount determined under paragraph (3) prior to the obligations receiving an investment-grade rating; and

[(B) the Secretary may fund the remaining portion of the secured loan only after the obligations have received an investment-grade rating by at least 1 rating agency].

(b) TERMS AND LIMITATIONS.—

(1) * * *

(2) MAXIMUM AMOUNT.—The amount of the secured loan shall not exceed *the lesser of* 33 percent of the reasonably anticipated eligible project costs *or the amount of the senior project obligations*.

(3) PAYMENT.—The secured loan—

(A) shall—

(i) be payable, in whole or in part, from tolls, user fees, or other dedicated revenue sources *that also secure the senior project obligations*; and

* * * * * * *

(4) INTEREST RATE.—The interest rate on the secured loan shall be not less than the yield on [marketable] United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

* * * * * * *

(8) NON-FEDERAL SHARE.—The proceeds of a secured loan under [this subchapter] *chapter* may be used for any non-Federal share of project costs required under this title or chapter 53 of title 49, if the loan is repayable from non-Federal funds.

(c) REPAYMENT.—

(1) * * *

* * * * * * *

[(3) SOURCES OF REPAYMENT FUNDS.—The sources of funds for scheduled loan repayments under this section shall include tolls, user fees, or other dedicated revenue sources.]

[(4)] *(3)* DEFERRED PAYMENTS.—

(A) * * *

* * * * * * *

[(5)] *(4)* PREPAYMENT.—

(A) * * *

* * * * * * *

§ [184] *604*. Lines of credit

(a) IN GENERAL.—

(1) AGREEMENTS.—Subject to paragraphs (2) through (4), the Secretary may enter into agreements to make available lines of credit to 1 or more obligors in the form of direct loans to be made by the Secretary at future dates on the occurrence of certain events for any project selected under section [182] *602*.

* * * * * * *

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget and each rat-

ing agency providing a preliminary rating opinion letter under section [182(b)(2)(B)] *602(b)(2)(B)*, shall determine an appropriate capital reserve subsidy amount for each line of credit, taking into account such letter.

* * * * * * *

(b) TERMS AND LIMITATIONS.—

(1) * * *

* * * * * * *

(3) DRAWS.—Any draw on the line of credit shall represent a direct loan and shall be made only if net revenues from the project (including capitalized interest[, any debt service reserve fund,] *but not including reasonably required financing reserves* and any other available reserve) are insufficient to pay the costs specified in subsection (a)(2).

(4) INTEREST RATE.—The interest rate on a direct loan resulting from a draw on the line of credit shall be not less than the yield on 30-year [marketable] United States Treasury securities as of the date [on which] *of execution of* the line of credit [is obligated] *agreement*.

(5) SECURITY.—The line of credit—

(A) shall—

(i) be payable, in whole or in part, from tolls, user fees, or other dedicated revenue sources *that also secure the senior project obligations*; and

* * * * * * *

(10) RELATIONSHIP TO OTHER CREDIT INSTRUMENTS.—A project that receives a line of credit under this section also shall not receive a secured loan or loan guarantee under section [183] *603* of an amount that, combined with the amount of the line of credit, exceeds 33 percent of eligible project costs.

(c) REPAYMENT.—

(1) * * *

(2) TIMING.—All [scheduled] repayments of principal or interest on a direct loan under this section shall *be scheduled to* commence not later than 5 years after the end of the period of availability specified in subsection (b)(6) and [be fully repaid, with interest,] *conclude, with full repayment of principal and interest,* by the date that is 25 years after the end of the period of availability specified in subsection (b)(6).

[(3) SOURCES OF REPAYMENT FUNDS.—The sources of funds for scheduled loan repayments under this section shall include tolls, user fees, or other dedicated revenue sources.]

[§ 185. Project servicing

[(a) REQUIREMENT.—The State in which a project that receives financial assistance under [this subchapter] *chapter* is located may identify a local servicer to assist the Secretary in servicing the Federal credit instrument made available under this subchapter.

[(b) AGENCY; FEES.—If a State identifies a local servicer under subsection (a), the local servicer—

[(1) shall act as the agent for the Secretary; and

[(2) may receive a servicing fee, subject to approval by the Secretary.

[(c) LIABILITY.—A local servicer identified under subsection (a) shall not be liable for the obligations of the obligor to the Secretary or any lender.

[(d) ASSISTANCE FROM EXPERT FIRMS.—The Secretary may retain the services of expert firms in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments.]

§ 605. Program administration

(a) REQUIREMENT.—The Secretary shall establish a uniform system to service the Federal credit instrument made available under this chapter.

(b) FEES.—The Secretary may establish fees at a level to cover all or a portion of the costs to the Federal Government of servicing the Federal credit instrument.

(c) SERVICES.—The Secretary may identify a financial entity to assist the Secretary in servicing a Federal credit instrument. The services—

(1) shall act as the agent for the Secretary; and

(2) shall receive a servicing fee, subject to approval by the Secretary.

(d) ASSISTANCE FROM EXPERT FIRMS.—The Secretary may retain the services of one or more expert firms, including counsel, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments.

§ [186] *606*. State and local permits

The provision of financial assistance under [this subchapter] *chapter* with respect to a project shall not—

(1) * * *

* * * * * * *

§ [187] *607*. Regulations

The Secretary may issue such regulations as the Secretary determines appropriate to carry out [this subchapter] *chapter*.

[§ 188. Funding

[(a) FUNDING.—

[(1) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subchapter—

[(A) $80,000,000 for fiscal year 1999;

[(B) $90,000,000 for fiscal year 2000;

[(C) $110,000,000 for fiscal year 2001;

[(D) $120,000,000 for fiscal year 2002;

[(E) $130,000,000 for fiscal year 2003; and

[(F) $81,666,666 for the period of October 1, 2003, through April 30, 2004.

[(2) ADMINISTRATIVE COSTS.—From funds made available under paragraph (1), the Secretary may use, for the administration of this subchapter, not more than $2,000,000 for each of fiscal years 1999 through 2003 and $833,333 for the period of October 1, 2003, through February 29, 2004.

(3) AVAILABILITY.—Amounts made available under paragraph (1) shall remain available until expended.

[(b) CONTRACT AUTHORITY.—

[(1) IN GENERAL.—Notwithstanding any other provision of law, approval by the Secretary of a Federal credit instrument that uses funds made available under this subchapter shall be deemed to be acceptance by the United States of a contractual obligation to fund the Federal credit instrument.

[(2) AVAILABILITY.—Amounts authorized under this section for a fiscal year shall be available for obligation on October 1 of the fiscal year.

[(c) LIMITATIONS ON CREDIT AMOUNTS.—For each of fiscal years 1999 through 2004, principal amounts of Federal credit instruments made available under this subchapter shall be limited to the amounts specified in the following table:

[Fiscal year:	Maximum amount of credit:
1999	$1,600,000,000
2000	$1,800,000,000
2001	$2,200,000,000
2002	$2,400,000,000
2003	$2,600,000,000
2004	$1,083,333,333.

[§ 189. Report to Congress

[Not later than 4 years after the date of enactment of this subchapter, the Secretary shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have received, assistance under this subchapter, including a recommendation as to whether the objectives of this subchapter are best served—

[(1) by continuing the program under the authority of the Secretary;

[(2) by establishing a Government corporation or Government-sponsored enterprise to administer the program; or

[(3) by phasing out the program and relying on the capital markets to fund the types of infrastructure investments assisted by this subchapter without Federal participation.]

§ 608. Funding

(a) FUNDING.—

(1) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) $130,000,000 for fiscal year 2004 and $140,000,000 for each of fiscal years 2005 through 2009 to carry out this chapter.

(2) ADMINISTRATIVE COSTS.—From funds made available under paragraph (1), the Secretary may use, for the administration of this subchapter, not more than $3,000,000 for each of fiscal years 2004 through 2009.

(3) AVAILABILITY.—Amounts made available under paragraph (1) shall remain available until expended.

(b) CONTRACT AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, approval by the Secretary of a Federal credit instrument that uses funds made available under this chapter shall be

deemed to be acceptance by the United States of a contractual obligation to fund the Federal credit instrument.

(2) AVAILABILITY.—Amounts authorized under this section for a fiscal year shall be available for obligation on October 1 of the fiscal year.

(c) LIMITATIONS ON CREDIT AMOUNTS.—For each of fiscal years 2004 through 2009, principal amounts of Federal credit instruments made available under this chapter shall be limited to $2,600,000,000.

§ 609. State infrastructure bank program

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

(1) CAPITAL PROJECT.—The term "capital project" has the meaning such term has under section 5302 of title 49, United States Code.

(2) OTHER FORMS OF CREDIT ASSISTANCE.—The term "other forms of credit assistance" includes any use of funds in an infrastructure bank—

(A) to provide credit enhancements;

(B) to serve as a capital reserve for bond or debt instrument financing;

(C) to subsidize interest rates;

(D) to insure or guarantee letters of credit and credit instruments against credit risk of loss;

(E) to finance purchase and lease agreements with respect to transit projects;

(F) to provide bond or debt financing instrument security; and

(G) to provide other forms of debt financing and methods of leveraging funds that are approved by the Secretary and that relate to the project with respect to which such assistance is being provided.

(3) STATE.—The term "State" has the meaning such term has under section 401 of this title.

(4) CAPITALIZATION.—The term "capitalization" means the process used for depositing funds as initial capital into a State infrastructure bank to establish the infrastructure bank.

(5) COOPERATIVE AGREEMENT.—The term "cooperative agreement" means written consent between a State and the Secretary which sets forth the manner in which the infrastructure bank established by the State in accordance with this section will be administered.

(6) LOAN.—The term "loan" means any form of direct financial assistance from a State infrastructure bank that is required to be repaid over a period of time and that is provided to a project sponsor for all or part of the costs of the project.

(7) GUARANTEE.—The term "guarantee" means a contract entered into by a State infrastructure bank in which the bank agrees to take responsibility for all or a portion of a project sponsor's financial obligations for a project under specified conditions.

(8) INITIAL ASSISTANCE.—The term "initial assistance" means the first round of funds that are loaned or used for credit enhancement by a State infrastructure bank for projects eligible for assistance under this section.

(9) LEVERAGE.—The term "leverage" means a financial structure used to increase funds in a State infrastructure bank through the issuance of debt instruments.

(10) LEVERAGED.—The term "leveraged", as used with respect to a State infrastructure bank, means that the bank has total potential liabilities that exceed the capital of the bank.

(b) COOPERATIVE AGREEMENTS.—Subject to the provisions of this section, the Secretary may enter into cooperative agreements with States for the establishment of State infrastructure banks for making loans and providing other forms of credit assistance to public and private entities carrying out or proposing to carry out projects eligible for assistance under this section.

(c) INTERSTATE COMPACTS.—Congress grants consent to 2 or more of the States, entering into a cooperative agreement under subsection (a) with the Secretary for the establishment by such States of a multi-State infrastructure bank in accordance with this section, to enter into an interstate compact establishing such bank in accordance with this section.

(d) FUNDING.—

(1) HIGHWAY ACCOUNT.—Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank to deposit into the highway account of the bank not to exceed—

(A) 10 percent of the funds apportioned to the State for each of fiscal years 2004 through 2009 under each of sections 104(b)(1), 104(b)(3), 104(b)(4), and 144; and

(B) 10 percent of the funds allocated to the State for each of such fiscal years under section 105.

(2) TRANSIT ACCOUNT.—Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank, and any other recipient of Federal assistance under section 5307, 5309, or 5311 of title 49, to deposit into the transit account of the bank not to exceed 10 percent of the funds made available to the State or other recipient in each of fiscal years 2004 through 2009 for capital projects under each of such sections.

(3) RAIL ACCOUNT.—Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank, and any other recipient of Federal assistance under subtitle V of title 49, to deposit into the rail account of the bank funds made available to the State or other recipient in each of fiscal years 2004 through 2009 for capital projects under such subtitle.

(4) CAPITAL GRANTS.—

(A) HIGHWAY ACCOUNT.—Federal funds deposited into a highway account of a State infrastructure bank under paragraph (1) shall constitute for purposes of this section a capitalization grant for the highway account of the bank.

(B) TRANSIT ACCOUNT.—Federal funds deposited into a transit account of a State infrastructure bank under paragraph (2) shall constitute for purposes of this section a capitalization grant for the transit account of the bank.

(C) RAIL ACCOUNT.—Federal funds deposited into a rail account of a State infrastructure bank under paragraph 3

shall constitute for purposes of this section a capitalization grant for the rail account of the bank.

(5) SPECIAL RULE FOR URBANIZED AREAS OF OVER 200,000.—Funds in a State infrastructure bank that are attributed to urbanized areas of a State with urbanized populations of over 200,000 under section 133(d)(3) may be used to provide assistance with respect to a project only if the metropolitan planning organization designated for such area concurs, in writing, with the provision of such assistance.

(6) DISCONTINUANCE OF FUNDING.—If the Secretary determines that a State is not implementing the State's infrastructure bank in accordance with a cooperative agreement entered into under subsection (b), the Secretary may prohibit the State from contributing additional Federal funds to the bank.

(e) FORMS OF ASSISTANCE FROM INFRASTRUCTURE BANKS.—An infrastructure bank established under this section may make loans or provide other forms of credit assistance to a public or private entity in an amount equal to all or a part of the cost of carrying out a project eligible for assistance under this section. The amount of any loan or other form of credit assistance provided for the project may be subordinated to any other debt financing for the project. Initial assistance provided with respect to a project from Federal funds deposited into an infrastructure bank under this section may not be made in the form of a grant.

(f) ELIGIBLE PROJECTS.—Subject to subsection (e), funds in an infrastructure bank established under this section may be used only to provide assistance for projects eligible for assistance under this title and capital projects defined in section 5302 of title 49, and any other projects related to surface transportation that the Secretary determines to be appropriate.

(g) INFRASTRUCTURE BANK REQUIREMENTS.—In order to establish an infrastructure bank under this section, the State establishing the bank shall—

(1) deposit in cash, at a minimum, into each account of the bank from non-Federal sources an amount equal to 25 percent of the amount of each capitalization grant made to the State and deposited into such account; except that, if the deposit is into the highway account of the bank and the State has a non-Federal share under section 120(b) that is less than 25 percent, the percentage to be deposited from non-Federal sources shall be the lower percentage of such grant;

(2) ensure that the bank maintains on a continuing basis an investment grade rating on its debt, or has a sufficient level of bond or debt financing instrument insurance, to maintain the viability of the bank;

(3) ensure that investment income derived from funds deposited to an account of the bank are—

(A) credited to the account;

(B) available for use in providing loans and other forms of credit assistance to projects eligible for assistance from the account; and

(C) invested in United States Treasury securities, bank deposits, or such other financing instruments as the Secretary may approve to earn interest to enhance the leveraging of projects assisted by the bank;

(4) ensure that any loan from the bank will bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible;

(5) ensure that repayment of any loan from the bank will commence not later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later;

(6) ensure that the term for repaying any loan will not exceed 30 years after the date of the first payment on the loan; and

(7) require the bank to make an annual report to the Secretary on its status no later than September 30 of each year and such other reports as the Secretary may require under guidelines issued to carry out this section.

(h) APPLICABILITY OF FEDERAL LAW.—

(1) IN GENERAL.—The requirements of this title and title 49 that would otherwise apply to funds made available under this title or such title and projects assisted with those funds shall apply to—

(A) funds made available under this title or such title and contributed to an infrastructure bank established under this section, including the non-Federal contribution required under subsection (g); and

(B) projects assisted by the bank through the use of the funds;

except to the extent that the Secretary determines that any requirement of such title (other than sections 113 and 114 of this title and section 5333 of title 49), is not consistent with the objectives of this section.

(2) REPAYMENTS.—The requirements of this title and title 49 shall apply to repayments from non-Federal sources to an infrastructure bank from projects assisted by the bank. Such a repayment shall be considered to be Federal funds.

(i) UNITED STATES NOT OBLIGATED.—The deposit of Federal funds into an infrastructure bank established under this section shall not be construed as a commitment, guarantee, or obligation on the part of the United States to any third party, nor shall any third party have any right against the United States for payment solely by virtue of the contribution. Any security or debt-financing instrument issued by the infrastructure bank shall expressly state that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

(j) MANAGEMENT OF FEDERAL FUNDS.—Sections 3335 and 6503 of title 31, shall not apply to funds deposited into an infrastructure bank under this section.

(k) PROGRAM ADMINISTRATION.—For each of fiscal years 2004 through 2009, a State may expend not to exceed 2 percent of the Federal funds contributed to an infrastructure bank established by the State under this section to pay the reasonable costs of administering the bank.

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TITLE 49, UNITED STATES CODE

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SUBTITLE I—DEPARTMENT OF TRANSPORTATION

* * * * * * *

CHAPTER 1—ORGANIZATION

* * * * * * *

§ 102. Department of Transportation

(a) * * *

* * * * * * *

(f) DEPUTY ASSISTANT SECRETARY FOR TRIBAL GOVERNMENT AFFAIRS.—The Department of Transportation shall have, within the office of the Secretary, a Deputy Assistant Secretary for Tribal Government Affairs appointed by the President to plan, coordinate, and implement the Department of Transportation policy and programs serving Indian tribes and tribal organizations and to coordinate tribal transportation programs and activities in all offices and administrations of the Department and to be a participant in any negotiated rulemaking related to, or has impact on, projects, programs, or funding associated with the tribal transportation program.

[(f)**]** *(g)* The Department shall have a seal that shall be judicially recognized.

[(g)**]** *(h)* The Department has an Associate Deputy Secretary appointed by the President, by and with the advice and consent of the Senate. The Associate Deputy Secretary shall carry out powers and duties prescribed by the Secretary.

* * * * * * *

§ 111. Bureau of Transportation Statistics

(a) * * *

[(b) DIRECTOR.—

[(1) APPOINTMENT.—The Bureau shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

[(2) QUALIFICATIONS.—The Director shall be appointed from among individuals who are qualified to serve as the Director by virtue of their training and experience in the compilation and analysis of transportation statistics.

[(3) REPORTING.—The Director shall report directly to the Secretary.

[(4) TERM.—The term of the Director shall be 4 years. The Director may continue to serve after the expiration of the term until a successor is appointed and confirmed.

[(c) RESPONSIBILITIES.—The Director of the Bureau shall be responsible for carrying out the following duties:

[(1) COMPILING TRANSPORTATION STATISTICS.—Compiling, analyzing, and publishing a comprehensive set of transportation statistics to provide timely summaries and totals (including industrywide aggregates and multiyear averages) of transportation-related information. Such statistics shall be suitable for conducting cost-benefit studies (including compari-

sons among individual transportation modes and intermodal transport systems) and shall include information on—

[(A) productivity in various parts of the transportation sector;

[(B) traffic flows;

[(C) travel times;

[(D) vehicle weights;

[(E) variables influencing traveling behavior, including choice of transportation mode;

[(F) travel costs of intracity commuting and intercity trips;

[(G) availability of mass transit and the number of passengers served by each mass transit authority;

[(H) frequency of vehicle and transportation facility repairs and other interruptions of transportation service;

[(I) accidents;

[(J) collateral damage to the human and natural environment;

[(K) the condition of the transportation system; and

[(L) transportation-related variables that influence global competitiveness.

[(2) IMPLEMENTING LONG-TERM DATA COLLECTION PROGRAM.—Establishing and implementing, in cooperation with the modal administrators, the States, and other Federal officials a comprehensive, long-term program for the collection and analysis of data relating to the performance of the transportation systems of the United States. Such program shall—

[(A) be coordinated with efforts to measure outputs and outcomes of the Department of Transportation and the transportation systems of the United States under the Government Performance and Results Act of 1993 (107 Stat. 285 et seq.) and the amendments made by such Act;

[(B) ensure that data is collected under this subsection in a manner which will maximize the ability to compare data from different regions and for different time periods; and

[(C) ensure that data collected under this subsection is controlled for accuracy, made relevant to the States and metropolitan planning organizations, and disseminated to the States and other interested parties.

[(3) ISSUING GUIDELINES.—Issuing guidelines for the collection of information by the Department of Transportation required for statistics to be compiled under paragraph (1) in order to ensure that such information is accurate, reliable, relevant, and in a form that permits systematic analysis. The Bureau shall review and report to the Secretary of Transportation on the sources and reliability of the statistics proposed by the heads of the operating administrations of the Department to measure outputs and outcomes as required by the Government Performance and Results Act of 1993, and the amendments made by such Act, and shall carry out such other reviews of the sources and reliability of other data collected by the heads of the operating administrations of the Department as shall be requested by the Secretary.

[(4) COORDINATING COLLECTION OF INFORMATION.—Coordinating the collection of information by the Department of Transportation required for statistics to be compiled under paragraph (1) with related information-gathering activities conducted by other Federal departments and agencies and collecting appropriate data not elsewhere gathered.

[(5) MAKING STATISTICS ACCESSIBLE.—Making the statistics published under this subsection readily accessible.

[(6) IDENTIFYING INFORMATION NEEDS.—Identifying information that is needed under paragraph (1) but which is not being collected, reviewing such needs at least annually with the Advisory Council on Transportation Statistics, and making recommendations to appropriate Department of Transportation research officials concerning extramural and intramural research programs to provide such information.

[(7) SUPPORTING TRANSPORTATION DECISIONMAKING.—Ensuring that the statistics compiled under paragraph (1) are relevant for transportation decisionmaking by the Federal Government, State and local governments, transportation-related associations, private businesses, and consumers.

[(d) INTERMODAL TRANSPORTATION DATA BASE.—

[(1) IN GENERAL.—In consultation with the Associate Deputy Secretary, the Assistant Secretaries, and the heads of the operating administrations of the Department of Transportation, the Director shall establish and maintain a transportation data base for all modes of transportation.

[(2) USE.—The data base shall be suitable for analyses carried out by the Federal Government, the States, and metropolitan planning organizations.

[(3) CONTENTS.—The data base shall include—

[(A) information on the volumes and patterns of movement of goods, including local, interregional, and international movement, by all modes of transportation and intermodal combinations, and by relevant classification;

[(B) information on the volumes and patterns of movement of people, including local, interregional, and international movements, by all modes of transportation (including bicycle and pedestrian modes) and intermodal combinations, and by relevant classification;

[(C) information on the location and connectivity of transportation facilities and services; and

[(D) a national accounting of expenditures and capital stocks on each mode of transportation and intermodal combination.

[(e) NATIONAL TRANSPORTATION LIBRARY.—

[(1) IN GENERAL.—The Director shall establish and maintain a National Transportation Library, which shall contain a collection of statistical and other information needed for transportation decisionmaking at the Federal, State, and local levels.

[(2) ACCESS.—The Director shall facilitate and promote access to the Library, with the goal of improving the ability of the transportation community to share information and the ability of the Director to make statistics readily accessible under subsection (c)(5).

[(3) COORDINATION.—The Director shall work with other transportation libraries and other transportation information providers, both public and private, to achieve the goal specified in paragraph (2).

[(f) NATIONAL TRANSPORTATION ATLAS DATA BASE.—

[(1) IN GENERAL.—The Director shall develop and maintain geospatial data bases that depict—

[(A) transportation networks;

[(B) flows of people, goods, vehicles, and craft over the networks; and

[(C) social, economic, and environmental conditions that affect or are affected by the networks.

[(2) INTERMODAL NETWORK ANALYSIS.—The data bases shall be able to support intermodal network analysis.

[(g) RESEARCH AND DEVELOPMENT GRANTS.—

[(1) IN GENERAL.—The Secretary may make grants to, or enter into cooperative agreements or contracts with, public and nonprofit private entities (including State transportation departments, metropolitan planning organizations, and institutions of higher education) for—

[(A) investigation of the subjects specified in subsection (c)(1) and research and development of new methods of data collection, management, integration, dissemination, interpretation, and analysis;

[(B) development of electronic clearinghouses of transportation data and related information, as part of the National Transportation Library under subsection (e); and

[(C) development and improvement of methods for sharing geographic data, in support of the national transportation atlas data base under subsection (f) and the National Spatial Data Infrastructure developed under Executive Order No. 12906.

[(2) LIMITATION.—Not more than $500,000 of the amounts made available to carry out this section in a fiscal year may be used to carry out this subsection.

[(h) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed—

[(1) to authorize the Bureau to require any other department or agency to collect data; or

[(2) to reduce the authority of any other officer of the Department of Transportation to collect and disseminate data independently.

[(i) PROHIBITION ON CERTAIN DISCLOSURES.—

[(1) IN GENERAL.—An officer or employee of the Bureau may not—

[(A) make any disclosure in which the data provided by an individual or organization under subsection (c)(2) can be identified;

[(B) use the information provided under subsection (c)(2) for a nonstatistical purpose; or

[(C) permit anyone other than an individual authorized by the Director to examine any individual report provided under subsection (c)(2).

[(2) PROHIBITION ON REQUESTS FOR CERTAIN DATA.—

[(A) GOVERNMENT AGENCIES.—No department, bureau, agency, officer, or employee of the United States (except the Director in carrying out this section) may require, for any reason, a copy of any report that has been filed under subsection (c)(2) with the Bureau or retained by an individual respondent.

[(B) COURTS.—Any copy of a report described in subparagraph (A) that has been retained by an individual respondent or filed with the Bureau or any of its employees, contractors, or agents—

[(i) shall be immune from legal process; and

[(ii) shall not, without the consent of the individual concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding.

[(C) APPLICABILITY.—This paragraph shall apply only to reports that permit information concerning an individual or organization to be reasonably inferred by direct or indirect means.

[(3) DATA COLLECTED FOR NONSTATISTICAL PURPOSES.—In a case in which the Bureau is authorized by statute to collect data or information for a nonstatistical purpose, the Director shall clearly distinguish the collection of the data or information, by rule and on the collection instrument, so as to inform a respondent that is requested or required to supply the data or information of the nonstatistical purpose.

[(j) TRANSPORTATION STATISTICS ANNUAL REPORT.—The Director shall transmit to the President and Congress a Transportation Statistics Annual Report which shall include information on items referred to in subsection (c)(1), documentation of methods used to obtain and ensure the quality of the statistics presented in the report, and recommendations for improving transportation statistical information.

[(k) PROCEEDS OF DATA PRODUCT SALES.—Notwithstanding section 3302 of title 31, United States Code, funds received by the Bureau from the sale of data products, for necessary expenses incurred, may be credited to the Highway Trust Fund (other than the Mass Transit Account) for the purpose of reimbursing the Bureau for the expenses.]

(b) DIRECTOR.—

(1) IN GENERAL.—The Bureau shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) APPOINTMENT.—The Director shall be appointed from among individuals who are qualified to serve as the Director by virtue of their training and experience in the collection, analysis and use of transportation data.

(3) REPORTING TO SECRETARY.—The Director shall report directly to the Secretary of Transportation.

(4) TERM.—The term of the Director shall be 4 years. The Director may continue to serve after the expiration of the term until a successor is appointed and confirmed.

(c) RESPONSIBILITIES.—The Director of the Bureau shall serve as the Secretary's senior advisor on data and statistics and be responsible for carrying out the following duties:

(1) Collecting, analyzing, and disseminating data concerning the domestic and international movement of freight.

(2) Collecting, analyzing, and disseminating data concerning travel patterns for local and long-distance travel, at the local, State, national, and international levels.

(3) Developing, analyzing, and disseminating information on the economics of transportation.

(4) Building and disseminating the transportation layer of the National Spatial Data Infrastructure, including coordinating the development of transportation geospatial data standards, compiling intermodal geospatial data, and collecting geospatial data that is not being collected by others.

(5) Developing, publishing, and disseminating a comprehensive set of measures of investment, use, costs, performance, and impacts of the national transportation system, including publishing an annual transportation statistics abstract.

(6) Identifying information needs of the Department and reviewing such needs at least annually with the Advisory Council on Transportation Statistics of the Bureau.

(7) Conducting or supporting research relating to methods of gathering or analyzing transportation statistics and issuing guidelines for the collection of information by the Department in order to ensure that such information is accurate, relevant, comparable, accessible, and in a form that permits systematic analysis.

(d) COORDINATING COLLECTION OF INFORMATION.—The Director shall work with the operating administrations of the Department to establish and implement the Bureau's data programs and to improve the coordination of information collection efforts with other Federal agencies.

(e) SUPPORTING TRANSPORTATION DECISIONMAKING.—The Director shall ensure that the statistics compiled under this section are relevant for transportation policy, planning, and decisionmaking by the Federal Government, State and local governments, transportation-related associations, private businesses, and the public. The Director shall provide to the Department's other operating administrations technical assistance on collecting, compiling, analyzing, and verifying transportation data and statistics and the design of surveys.

(f) NATIONAL TRANSPORTATION LIBRARY.—

(1) IN GENERAL.—The Director shall establish and maintain a National Transportation Library. The Library shall contain a collection of statistical and other information needed for transportation decisionmaking at the Federal, State, and local levels.

(2) ACCESS.—The Director shall facilitate and promote access to the Library, with the goal of improving the ability of the transportation community to share information and the ability of the Director to disseminate information under subsection (c).

(3) COORDINATION.—The Director shall work with other transportation libraries and other transportation information providers, both public and private, to achieve the goal specified in paragraph (2).

(4) TRANSPORTATION RESEARCH INFORMATION SERVICE.—The Director shall provide the full financial support for the web-

based version of the Transportation Research Information Service.

(g) RESEARCH AND DEVELOPMENT GRANTS.—

(1) IN GENERAL.—The Secretary may make grants to, or enter into cooperative agreements or contracts with, public and nonprofit private entities (including State transportation departments, metropolitan planning organizations, and institutions of higher education) if each of the grants, agreements, and contracts—

(A) provide for an alternative means of accomplishing program-related research of the Department;

(B) contribute to research and development of new methods of transportation data collection; or

(C) improve the methods for sharing geographic transportation data.

(2) FUNDING LIMIT.—Not more than $500,000 of the amounts made available to carry out this section in a fiscal year may be used for research and development grants under this subsection.

(h) TRANSPORTATION STATISTICS ANNUAL REPORT.—By March 31 of each year, the Director shall transmit to the President and Congress a report that includes information on the subjects described in subsection (c), documentation of the methods used to obtain the information and ensure the quality of the statistics presented in the report, and recommendations for improving transportation statistical information.

(i) PROCEEDS OF DATA PRODUCT SALES.—Notwithstanding section 3302 of title 31, funds received by the Bureau from the sale of data products, for necessary expenses incurred, may be credited to the Highway Trust Fund (other than the Mass Transit Account) for the purpose of reimbursing the Bureau for the expenses.

(j) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to—

(1) authorize the Bureau to require any other department or agency to collect data; or

(2) reduce the authority of any other officer of the Department of Transportation to collect and disseminate data independently.

(k) MANDATORY RESPONSE AUTHORITY FOR FREIGHT DATA COLLECTION.—Whoever, being the owner, official, agent, person in charge, or assistant to the person in charge of any corporation, company, business, institution, establishment, or organization of any nature whatsoever, neglects or refuses, when requested by the Director or other authorized officer, employee, or contractor of the Bureau, to answer completely and correctly to the best of his or her knowledge all questions relating to the corporation, company, business, institution, establishment, or other organization, or to make available records or statistics in his or her official custody, contained in a data collection request prepared and submitted under the authority of subsection (c)(1), shall be fined not more than $500; but if he or she willfully gives a false answer to such a question, he or she shall be fined not more than $10,000.

(l) PROHIBITION ON CERTAIN DISCLOSURES.—

(1) IN GENERAL.—An officer, employee or contractor of the Bureau may not—

(A) make any disclosure in which the data provided by an individual or organization under subsection (c) can be identified;

(B) use the information provided under subsection (c) for a nonstatistical purpose; or

(C) permit anyone other than an individual authorized by the Director to examine any individual report provided under subsection (c).

(2) COPIES OF REPORTS.—

(A) IN GENERAL.—No department, bureau, agency, officer, or employee of the United States (except the Director in carrying out this section) may require, for any reason, a copy of any report that has been filed under subsection (c) with the Bureau or retained by an individual respondent.

(B) LIMITATION ON JUDICIAL PROCEEDINGS.—A copy of a report described in subparagraph (A) that has been retained by an individual respondent or filed with the Bureau or any of its employees, contractors, or agents—

(i) shall be immune from legal process; and

(ii) shall not, without the consent of the individual concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding.

(C) APPLICABILITY.—This paragraph shall apply only to reports that permit information concerning an individual or organization to be reasonably determined by direct or indirect means.

(3) INFORMING RESPONDENT OF USE OF DATA.—In a case in which the Bureau is authorized by statute to collect data or information for a nonstatistical purpose, the Director shall clearly distinguish the collection of the data or information, by rule and on the collection instrument, so as to inform a respondent that is requested or required to supply the data or information of the nonstatistical purpose.

(m) DATA ACCESS.—The Director shall have access to transportation and transportation-related information in the possession of any Federal agency except information—

(1) the disclosure of which to another Federal agency is expressly prohibited by law; or

(2) the disclosure of which the agency so requested determines would significantly impair the discharge of authorities and responsibilities which have been delegated to, or vested by law, in such agency.

(n) ADVISORY COUNCIL ON TRANSPORTATION STATISTICS.—

(1) ESTABLISHMENT.—There is established in the Bureau an Advisory Council on Transportation Statistics.

(2) FUNCTION.—It shall be the function of the Advisory Council to advise the Director of the Bureau on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information.

(3) MEMBERSHIP.—The Advisory Council shall be composed of not more than 6 members appointed by the Director who are not officers or employees of the United States. Each member shall have expertise in transportation data collection or analysis or

application; except that 1 member shall have expertise in economics, 1 member shall have expertise in statistics, and 1 member shall have expertise in transportation safety. At least 1 member shall be a senior official of a State department of transportation.

(4) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 App. U.S.C.) shall apply to the advisory council established under this section, except that section 14 of such Act shall not apply to the Advisory Council.

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§ 113. Federal Motor Carrier Safety Administration

(a) * * *

* * * * * * *

(j) MEDICAL REVIEW BOARD.—

(1) ESTABLISHMENT AND FUNCTION.—The Administrator shall establish a Medical Review Board as an advisory committee to provide the 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 consist of 5 members appointed for a term not to exceed 3 years by the Secretary from medical institutions and private medical practice. The membership shall reflect expertise in a variety of medical specialties relevant to the functions of the Administration.

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CHAPTER 3—GENERAL DUTIES AND POWERS

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SUBCHAPTER I—DUTIES OF THE SECRETARY OF TRANSPORTATION

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§ 303. Policy on lands, wildlife and waterfowl refuges, and historic sites

(a) * * *

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(d) SPECIAL RULES FOR HISTORIC SITES.—

(1) IN GENERAL.—The requirements of this section are deemed to be satisfied in any case in which the treatment of a historic site has been agreed upon in accordance with section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and the agreement includes a determination that the program or project will not have an adverse effect on the historic site.

(2) LIMITATION ON APPLICABILITY.—This subsection does not apply in any case in which the Advisory Council on Historic Preservation determines, concurrent with or prior to the conclusion of section 106 consultation, that allowing section 106 compliance to satisfy the requirements of this section would be inconsistent with the objectives of the National Historic Preserva-

tion Act. The Council shall make such a determination if petitioned to do so by a section 106 consulting party, unless the Council affirmatively finds that the views of the requesting party have been adequately considered and that section 106 compliance will adequately protect historic properties.

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

(A) SECTION 106 CONSULTATION.—The term "section 106 consultation" means the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

(B) ADVERSE EFFECT.—The term "adverse effect" means altering, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

* * * * * * *

SUBCHAPTER III—MISCELLANEOUS

§ 351. Judicial review of actions in carrying out certain transferred duties and powers

(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, the [Federal Highway 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.

* * * * * * *

§ 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 Highway Administration] *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.

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CHAPTER 5—SPECIAL AUTHORITY

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SUBCHAPTER II—PENALTIES

* * * * * * *

§ 521. Civil penalties

(a) * * *

[(b)(1)(A) If the Secretary]

(b) VIOLATIONS RELATING TO COMMERCIAL MOTOR VEHICLE SAFETY REGULATION AND OPERATORS.—

(1) NOTICE.—

(A) IN GENERAL.—If the Secretary finds that a violation of a provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502 of this title, or a violation of a regulation issued under any of those provisions, has occurred, the Secretary shall issue a written notice to the violator. Such notice shall describe with reasonable particularity the nature of the violation found and the provision which has been violated. The notice shall specify the proposed civil penalty, if any, and suggest actions which might be taken in order to abate the violation. The notice shall indicate that the violator may, within 15 days of service, notify the Secretary of the violator's intention to contest the matter. In the event of a contested notice, the Secretary shall afford such violator an opportunity for a hearing, pursuant to section 554 of title 5, following which the Secretary shall issue an order affirming, modifying, or vacating the notice of violation.

* * * * * * *

(2) CIVIL PENALTY.—

(A) * * *

(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 [$500] *$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 [$5,000] *$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 [$5,000] *$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.

* * * * * * *

(E) COPYING OF RECORDS AND ACCESS TO EQUIPMENT, LANDS, AND BUILDINGS.—A person subject to chapter 51 or part B of subtitle VI 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 section 504(c), 5121(c), or 14122(b) shall be liable to the United States for a civil penalty not to exceed $1,000 for each offense. Each day the Secretary is denied the right to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property shall constitute a separate offense; except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed $10,000. It shall be a defense to such penalty that the records did not exist at the time of the Secretary's request or could not be timely produced without unreasonable expense or effort. Nothing in this subparagraph shall be construed as amending or superseding any remedy available to the Secretary under section 502(d), section 507(c), or any other provision of this title.

* * * * * * *

SUBTITLE III—GENERAL AND INTERMODAL PROGRAMS

CHAPTER		Sec.
51.	TRANSPORTATION OF HAZARDOUS MATERIAL	5101
52.	*TRANSPORTATION PLANNING AND PROJECT DELIVERY*	*5201*
53.	[MASS] *PUBLIC* TRANSPORTATION	5301

* * * * * * *

CHAPTER 51—TRANSPORTATION OF HAZARDOUS MATERIAL

Sec.
5101. Purpose.

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[5111. Rail tank cars.]

* * * * * * *

[5117. Exemptions and exclusions.
[5118. Inspectors.]
5117. Special permits and exclusions.

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[5127. Authorization of appropriations.]
5127. Judicial review.
5128. Authorization of appropriations.

§ 5101. Purpose

[The purpose of this chapter is to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce by improving the regulatory and enforcement authority of the Secretary of Transportation.] *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.*

§ 5102. Definitions

In this chapter—

(1) "commerce" means trade or transportation in the jurisdiction of the United States—

(A) between a place in a State and a place outside of the State; [or]

(B) that affects trade or transportation between a place in a State and a place outside of the State[.]*; or*

(C) on a United States registered aircraft.

(2) "hazardous material" means a substance or material the Secretary [of Transportation] designates under section 5103(a) of this title.

* * * * * * *

(11) "Secretary" means the Secretary of Transportation.

[(11)] *(12)* "State" means—

(A) * * *

* * * * * * *

[(12)] *(13)* "transports" or "transportation" means the movement of property and loading, unloading, or storage incidental to the movement.

[(13)] *(14)* "United States" means all of the States.

§ 5103. General regulatory authority

(a) DESIGNATING MATERIAL AS HAZARDOUS.—The Secretary [of Transportation] shall designate material (including an explosive, radioactive material, [etiologic agent,] *infectious substance,* flammable or combustible liquid or solid, [poison,] *toxic,* oxidizing or corrosive material, and compressed gas) or a group or class of material as hazardous when the Secretary decides that transporting the material in commerce in a particular amount and form may pose an unreasonable risk to health and safety or property.

(b) REGULATIONS FOR SAFE TRANSPORTATION.—(1) The Secretary shall prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. The regulations—

(A) apply to a person—

(i) [transporting] *that transports* hazardous material in commerce;

(ii) [causing] *that causes* hazardous material to be transported in commerce; [or]

[(iii) manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a packaging or a container that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce; and]

(iii) that designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package or container that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce;

(iv) that prepares or accepts hazardous material for transportation in commerce;

(v) that is responsible for the safety of transporting hazardous material in commerce;

(vi) that certifies compliance with any requirement of this chapter; or

(vii) that misrepresents whether the person is engaged in any of the activities described in this subparagraph; and

* * * * * * *

(2) A proceeding to prescribe the regulations must be conducted under section 553 of title 5, including an opportunity for informal oral presentation.

[(C)] *(3)* 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.

§ 5103a. Limitation on issuance of hazmat licenses

(a) LIMITATION.—

(1) ISSUANCE OF LICENSES.—A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary [of Transportation] has first determined, upon receipt of a notification under subsection (c)(1)(B), that the individual does not pose a security risk warranting denial of the license.

(2) RENEWALS INCLUDED.—For the purposes of this section, the term "issue", with respect to a license, includes renewal of the license.

(b) HAZARDOUS MATERIALS DESCRIBED.—The limitation in subsection (a) shall apply with respect to—

(1) any material defined as a hazardous material by the Secretary [of Transportation]; and

(2) any chemical or biological material or agent determined by the Secretary of Health and Human Services or the Attorney General as being a threat to the national security of the United States.

(c) BACKGROUND RECORDS CHECK.—

(1) IN GENERAL.—Upon the request of a State regarding issuance of a license described in subsection (a)(1) to an individual, the Attorney General—

(A) * * *

(B) upon completing the background records check, shall notify the Secretary [of Transportation] of the completion and results of the background records check.

(2) SCOPE.—A background records check regarding an individual under [this subsection] *paragraph (1)* shall consist of the following:

(A) * * *

* * * * * * *

(3) STANDARDS.—The Secretary shall prescribe by regulation uniform standards (including standards used to disqualify applicants) governing—

(A) the collection by States of background information authorized by paragraph (1);

(B) the collection, transmission, and review of background information; and

(C) the notification of an applicant of the results of the background check.

(4) FEES.—A State may impose and collect an appropriate fee to carry out paragraph (1) consistent with section 5125(f).

(5) OPERATORS REGISTERED IN MEXICO AND CANADA.—No operator of a commercial motor vehicle (as defined in section 31101) licensed in Mexico or Canada may operate in the United States a commercial motor vehicle transporting hazardous material until the operator has undergone a background records check similar to the background records check required of operators of commercial motor vehicles licensed in the United States to transport hazardous materials.

(d) REPORTING REQUIREMENT.—Each State shall submit to the Secretary [of Transportation], at such time and in such manner as the Secretary may prescribe, the name, address, and such other information as the Secretary may require, concerning—

(1) * * *

* * * * * * *

§ 5104. Representation and tampering

(a) REPRESENTATION.—[A] *No* person may represent, by marking or otherwise, that—

(1) a container, package, or packaging (or a component of a container, package, or packaging) for transporting hazardous material is safe, certified, or complies with this chapter [only if the container, package, or packaging (or a component of a container, package, or packaging) meets] *if it does not conform to* the requirements of each applicable regulation prescribed under this chapter; or

(2) hazardous material is present in a package, container, motor vehicle, rail freight car, aircraft, or vessel [only if] *unless* the material is present.

(b) TAMPERING.—[A person may not] *No person may* alter, remove, destroy, or otherwise tamper unlawfully with—

(1) * * *

* * * * * * *

§ 5105. Transporting certain highly radioactive material

(a) * * *

(b) TRANSPORTATION SAFETY STUDY.—In consultation with the Secretary of Energy, the Nuclear Regulatory Commission, potentially affected States and Indian tribes, representatives of the rail transportation industry, and shippers of high-level radioactive waste and spent nuclear fuel, the Secretary [of Transportation] shall conduct a study comparing the safety of using trains operated only to transport high-level radioactive waste and spent nuclear fuel with the safety of using other methods of rail transportation for transporting that waste and fuel. The Secretary [of Transportation] shall submit to Congress not later than November 16, 1991, a report on the results of the study.

(c) SAFE RAIL TRANSPORTATION REGULATIONS.—Not later than November 16, 1992, after considering the results of the study conducted under subsection (b) of this section, the Secretary [of Transportation] shall prescribe amendments to existing regulations that the Secretary considers appropriate to provide for the safe rail transportation of high-level radioactive waste and spent nuclear fuel, including trains operated only for transporting high-level radioactive waste and spent nuclear fuel.

[(d) ROUTES AND MODES STUDY.—Not later than November 16, 1991, the Secretary of Transportation shall conduct a study to decide which factors, if any, shippers and carriers should consider when selecting routes and modes that would enhance overall public safety related to the transportation of high-level radioactive waste and spent nuclear fuel. The study shall include—

[(1) notice and opportunity for public comment; and

[(2) an assessment of the degree to which at least the following affect the overall public safety of the transportation:

[(A) population densities.

[(B) types and conditions of modal infrastructures (including highways, railbeds, and waterways).

[(C) quantities of high-level radioactive waste and spent nuclear fuel.

[(D) emergency response capabilities.

[(E) exposure and other risk factors.

[(F) terrain considerations.

[(G) continuity of routes.

[(H) available alternative routes.

[(I) environmental impact factors.]

[(e)] *(d)* INSPECTIONS OF MOTOR VEHICLES TRANSPORTING CERTAIN MATERIAL.—(1) Not later than November 16, 1991, the Secretary [of Transportation] shall require by regulation that before each use of a motor vehicle to transport a highway-route-controlled quantity of radioactive material in commerce, the vehicle shall be inspected and certified as complying with this chapter and applicable United States motor carrier safety laws and regulations. The Secretary may require that the inspection be carried out by an authorized United States Government inspector or according to appropriate State procedures.

(2) The Secretary [of Transportation] may allow a person, transporting or causing to be transported a highway-route-controlled quantity of radioactive material, to inspect the motor vehicle used to transport the material and to certify that the vehicle complies

with this chapter. The inspector qualification requirements the Secretary prescribes for an individual inspecting a motor vehicle apply to an individual conducting an inspection under this paragraph.

§ 5106. Handling criteria

The Secretary [of Transportation] may prescribe criteria for handling hazardous material, including—

(1) * * *

* * * * * * *

§ 5107. Hazmat employee training requirements and grants

(a) TRAINING REQUIREMENTS.—The Secretary [of Transportation] shall prescribe by regulation requirements for training that a hazmat employer must give hazmat employees of the employer on the safe loading, unloading, handling, storing, and transporting of hazardous material and emergency preparedness for responding to an accident or incident involving the transportation of hazardous material. The regulations—

(1) * * *

* * * * * * *

(b) BEGINNING AND COMPLETING TRAINING.—A hazmat employer shall begin the training of hazmat employees of the employer not later than 6 months after the Secretary [of Transportation] prescribes the regulations under subsection (a) of this section. The training shall be completed within a reasonable period of time after—

(1) * * *

* * * * * * *

(c) CERTIFICATION OF TRAINING.—After completing the training, each hazmat employer shall certify, with documentation the Secretary [of Transportation] may require by regulation, that the hazmat employees of the employer have received training and have been tested on appropriate transportation areas of responsibility, including at least one of the following:

(1) * * *

* * * * * * *

(d) COORDINATION OF TRAINING REQUIREMENTS.—In consultation with the Administrator of the Environmental Protection Agency and the Secretary of Labor, the Secretary [of Transportation] shall ensure that the training requirements prescribed under this section do not conflict with or duplicate—

(1) * * *

* * * * * * *

(f) TRAINING OF CERTAIN EMPLOYEES.—The Secretary shall ensure that maintenance-of-way employees and railroad signalmen receive general awareness/familiarization training and safety training pursuant to section 172.704 of title 49, Code of Federal Regulations.

[(f)] *(g)* RELATIONSHIP TO OTHER LAWS.—(1) Chapter 35 of title 44 does not apply to an activity of the Secretary [of Transportation] under subsections (a)–(d) of this section.

(2) An action of the Secretary [of Transportation] under subsections (a)–(d) of this section and [sections 5106, 5108(a)–(g)(1) and (h), and 5109 of this title] *section 5106* is not an exercise, under section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), of statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

[(g)] *(h)* EXISTING EFFORT.—No grant under subsection (e) shall supplant or replace existing employer-provided hazardous materials training efforts or obligations.

§ 5108. Registration

(a) PERSONS REQUIRED TO FILE.—(1) A person shall file a registration statement with the Secretary [of Transportation] under this subsection if the person is transporting or causing to be transported in commerce any of the following:

(A) * * *

(B) more than 25 kilograms of a [class A or B] *Division 1.1, 1.2, or 1.3* explosive in a motor vehicle, rail car, or transport container.

* * * * * * *

(2) The Secretary [of Transportation] may require any of the following persons to file a registration statement with the Secretary under this subsection:

(A) * * *

(B) a person [manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing] *designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing* a package or container the person represents, marks, certifies, or sells for use in transporting in commerce hazardous material the Secretary designates.

(3) A person required to file a registration statement under this subsection may transport or cause to be transported, or manufacture, fabricate, mark, maintain, recondition, repair, or test a package or container for use in transporting, hazardous material, only if the person has a statement on file as required by this subsection.

* * * * * * *

(b) FORM, CONTENTS, AND LIMITATION ON FILINGS.—(1) A registration statement under subsection (a) of this section shall be in the form and contain information the Secretary [of Transportation] requires by regulation. The Secretary may use existing forms of the Department of Transportation and the Environmental Protection Agency to carry out this subsection. The statement shall include—

(A) * * *

* * * * * * *

(c) [FILING DEADLINES AND AMENDMENTS.—] *FILING SCHEDULE.*—(1) Each person required to file a registration statement under subsection (a) of this section [must file the first] *shall file that* statement [not later than March 31, 1992. The Secretary of Transportation may extend that date to September 30, 1992, for activities referred to in subsection (a)(1) of this section.] *in accord-*

ance with regulations issued by the Secretary. A person shall renew the statement periodically consistent with regulations the Secretary prescribes, but not more than once each year and not less than once every 5 years.

(2) The Secretary [of Transportation] shall decide by regulation when and under what circumstances a registration statement must be amended and the procedures to follow in amending the statement.

(d) SIMPLIFYING THE REGISTRATION PROCESS.—The Secretary [of Transportation] may take necessary action to simplify the registration process under subsections (a)–(c) of this section and to minimize the number of applications, documents, and other information a person is required to file under this chapter and other laws of the United States.

(e) COOPERATION WITH ADMINISTRATOR.—The Administrator of the Environmental Protection Agency shall assist the Secretary [of Transportation] in carrying out subsections (a)–(g)(1) and (h) of this section by providing the Secretary with information the Secretary requests to carry out the objectives of subsections (a)–(g)(1) and (h).

(f) AVAILABILITY OF STATEMENTS.—The Secretary [of Transportation] shall make a registration statement filed under subsection (a) of this section available for inspection by any person for a fee the Secretary establishes. However, this subsection does not require the release of information described in section 552(b) of title 5 or otherwise protected by law from disclosure to the public.

(g) FEES.—(1) The Secretary [of Transportation may] *shall* establish, impose, and collect from a person required to file a registration statement under subsection (a) of this section a fee necessary to pay for the costs of the Secretary in processing the statement.

(2)(A) In addition to a fee established under paragraph (1) of this subsection, the Secretary [of Transportation] shall establish and impose by regulation and collect an annual fee. Subject to subparagraph (B) of this paragraph, the fee shall be at least $250 but not more than [$5,000] *$3,000* from each person required to file a registration statement under this section. The Secretary shall determine the amount of the fee under this paragraph on at least one of the following:

(i) * * *

* * * * * * *

(B) The Secretary [of Transportation] shall adjust the amount being collected under this paragraph to reflect any unexpended balance in the account established under section 5116(i) of this title. However, the Secretary is not required to refund any fee collected under this paragraph.

(C) The Secretary [of Transportation] shall transfer to the Secretary of the Treasury amounts the Secretary of Transportation collects under this paragraph for deposit in the account the Secretary of the Treasury establishes under section 5116(i) of this title.

(3) FEES ON EXEMPT PERSONS.—Notwithstanding subsection (a)(4), the Secretary shall impose and collect a fee of $25 from a person who is required to register under this section but who is otherwise exempted by the Secretary from paying any fee under this section. The fee shall be used to pay the cost of the

Secretary in processing registration statements filed by such persons.

(h) MAINTAINING PROOF OF FILING AND PAYMENT OF FEES.—The Secretary [of Transportation] may prescribe regulations requiring a person required to file a registration statement under subsection (a) of this section to maintain proof of the filing and payment of fees imposed under subsection (g) of this section.

(i) RELATIONSHIP TO OTHER LAWS.—(1) Chapter 35 of title 44 does not apply to an activity of the Secretary [of Transportation] under subsections (a)–(g)(1) and (h) of this section.

(2)(A) * * *

(B) Subsections (a)–(h) of this section do not apply to a department, agency, or instrumentality of the United States Government, an authority of a State*, Indian tribe,* or political subdivision of a State, or an employee of a department, agency, instrumentality, or authority carrying out official duties.

§ 5109. Motor carrier safety permits

(a) REQUIREMENT.—A motor carrier may transport or cause to be transported by motor vehicle in commerce hazardous material only if the carrier holds a safety permit the Secretary [of Transportation] issues under this section authorizing the transportation and keeps a copy of the permit, or other proof of its existence, in the vehicle. The Secretary shall issue a permit if the Secretary finds the carrier is fit, willing, and able—

(1) * * *

* * * * * * *

§ 5110. Shipping papers and disclosure

(a) PROVIDING SHIPPING PAPERS.—Each person offering for transportation in commerce hazardous material to which the shipping paper requirements of the Secretary [of Transportation] apply shall provide to the carrier providing the transportation a shipping paper that makes the disclosures the Secretary prescribes [under subsection (b) of this section] *by regulation*.

* * * * * * *

(e) RETENTION OF PAPERS.—After the hazardous material to which a shipping paper provided to a carrier under subsection (a) applies is no longer in transportation, the person who provided the shipping paper and the carrier required to maintain it under subsection (a) shall retain the paper or electronic image thereof for a period of [1 year] *2 years after the date of preparation of the shipping paper* to be accessible through their respective principal places of business. Such person and carrier shall, upon request, make the shipping paper available to a Federal, State, or local government agency at reasonable times and locations.

[§ 5111. Rail tank cars

[A rail tank car built before January 1, 1971, may be used to transport hazardous material in commerce only if the air brake equipment support attachments of the car comply with the standards for attachments contained in sections 179.100-16 and 179.200-19 of title 49, Code of Federal Regulations, in effect on November 16, 1990.]

§ 5112. Highway routing of hazardous material

(a) APPLICATION.—(1) This section applies to a motor vehicle only if the vehicle is transporting hazardous material in commerce for which placarding of the vehicle is required under regulations prescribed under this chapter. However, the Secretary [of Transportation] by regulation may extend application of this section or a standard prescribed under subsection (b) of this section to—

(A) * * *

* * * * * * *

§ 5113. Unsatisfactory safety rating

[See section 31144.] *A person who violates section 31144(c)(3) shall be subject to the penalties in sections 5123 and 5124.*

§ 5114. Air transportation of ionizing radiation material

(a) * * *

(b) PROCEDURES.—The Secretary [of Transportation] shall prescribe procedures for monitoring and enforcing regulations prescribed under this section.

* * * * * * *

§ 5115. Training curriculum for the public sector

(a) DEVELOPMENT AND UPDATING.—Not later than November 16, 1992, in coordination with the Director of the Federal Emergency Management Agency, Chairman of the Nuclear Regulatory Commission, Administrator of the Environmental Protection Agency, Secretaries of Labor, Energy, and Health and Human Services, and Director of the National Institute of Environmental Health Sciences, and using the existing coordinating mechanisms of the national response team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee, the Secretary of Transportation shall develop and update periodically a curriculum consisting of a list of courses necessary to train public sector emergency response and preparedness teams. Only in developing the curriculum, the Secretary [of Transportation] shall consult with regional response teams established under the national contingency plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605), representatives of commissions established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001), persons (including governmental entities) that provide training for responding to accidents and incidents involving the transportation of hazardous material, and representatives of persons that respond to those accidents and incidents.

(b) REQUIREMENTS.—The curriculum developed under subsection (a) of this section—

(1) shall include—

(A) * * *

* * * * * * *

(C) appropriate emergency response training and planning programs for public sector employees developed [under other United States Government grant programs,

including those] *with Federal financial assistance, including programs* developed with grants made under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9660a); and

* * * * * * *

(c) TRAINING ON COMPLYING WITH LEGAL REQUIREMENTS.—A recommended basic course described in subsection (b)(1)(B) of this section shall provide the training necessary for public sector employees to comply with—

(1) * * *

* * * * * * *

(3) standards related to emergency response training prescribed by the National Fire Protection Association *and such other voluntary consensus standard-setting organizations as the Secretary determines appropriate*.

(d) DISTRIBUTION AND PUBLICATION.—With the [national response team] *National Response Team*—

(1) the [Director of the Federal Emergency Management Agency] *Secretary* shall distribute the curriculum and any updates to the curriculum to the regional response teams and all committees and commissions established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001); and

(2) the Secretary [of Transportation] may publish *and distribute* a list of [programs that uses a course developed under this section for training public sector employees to respond to an accident or incident involving the transportation of hazardous material] *programs and courses developed under this section*.

§ 5116. Planning and training grants, monitoring, and review

(a) PLANNING GRANTS.—(1) The Secretary [of Transportation] shall make grants to States and Indian tribes—

(A) * * *

* * * * * * *

(2) The Secretary [of Transportation] may make a grant to a State or Indian tribe under paragraph (1) of this subsection in a fiscal year only if—

(A) * * *

* * * * * * *

(b) TRAINING GRANTS.—(1) The Secretary [of Transportation] shall make grants to States and Indian tribes to train public sector employees to respond to accidents and incidents involving hazardous material.

(2) The Secretary [of Transportation] may make a grant under paragraph (1) of this subsection in a fiscal year—

(A) * * *

* * * * * * *

(3) A grant under this subsection may be used—

(A) * * *

* * * * * * *

(C) to make an agreement the Secretary [of Transportation] approves authorizing a person (including an authority of a State or political subdivision of a State or Indian tribe) to provide the training—

(i) * * *

* * * * * * *

(4) The Secretary [of Transportation] shall allocate amounts made available for grants under this subsection for a fiscal year among eligible States and Indian tribes based on the needs of the States and tribes for emergency response training. In making a decision about those needs, the Secretary shall consider—

(A) * * *

* * * * * * *

(D) whether the fee is used only to carry out a purpose related to transporting hazardous material; [and]

(E) the report submitted by the State to the Secretary under section 5125(f)(2); and

[(E)] *(F)* other factors the Secretary decides are appropriate to carry out this subsection.

(c) COMPLIANCE WITH CERTAIN LAW.—The Secretary [of Transportation] may make a grant to a State *or Indian tribe* under this section in a fiscal year only if the State *or Indian tribe* certifies that *(1) the State or Indian tribe is complying with all applicable requirements of this chapter (including section 5125(f)), and (2) in the case of a State,* the State complies with sections 301 and 303 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001, 11003).

(d) APPLICATIONS.—A State or Indian tribe interested in receiving a grant under this section shall submit an application to the Secretary [of Transportation]. The application must be submitted at the time, and contain information, the Secretary requires by regulation to carry out the objectives of this section.

(e) GOVERNMENT'S SHARE OF COSTS.—A grant under this section is for 80 percent of the cost the State or Indian tribe incurs in the fiscal year to carry out the activity for which the grant is made. [Amounts of the State or tribe under subsections (a)(2)(A) and (b)(2)(A) of this section are not part of the non-Government share under this subsection.] *Amounts received by the State or tribe under subsections (a)(1) and (b)(1) are not part of the non-Government share under this subsection.*

(f) MONITORING AND TECHNICAL ASSISTANCE.—In coordination with the [Secretaries of Transportation and Energy,] *Secretary of Energy, Director of the Federal Emergency Management Agency,* Administrator of the Environmental Protection Agency, and Director of the National Institute of Environmental Health Sciences, the [Director of the Federal Emergency Management Agency shall] *Secretary of Transportation shall* monitor public sector emergency response planning and training for an accident or incident involving hazardous material. Considering the results of the monitoring, [the Secretaries, Administrator, and Directors each shall] *the Secretary shall* provide technical assistance to a State, political subdivision of a State, or Indian tribe for carrying out emergency response training and planning for an accident or incident involving hazardous material and shall coordinate the assistance using the

existing coordinating mechanisms of the [national response team] *National Response Team* and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee.

(g) DELEGATION OF AUTHORITY.—To minimize administrative costs and to coordinate [Government grant programs] *Federal financial assistance* for emergency response training and planning, the Secretary of Transportation may delegate to the Directors of the Federal Emergency Management Agency and National Institute of Environmental Health Sciences, Chairman of the Nuclear Regulatory Commission, Administrator of the Environmental Protection Agency, and Secretaries of Labor and Energy any of the following:

(1) * * *

* * * * * * *

(i) [ANNUAL REGISTRATION FEE ACCOUNT AND ITS USES.—] *HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS FUND*.—The Secretary of the Treasury shall establish an account in the Treasury, *to be known as the "Hazardous Materials Emergency Preparedness Fund",* into which the Secretary of the Treasury shall deposit amounts the Secretary of Transportation collects under [section 5108(g)(2)(A) of this title and transfers to the Secretary of the Treasury under section 5108(g)(2)(C) of this title] *this chapter*. Without further appropriation, amounts in the account are available—

(1) to make grants under this section;

(2) to monitor and provide technical assistance under subsection (f) of this section; [and]

(3) to publish and distribute the Emergency Response Guidebook; and

[(3)] *(4)* to pay administrative costs of carrying out this section and sections 5108(g)(2) and 5115 of this title, except that not more than 10 percent of the amounts made available from the account in a fiscal year may be used to pay those costs.

* * * * * * *

(k) REPORTS.—[Not later than September 30, 1997, the Secretary shall submit to Congress a report on the allocation and uses of training grants authorized under subsection (b) for fiscal year 1993 through fiscal year 1996 and grants authorized under subsection (j) and section 5107 for fiscal years 1995 and 1996. Such] *The Secretary shall submit to Congress and make available to the public annually a report on the allocation and uses of planning grants under subsection (a), training grants under subsection (b), and grants under subsection (j) and under section 5107. The* report shall identify the ultimate recipients of training grants and include a detailed accounting of all grant expenditures by grant recipients, the number of persons trained under the grant programs, and an evaluation of the efficacy of training programs carried out.

[§ 5117. Exemptions and exclusions]

§ 5117. Special permits and exclusions

(a) AUTHORITY TO [EXEMPT] *ISSUE SPECIAL PERMITS*.—(1) As provided under procedures prescribed by regulation, the Secretary [of Transportation] may issue [an exemption], *modify, or termi-*

nate a special permit authorizing a variance from this chapter or a regulation prescribed under section 5103(b), 5104, 5110, or 5112 of this title to a person [transporting, or causing to be transported, hazardous material] *performing a function regulated by the Secretary under section 5103(b)(1)* in a way that achieves a safety level—

(A) * * *

* * * * * * *

[(2) An exemption under this subsection is effective for not more than 2 years and may be renewed on application to the Secretary.]

(2) A special permit issued under this section shall be effective for an initial period of not more than 2 years and may be renewed by the Secretary upon application for an additional period of not more than 4 years or, in the case of a special permit relating to section 5112, for an additional period of not more than 2 years.

(b) APPLICATIONS.—When applying for [an exemption] *a special permit* or renewal of [an exemption] *a special permit* under this section, the person must provide a safety analysis prescribed by the Secretary that justifies [the exemption] *the special permit*. The Secretary shall publish in the Federal Register notice that an application for [an exemption] *a special permit* has been filed and shall give the public an opportunity to inspect the safety analysis and comment on the application. This subsection does not require the release of information protected by law from public disclosure.

(c) APPLICATIONS TO BE DEALT WITH PROMPTLY.—The Secretary shall issue or renew [the exemption] *the special permit* for which an application was filed or deny such issuance or renewal within 180 days after the first day of the month following the date of the filing of such application, or the Secretary shall publish a statement in the Federal Register of the reason why the Secretary's decision on [the exemption] *the special permit* is delayed, along with an estimate of the additional time necessary before the decision is made.

* * * * * * *

(e) LIMITATION ON AUTHORITY.—Unless the Secretary decides that an emergency exists, [an exemption] *a special permit* or renewal granted under this section is the only way a person subject to this chapter may [be exempt] *be granted a variance* from this chapter.

[§ 5118. Inspectors

[(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall maintain the employment of 30 hazardous material safety inspectors more than the total number of safety inspectors authorized for the fiscal year that ended September 30, 1990, for the Federal Railroad Administration, the Federal Highway Administration, and the Research and Special Programs Administration.

[(b) ALLOCATION TO PROMOTE SAFETY IN TRANSPORTING RADIOACTIVE MATERIAL.—(1) The Secretary shall ensure that 10 of the 30 additional inspectors focus on promoting safety in transporting radioactive material, as defined by the Secretary, including inspecting—

[(A) at the place of origin, shipments of high-level radioactive waste or nuclear spent material (as those terms are defined in section 5105(a) of this title); and

[(B) to the maximum extent practicable shipments of radioactive material that are not high-level radioactive waste or nuclear spent material.

[(2) In carrying out their duties, those 10 additional inspectors shall cooperate to the greatest extent possible with safety inspectors of the Nuclear Regulatory Commission and appropriate State and local government officials.

[(3) Those 10 additional inspectors shall be allocated as follows:

[(A) one to the Research and Special Programs Administration.

[(B) 3 to the Federal Railroad Administration.

[(C) 3 to the Federal Highway Administration.

[(D) the other 3 among the administrations referred to in clauses (A)–(C) of this paragraph as the Secretary decides.

[(c) ALLOCATION OF OTHER INSPECTORS.—The Secretary shall allocate, as the Secretary decides, the 20 additional inspectors authorized under this section and not allocated under subsection (b) of this section among the administrations referred to in subsection (b)(3)(A)–(C) of this section.

[§ 5119. Uniform forms and procedures

[(a) WORKING GROUP.—The Secretary of Transportation shall establish a working group of State and local government officials, including representatives of the National Governors' Association, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, and the National Conference of State Legislatures. The purposes of the working group are—

[(1) to establish uniform forms and procedures for a State—

[(A) to register persons that transport or cause to be transported hazardous material by motor vehicle in the State; and

[(B) to allow the transportation of hazardous material in the State; and

[(2) to decide whether to limit the filing of any State registration and permit forms and collection of filing fees to the State in which the person resides or has its principal place of business.

[(b) CONSULTATION AND REPORTING.—The working group—

[(1) shall consult with persons subject to registration and permit requirements described in subsection (a) of this section; and

[(2) not later than November 16, 1993, shall submit to the Secretary, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a final report that contains—

[(A) a detailed statement of its findings and conclusions; and

[(B) its joint recommendations on the matters referred to in subsection (a) of this section.

[(c) REGULATIONS ON RECOMMENDATIONS.—(1) The Secretary shall prescribe regulations to carry out the recommendations con-

tained in the report submitted under subsection (b) of this section with which the Secretary agrees. The regulations shall be prescribed by the later of the last day of the 3-year period beginning on the date the working group submitted its report or the last day of the 90-day period beginning on the date on which at least 26 States adopt all of the recommendations of the report. A regulation prescribed under this subsection may not define or limit the amount of a fee a State may impose or collect.

[(2) A regulation prescribed under this subsection takes effect one year after it is prescribed. The Secretary may extend the one-year period for an additional year for good cause. After a regulation is effective, a State may establish, maintain, or enforce a requirement related to the same subject matter only if the requirement is the same as the regulation.

[(3) In consultation with the working group, the Secretary shall develop a procedure to eliminate differences in how States carry out a regulation prescribed under this subsection.

[(d) RELATIONSHIP TO OTHER LAWS.—The Federal Advisory Committee Act (5 App. U.S.C.) does not apply to the working group.**]**

§ 5119. Uniform forms and procedures

(a) ESTABLISHMENT OF WORKING GROUP.—The Secretary shall establish a working group of State and local government officials, including representatives of the National Governors' Association, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, the National Conference of State Legislatures, and the Alliance for Uniform Hazmat Transportation Procedures.

(b) PURPOSE OF WORKING GROUP.—The purpose of the working group shall be to establish uniform forms and procedures for a State to register, and to issue permits to, persons that transport, or cause to be transported, hazardous material by motor vehicle in the State.

(c) LIMITATION ON WORKING GROUP.—The working group may not propose to define or limit the amount of a fee a State may impose or collect.

(d) PROCEDURE.—The Secretary shall develop a procedure by which the working group shall harmonize existing State registration and permit laws and regulations relating to the transportation of hazardous materials, with special attention paid to each State's unique safety concerns and interest in maintaining strong hazmat safety standards.

(e) REPORT OF WORKING GROUP.—Not later than 18 months after the date of enactment of this subsection, the working group shall transmit to the Secretary a report containing recommendations for establishing uniform forms and procedures described in subsection (b).

(f) REGULATIONS.—Not later than 2 years after the date of enactment of this subsection, the Secretary shall issue regulations to carry out such recommendations of the working group as the Secretary considers appropriate.

(g) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as prohibiting a State from voluntarily participating in a program of uniform forms and procedures until such time as the Secretary issues regulations under subsection (f).

§ 5120. International uniformity of standards and requirements

(a) * * *

(b) CONSULTATION.—The Secretary [of Transportation] may consult with interested authorities to ensure that, to the extent practicable, regulations the Secretary prescribes under sections 5103(b), 5104, 5110, and 5112 of this title are consistent with standards *and requirements* related to transporting hazardous material that international authorities adopt.

(c) DIFFERENCES WITH INTERNATIONAL STANDARDS AND REQUIREMENTS.—This section—

(1) does not require the Secretary [of Transportation] to prescribe a standard *or requirement* identical to a standard *or requirement* adopted by an international authority if the Secretary decides the standard *or requirement* is unnecessary or unsafe; and

(2) does not prohibit the Secretary from prescribing a safety *standard or* requirement more stringent than a *standard or* requirement [included in a standard] adopted by an international authority if the Secretary decides the *standard or* requirement is necessary in the public interest.

§ 5121. Administrative

(a) GENERAL AUTHORITY.—To carry out this chapter, the Secretary [of Transportation] may investigate, *conduct tests,* make reports, issue subpenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities. [After] *Except as provided in subsections (c) and (d), after* notice and an opportunity for a hearing, the Secretary may issue an order requiring compliance with this chapter or a [regulation prescribed] *regulation, order, special permit, or approval issued* under this chapter.

(b) RECORDS, REPORTS, AND INFORMATION.—A person subject to this chapter shall—

(1) maintain records *and property*, make reports, and provide information the Secretary by regulation or order requires; and

(2) make the records, *property,* reports, and information available *for inspection* when the Secretary [requests] *undertakes an investigation or makes a request*.

[(c) INSPECTION.—(1) The Secretary may authorize an officer, employee, or agent to inspect, at a reasonable time and in a reasonable way, records and property related to—

[(A) manufacturing, fabricating, marking, maintaining, reconditioning, repairing, testing, or distributing a packaging or a container for use by a person in transporting hazardous material in commerce; or

[(B) the transportation of hazardous material in commerce.

[(2) An officer, employee, or agent under this subsection shall display proper credentials when requested.]

(c) INSPECTIONS AND INVESTIGATIONS.—

(1) IN GENERAL.—A designated officer, employee, or agent of the Secretary may—

(A) inspect and investigate, at a reasonable time and in a reasonable manner, records and property relating to a function described in section 5103(b)(1);

(B) except in the case of packaging immediately adjacent to its hazardous material contents, gain access to, open, and examine a package offered for, or in, transportation when the officer, employee, or agent has an objectively reasonable and articulable belief that the package may contain a hazardous material;

(C) remove from transportation a package or related packages in a shipment offered for or in transportation for which—

(i) such officer, employee, or agent has an objectively reasonable and articulable belief that the package may pose an imminent hazard; and

(ii) such officer, employee, or agent contemporaneously documents such belief in accordance with procedures set forth in guidance or regulations prescribed under subsection (e);

(D) gather information from the offeror, carrier, packaging manufacturer or retester, or other person responsible for the package, to ascertain the nature and hazards of the contents of the package;

(E) as necessary, under terms and conditions specified by the Secretary, order the offeror, carrier, packaging manufacturer or retester, or other person responsible for the package to have the package transported to, opened, and the contents examined and analyzed, at a facility appropriate for the conduct of such examination and analysis; and

(F) when safety might otherwise be compromised, authorize properly qualified personnel to assist in the activities conducted under this subsection.

(2) DISPLAY OF CREDENTIALS.—An officer, employee, or agent acting under this subsection shall display proper credentials when requested.

(3) SAFE RESUMPTION OF TRANSPORTATION.—In instances when, as a result of an inspection or investigation under this subsection, an imminent hazard is not found to exist, the Secretary, in accordance with procedures set forth in regulations prescribed under subsection (e), shall assist—

(A) in the safe resumption of transportation of the package concerned; or

(B) in any case in which the hazardous material being transported is perishable, in the safe and expeditious resumption of transportation of the perishable hazardous material.

(d) EMERGENCY ORDERS.—

(1) IN GENERAL.—If, upon inspection, investigation, testing, or research, the Secretary determines that either a violation of a provision of this chapter or a regulation issued under this chapter, or an unsafe condition or practice, constitutes or is causing an imminent hazard, the Secretary may issue an emergency order, without notice or the opportunity for a hearing, but only to the extent necessary to abate the imminent hazard.

(2) WRITTEN ORDERS.—An emergency order issued under paragraph (1) shall be in writing, describe the violation, condition, or practice that is causing the imminent hazard, and state

the restrictions, prohibitions, recalls, or out-of-service orders issued. The emergency order also shall describe the standards and procedures for obtaining relief from the order.

(3) OPPORTUNITY FOR REVIEW.—After issuing an emergency order under paragraph (1), the Secretary shall provide an opportunity for review of the order under section 554 of title 5 if a petition for review is filed within 20 calendar days after the date of issuance of the order.

(4) EXPIRATION OF EFFECTIVENESS OF EMERGENCY ORDER.—If a petition for review is filed for an order and the review is not completed by the end of the 30-day period beginning on the date the petition was filed, the order shall cease to be effective at the end of that period unless the Secretary determines in writing that the emergency situation still exists.

(e) GUIDANCE AND REGULATIONS.—

(1) GUIDANCE.—Not later than 60 days after the date of enactment of the Transportation Equity Act: A Legacy for Users, the Secretary shall issue interim guidance to carry out subsections (c) and (d).

(2) REGULATIONS.—Not later than 1 year after such date of enactment, the Secretary shall issue regulations to carry out subsections (c) and (d) in accordance with subchapter II of chapter 5 of title 5.

[(d)**]** *(f)* FACILITY, STAFF, AND REPORTING SYSTEM ON RISKS, EMERGENCIES, AND ACTIONS.—(1) * * *

* * * * * * *

[(e)**]** *(g)* REPORT.—The Secretary shall, once every 2 years, prepare and **[**submit to the President for transmittal to the Congress**]** *transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate* a comprehensive report on the transportation of hazardous materials during the preceding 2 calendar years. The report shall include—

(1) * * *

* * * * * * *

(4) an evaluation of the effectiveness of enforcement activities *relating to a function regulated by the Secretary under section 5103(b)(1)* and the degree of voluntary compliance with regulations;

* * * * * * *

§ 5122. Enforcement

(a) GENERAL.—At the request of the Secretary **[**of Transportation**]**, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter or a regulation prescribed or order issued under this chapter. **[**The court may award appropriate relief, including punitive damages.**]** *The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties considering the same penalty amounts and factors as prescribed for the Secretary in an administrative case under section 5123.*

(b) IMMINENT HAZARDS.—[(1)] If the Secretary has reason to believe that an imminent hazard exists, the Secretary may bring a civil action in an appropriate district court of the United States—

[(A)] *(1)* to suspend or restrict the transportation of the hazardous material responsible for the hazard; or

[(B)] *(2)* to eliminate [or ameliorate the] *or mitigate the* hazard.

[(2) On request of the Secretary, the Attorney General shall bring an action under paragraph (1) of this subsection.]

* * * * * * *

§ 5123. Civil penalty

(a) PENALTY.—(1) A person that knowingly violates this chapter or a [regulation prescribed or order issued] *regulation, order, special permit, or approval issued* under this chapter is liable to the United States Government for a civil penalty of at least $250 but not more than [$25,000] *$50,000* for each violation. A person acts knowingly when—

(A) * * *

* * * * * * *

(2) If the Secretary finds that a violation under paragraph (1) results in death, serious illness, or severe injury to any person or substantial destruction of property, the Secretary may increase the amount of the civil penalty for such violation to not more than $100,000.

[(2)] *(3)* A separate violation occurs for each day the violation, committed by a person that transports or causes to be transported hazardous material, continues.

(b) HEARING REQUIREMENT.—The Secretary [of Transportation] may find that a person has violated this chapter or a [regulation prescribed] *regulation, order, special permit, or approval issued* under this chapter only after notice and an opportunity for a hearing. The Secretary shall impose a penalty under this section by giving the person written notice of the amount of the penalty.

* * * * * * *

(d) CIVIL ACTIONS TO COLLECT.—The [Attorney General] *Secretary* may bring a civil action in an appropriate district court of the United States to collect a civil penalty under this section. *In such action, the validity, amount, and appropriateness of the civil penalty shall not be subject to review.*

(e) COMPROMISE.—The Secretary may compromise the amount of a civil penalty imposed under this section [before referral to the Attorney General].

* * * * * * *

[§ 5124. Criminal penalty

[A person knowingly violating section 5104(b) of this title or willfully violating this chapter or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both.]

§ 5124. Criminal penalty

(a) IN GENERAL.—A person knowingly violating section 5104(b) or willfully or recklessly violating this chapter or a regulation, order, special permit, or approval issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both; except that the maximum amount of imprisonment shall be 10 years in any case in which the violation involves the release of a hazardous material that results in death or bodily injury to any person.

(b) KNOWING VIOLATIONS.—For purposes of this section—

(1) a person acts knowingly when—

(A) the person has actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge; and

(2) knowledge of the existence of a statutory provision, or a regulation or a requirement required by the Secretary, is not an element of an offense under this section.

(c) WILLFUL VIOLATIONS.—For purposes of this section, a person acts willfully when—

(1) the person has knowledge of the facts giving rise to the violation; and

(2) the person has knowledge that the conduct was unlawful.

(d) RECKLESS VIOLATIONS.—For purposes of this section, a person acts recklessly when the person displays a deliberate indifference or conscious disregard to the consequences of that person's conduct.

§ 5125. Preemption

(a) [GENERAL.—] *DUAL COMPLIANCE AND OBSTACLE TESTS.*—Except as provided in subsections (b), (c), and (e) of this section and unless authorized by another law of the United States, a requirement of a State, political subdivision of a State, or Indian tribe is preempted if—

(1) * * *

* * * * * * *

(b) SUBSTANTIVE DIFFERENCES.—(1) * * *

(2) If the Secretary [of Transportation] prescribes or has prescribed under section 5103(b), 5104, 5110, or 5112 of this title or prior comparable provision of law a regulation or standard related to a subject referred to in paragraph (1) of this subsection, a State, political subdivision of a State, or Indian tribe may prescribe, issue, maintain, and enforce only a law, regulation, standard, or order about the subject that is substantively the same as a provision of this chapter or a regulation prescribed or order issued under this chapter. The Secretary shall decide on and publish in the Federal Register the effective date of section 5103(b) of this title for any regulation or standard about any of those subjects that the Secretary prescribes [after November 16, 1990]. However, the effective date may not be earlier than 90 days after the Secretary prescribes the regulation or standard nor later than the last day of the 2-year period beginning on the date the Secretary prescribes the regulation or standard.

* * * * * * *

(d) DECISIONS ON PREEMPTION.—(1) A person (including a State, political subdivision of a State, or Indian tribe) directly affected by

a requirement of a State, political subdivision, or tribe may apply to the Secretary, as provided by regulations prescribed by the Secretary, for a decision on whether the requirement is preempted by subsection (a), (b)(1), or (c) of this section. The Secretary shall publish notice of the application in the Federal Register. The Secretary shall issue *and publish in the Federal Register* a decision on an application for a determination within 180 days after the date of the publication of the notice of having received such application, or the Secretary shall publish a statement in the Federal Register of the reason why the Secretary's decision on the application is delayed, along with an estimate of the additional time necessary before the decision is made. After notice is published, an applicant may not seek judicial relief on the same or substantially the same issue until the Secretary takes final action on the application or until 180 days after the application is filed, whichever occurs first.

* * * * * * *

[(f) JUDICIAL REVIEW.—A party to a proceeding under subsection (d) or (e) of this section may bring a civil action in an appropriate district court of the United States for judicial review of the decision of the Secretary not later than 60 days after the decision becomes final.**]**

[(g)**]** *(f)* FEES.—(1) * * *

(2) A State or political subdivision thereof or Indian tribe that levies a fee in connection with the transportation of hazardous materials shall, upon the Secretary's request, report to the Secretary on—

(A) the basis on which the fee is levied upon persons involved in such transportation;

(B) the purposes for which the revenues from the fee are used;

(C) the annual total amount of the revenues collected from the fee; and

(D) such other matters as the Secretary requests.

(g) INDEPENDENT APPLICATION OF EACH STANDARD.—Subsections (b), (c)(1), (d), and (g) are independent in their application to a requirement of any State, political subdivision of a State, or Indian tribe and shall be reviewed independently.

§ 5126. Relationship to other laws

(a) CONTRACTS.—A person under contract with a department, agency, or instrumentality of the United States Government that transports or causes to be transported hazardous material, or manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container that the person represents, marks, certifies, or sells as qualified for use in transporting hazardous material **[**must comply**]** *shall comply* with this chapter, regulations prescribed and orders issued under this chapter, and all other requirements of the Government, State and local governments, and Indian tribes (except a requirement preempted by a law of the United States) in the same way and to the same extent that any person engaging in that transportation, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing that is in or

affects commerce must comply with the provision, regulation, order, or requirement.

* * * * * * *

[§ 5127. Authorization of appropriations

[(a) GENERAL.—Not more than $18,000,000 may be appropriated to the Secretary of Transportation for fiscal year 1993, $18,000,000 for fiscal year 1994, $18,540,000 for fiscal year 1995, $19,100,000 for fiscal year 1996, and $19,670,000 for fiscal year 1997 to carry out this chapter (except sections 5107(e), 5108(g)(2), 5113, 5115, 5116, and 5119).

[(b) TRAINING OF HAZMAT EMPLOYEE INSTRUCTORS.—(1) There is authorized to be appropriated to the Secretary $3,000,000 for each of fiscal years 1995, 1996, 1997, and 1998 to carry out section 5107(e).

[(2)(A) There shall be available to the Secretary for carrying out section 5116(j), from amounts in the account established pursuant to section 5116(i), $250,000 for each of fiscal years 1995, 1996, 1997, and 1998.

[(B) In addition to amounts made available under subparagraph (A), there is authorized to be appropriated to the Secretary for carrying out section 5116(j) $1,000,000 for each of the fiscal years 1995, 1996, 1997, and 1998.

[(c) TRAINING CURRICULUM.—(1) Not more than $1,000,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5115 of this title.

[(2) The Secretary of Transportation may transfer to the Director of the Federal Emergency Management Agency from amounts available under this subsection amounts necessary to carry out section 5115(d)(1) of this title.

[(d) PLANNING AND TRAINING.—(1) Not more than $5,000,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5116(a) of this title.

[(2) Not more than $7,800,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5116(b) of this title.

[(3) Not more than the following amounts are available from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5116(f) of this title:

[(A) $750,000 each to the Secretaries of Transportation and Energy, Administrator of the Environmental Protection Agency, and Director of the Federal Emergency Management Agency.

[(B) $200,000 to the Director of the National Institute of Environmental Health Sciences.

[(e) UNIFORM FORMS AND PROCEDURES.—Not more than $400,000 may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 1993, to carry out section 5119 of this title.

[(f) CREDITS TO APPROPRIATIONS.—The Secretary of Transportation may credit to any appropriation to carry out this chapter an amount received from a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, authority, or entity.

[(g) AVAILABILITY OF AMOUNTS.—Amounts available under subsections (c)–(e) of this section remain available until expended.]

§ 5127. JUDICIAL REVIEW

(a) FILING AND VENUE.—Except as provided in section 20114(c), a person adversely affected or aggrieved by a final action of the Secretary under this chapter may petition for review of the final action in the United States Court of Appeals for the District of Columbia or in the court of appeals for the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not more than 60 days after the Secretary's action becomes final.

(b) JUDICIAL PROCEDURES.—When a petition is filed under subsection (a), the clerk of the court immediately shall send a copy of the petition to the Secretary. The Secretary shall file with the court a record of any proceeding in which the final action was issued, as provided in section 2112 of title 28.

(c) AUTHORITY OF COURT.—The court has exclusive jurisdiction, as provided in subchapter II of chapter 5 of title 5, to affirm or set aside any part of the Secretary's final action and may order the Secretary to conduct further proceedings. Findings of fact by the Secretary, if supported by substantial evidence, are conclusive.

(d) REQUIREMENT FOR PRIOR OBJECTION.—In reviewing a final action under this section, the court may consider an objection to a final action of the Secretary only if the objection was made in the course of a proceeding or review conducted by the Secretary or if there was a reasonable ground for not making the objection in the proceeding.

§ 5128. Authorizations of appropriations

(a) IN GENERAL.—In order to carry out this chapter (except sections 5107(e), 5108(g)(2), 5113, 5115, 5116, and 5119), the following amounts are authorized to be appropriated to the Secretary:

(1) For fiscal year 2004, $24,981,000.

(2) For fiscal year 2005, $27,000,000.

(3) For fiscal year 2006, $29,000,000.

(4) For fiscal year 2007, $30,000,000.

(b) EMERGENCY PREPAREDNESS FUND.—There shall be available to the Secretary, from the account established pursuant to section 5116(i), for each of fiscal years 2004 through 2007 the following:

(1) To carry out section 5115, $200,000.

(2) To carry out section 5116(a), $8,000,000.

(3) To carry out section 5116(b), $13,800,000.

(4) To carry out section 5116(f), $150,000.

(5) To publish and distribute the Emergency Response Guidebook under section 5116(i)(3), $500,000.

(6) To pay administrative expenses in accordance with section 5116(i)(4), $150,000.

(7) To carry out section 5116(j), $1,000,000.

(c) TRAINING OF HAZMAT EMPLOYEE INSTRUCTORS.—There shall be available to the Secretary, from the account established pursuant

to section 5116(i), to carry out section 5107(e) $4,000,000 for each of fiscal years 2004 through 2007.

(d) UNIFORM FORMS AND PROCEDURES.—There is authorized to be appropriated to the Secretary for making grants to States participating in the working group established under section 5119 $1,000,000 for each of the fiscal years 2005 and 2006.

(e) ISSUANCE OF HAZMAT LICENSES.—There are authorized to be appropriated for the Department of Transportation such amounts as may be necessary to carry out section 5103a.

(f) CREDITS TO APPROPRIATIONS.—The Secretary may credit to any appropriation to carry out this chapter an amount received from a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, authority, or entity.

(g) AVAILABILITY OF AMOUNTS.—Amounts made available by or under this section remain available until expended.

CHAPTER 52—TRANSPORTATION PLANNING AND PROJECT DELIVERY

SUBCHAPTER A—GENERAL PROVISIONS

Sec.
5201. Definitions.

SUBCHAPTER B—TRANSPORTATION PLANNING AND PROJECT DELIVERY

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5251. Definitions and applicability.
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SUBCHAPTER A—GENERAL PROVISIONS

§ 5201. Definitions

In this chapter, the following definitions apply:

(1) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

(2) STATE.—The term "State" means a State of the United States, the District of Columbia, and Puerto Rico.

SUBCHAPTER B—TRANSPORTATION PLANNING AND PROJECT DELIVERY

§ 5211. Policy

(a) IN GENERAL.—It is in the national interest to—

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

(2) encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes

by metropolitan planning organizations, State departments of transportation, and public transit operators as guided by the planning factors identified in sections 5213(f) and 5214(d).

(b) COMMON TRANSPORTATION PLANNING PROGRAM.—This subchapter provides a common transportation planning program to be administered by the Federal Highway Administration and the Federal Transit Administration.

§ 5212. Definitions

(a) APPLICABILITY BY REFERENCE.—Unless otherwise specified in subsection (b), the definitions in section 101(a) of title 23 and section 5302 are applicable to this subchapter.

(b) ADDITIONAL DEFINITIONS.—In this subchapter, the following definitions apply:

(1) METROPOLITAN PLANNING AREA.—The term "metropolitan planning area" means the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor under section 5213(c).

(2) METROPOLITAN PLANNING ORGANIZATION.—The term "metropolitan planning organization" means the policy board of an organization created as a result of the designation process in section 5213(b).

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

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

(5) TIP.—The term "TIP" means a transportation improvement program developed by a metropolitan planning organization under section 5213.

(6) URBANIZED AREA.—The term "urbanized area" means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

§ 5213. Metropolitan transportation planning

(a) GENERAL REQUIREMENTS.—

(1) DEVELOPMENT OF LONG-RANGE PLANS AND TIPS.—To accomplish the objectives in section 5211, metropolitan planning organizations designated under subsection (b), in cooperation with the State and public transportation operators, shall develop long-range transportation plans and transportation improvement programs for metropolitan planning areas of the State.

(2) CONTENTS.—The plans and TIPs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

(3) PROCESS OF DEVELOPMENT.—The process for developing the plans and TIPs shall provide for consideration of all modes

of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(b) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

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

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

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

(2) STRUCTURE.—Each metropolitan planning organization that serves an area designated as a transportation management area, when designated or redesignated under this subsection, shall consist of—

(A) local elected officials;

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

(C) appropriate State officials.

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

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

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

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

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

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

(c) METROPOLITAN PLANNING AREA BOUNDARIES.—

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

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

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

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

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

(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of this paragraph, the boundaries of the metropolitan planning area in existence as of such date of enactment shall be retained; except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in the manner described in subsection (b)(5).

(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—In the case of an urbanized area designated after the date of enactment of this paragraph as a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

(A) shall be established in the manner described in subsection (b)(1);

(B) shall encompass the areas described in paragraph (2)(A);

(C) may encompass the areas described in paragraph (2)(B); and

(D) may address any nonattainment area identified under the Clean Air Act for ozone or carbon monoxide.

(d) COORDINATION IN MULTISTATE AREAS.—

(1) IN GENERAL.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

(2) INTERSTATE COMPACTS.—The consent of Congress is granted to any 2 or more States—

(A) to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(3) LAKE TAHOE REGION.—

(A) DEFINITION.—In this paragraph, the term "Lake Tahoe region" has the meaning given the term "region" in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96–551 (94 Stat. 3234).

(B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

(ii) coordinate the transportation planning process with the planning process required of State and local governments under this section and section 5214.

(C) INTERSTATE COMPACT.—

(i) IN GENERAL.—Subject to clause (ii), notwithstanding subsection (b), to carry out the transportation planning process required by this section, the consent of Congress is granted to the States of California and Nevada to designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governors of the States of California and Nevada and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities (as defined by the Bureau of the Census)), or in accordance with procedures established by applicable State or local law.

(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

(II) FUNDING.—In addition to funds made available to the metropolitan planning organization under other provisions of title 23 and under chapter 53, 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.

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

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

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

(3) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.—The Secretary shall encourage each metropolitan planning organization to consult with those officials responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, environmental protection, airport operations, and freight movements) or to coordinate its planning process, to the maximum extent practicable, with such planning activities. Under the metropolitan planning process, transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the metropolitan area that are provided by—

(A) recipients of assistance under chapter 53;

(B) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

(C) recipients of assistance under section 204 of title 23.

(f) 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 the following factors as they relate to the performance of the metropolitan area transportation systems:

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

(B) Increases in the safety and security of the transportation system for motorized and nonmotorized users.

(C) Increases in the accessibility and mobility of people and for freight.

(D) Protection and enhancement of the environment, promotion of energy conservation, improvement of the quality of life, and promotion of consistency between transportation improvements and State and local planned growth and economic development patterns.

(E) Enhancement of the integration and connectivity of the transportation system, across and between modes, for people and freight.

(F) Promotion of efficient system management and operation.

(G) Emphasis on the preservation of the existing transportation system.

(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under title 23 or this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a TIP, a project or strategy, or the certification of a planning process.

(g) DEVELOPMENT OF TRANSPORTATION PLAN.—

(1) IN GENERAL.—Each metropolitan planning organization shall prepare, and update no less frequently than every 4 years, a transportation plan for its metropolitan planning area in accordance with the requirements of this subsection.

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

(A) An identification of transportation facilities (including major roadways, transit, multimodal and intermodal facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions. In formulating the transportation plan, the metropolitan planning organization shall consider factors described in subsection (f) as such factors relate to a 20-year forecast period.

(B) A financial plan that demonstrates how the adopted transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available. For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

(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 and projected future metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs.

(E) Proposed transportation and transit enhancement activities.

(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas which are in nonattainment for ozone or carbon monoxide under the Clean Air Act, the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

(4) PARTICIPATION BY INTERESTED PARTIES.—Before approving a transportation plan, each metropolitan planning organization shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan, in a manner that the Secretary deems appropriate.

(5) PUBLICATION.—A transportation plan involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review and submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

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

(h) METROPOLITAN TIP.—

(1) DEVELOPMENT.—

(A) IN GENERAL.—In cooperation with the State and any affected public transportation operator, the metropolitan planning organization designated for a metropolitan area shall develop a TIP for the area for which the organization is designated.

(B) OPPORTUNITY FOR COMMENT.—In developing the TIP, the metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of the disabled, representatives of users of pedestrian walkways and bicycle facilities, and other interested parties with a reasonable opportunity to comment on the proposed TIP.

(C) FUNDING ESTIMATES.—For the purpose of developing the TIP, the metropolitan planning organization, public transportation agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

(D) UPDATING AND APPROVAL.—The TIP shall be updated at least once every 4 years and shall be approved by the metropolitan planning organization and the Governor.

(2) CONTENTS.—

(A) PRIORITY LIST.—The TIP shall include a priority list of proposed federally supported projects and strategies to be carried out within each 4-year period after the initial adoption of the TIP.

(B) FINANCIAL PLAN.—The TIP shall include a financial plan that—

(i) demonstrates how the TIP can be implemented;

(ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;

(iii) identifies innovative financing techniques to finance projects, programs, and strategies; and

(iv) may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available.

(C) DESCRIPTIONS.—Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.

(D) CONGESTION RELIEF ACTIVITIES.—The TIP shall include a listing of congestion relief activities to be carried out to meet the requirements of section 139 of title 23, categorized as either under one or under three congestion relief activities.

(3) INCLUDED PROJECTS.—

(A) PROJECTS UNDER TITLE 23 AND CHAPTER 53.—A TIP developed under this subsection for a metropolitan area shall include the projects within the area that are proposed for funding under chapter 1 of title 23 and chapter 53.

(B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.—All projects proposed for funding under chapter 2 of title 23 shall be identified individually in the TIP.

(C) CONSISTENCY WITH LONG-RANGE TRANSPORTATION PLAN.—Each project shall be consistent with the long-range transportation plan developed under subsection (g) for the area.

(D) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

(4) NOTICE AND COMMENT.—Before approving a TIP, a metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of the disabled, representatives of users of pedestrian walkways and bicycle facilities, and other interested parties with reasonable notice of and an opportunity to comment on the proposed program.

(5) SELECTION OF PROJECTS.—

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

(i) by—

(I) in the case of projects under title 23, the State; and

(II) in the case of projects under chapter 53, the designated recipients of public transportation funding; and

(ii) in cooperation with the metropolitan planning organization.

(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved TIP in place of another project in the program.

(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

(A) NO REQUIRED SELECTION.—Notwithstanding paragraph (2)(B)(iv), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv).

(B) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv) for inclusion in an approved TIP.

(7) PUBLICATION.—

(A) PUBLICATION OF TIPS.—A TIP involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.

(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—An annual listing of projects for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the metropolitan planning organization for public review. The listing shall be consistent with the categories identified in the TIP.

(i) TRANSPORTATION MANAGEMENT AREAS.—

(1) IDENTIFICATION AND DESIGNATION.—

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

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

(2) TRANSPORTATION PLANS.—In a metropolitan planning area serving a transportation management area, transportation plans shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan

planning organization in cooperation with the State and public transportation operators.

(3) CONGESTION MANAGEMENT PROCESS.—Within a metropolitan planning area serving a transportation management area, the transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 and chapter 53 through the use of travel demand reduction and operational management strategies and shall identify a sufficient number of congestion relief activities under section 139 of title 23 to meet the requirements of such section. The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section but no sooner than one year after the identification of a transportation management area.

(4) SELECTION OF PROJECTS.—

(A) IN GENERAL.—All federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under title 23 (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) or under chapter 53 shall be selected for implementation from the approved TIP by the metropolitan planning organization designated for the area in consultation with the State and any affected public transportation operator.

(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects, carried out within the boundaries of a metropolitan planning area serving a transportation management area, on the National Highway System and projects carried out within such boundaries under the bridge program or the Interstate maintenance program under title 23 shall be selected for implementation from the approved TIP by the State in cooperation with the metropolitan planning organization designated for the area.

(5) CERTIFICATION.—

(A) IN GENERAL.—The Secretary shall—

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

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

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

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

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

(C) EFFECT OF FAILURE TO CERTIFY.—

(i) WITHHOLDING OF PROJECT FUNDS.—If a metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the metropolitan planning organization for projects funded under title 23 and chapter 53.

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

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

(j) ABBREVIATED PLANS FOR CERTAIN AREAS.—

(1) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and TIP for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems in the area.

(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans or TIPs for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

(k) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

(1) IN GENERAL.—Notwithstanding any other provisions of title 23 or chapter 53, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be advanced in such area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

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

(l) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project not eligible under title 23 or chapter 53.

(m) FUNDING.—

(1) SET-ASIDES.—Funds set aside under section 104(f) of title 23 or section 5305(h) shall be available to carry out this section.

(2) OTHER FUNDING.—Funds made available under section 5338(c) shall be available to carry out this section.

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

§ 5214. Statewide transportation planning

(a) GENERAL REQUIREMENTS.—

(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To accomplish the objectives stated in section 5211, each State shall develop a statewide transportation plan and a statewide transportation improvement program for all areas of the State subject to section 5213.

(2) CONTENTS.—The statewide transportation plan and the transportation improvement program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

(3) PROCESS OF DEVELOPMENT.—The process for developing the statewide plan and the transportation improvement program shall provide for consideration of all modes of transportation and the policies stated in section 5211, and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—A State shall—

(1) coordinate planning carried out under this section with the transportation planning activities carried out under section 5213 for metropolitan areas of the State and with statewide trade and economic development planning activities and related multistate planning efforts; and

(2) develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

(c) INTERSTATE AGREEMENTS.—The consent of Congress is granted to 2 or more States entering into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

(d) SCOPE OF PLANNING PROCESS.—

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

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

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

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

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

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

(F) promote efficient system management and operation; and

(G) emphasize the preservation of the existing transportation system.

(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under title 23 or this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a statewide transportation plan, the transportation improvement program, a project or strategy, or the certification of a planning process.

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

(1) with respect to nonmetropolitan areas, the concerns of affected local officials with responsibility for transportation;

(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

(3) coordination of transportation plans, the transportation improvement program, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

(f) LONG-RANGE STATEWIDE TRANSPORTATION PLAN.—

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

(2) CONSULTATION WITH GOVERNMENTS.—

(A) METROPOLITAN AREAS.—The statewide transportation plan shall be developed for each metropolitan area in the State in cooperation with the metropolitan planning organization designated for the metropolitan area under section 5213.

(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 Sec-

retary shall not review or approve the consultation process in each State.

(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the statewide transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the statewide transportation 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, representatives of the disabled, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed plan; and

(B) identify transportation strategies necessary to efficiently serve the mobility needs of people.

(4) FINANCIAL PLAN.—The statewide transportation plan may include a financial plan that demonstrates how the adopted statewide transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted statewide transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

(5) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (4).

(6) EXISTING SYSTEM.—The statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—

(1) DEVELOPMENT.—Each State shall develop a statewide transportation improvement program for all areas of the State.

(2) CONSULTATION WITH GOVERNMENTS.—

(A) METROPOLITAN AREAS.—With respect to each metropolitan area in the State, the program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 5213.

(B) NONMETROPOLITAN AREAS.—With respect to each nonmetropolitan area in the State, the program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation. The Secretary shall not review or approve the specific consultation process in the State.

(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal govern-

ment, the program shall be developed in consultation with the tribal government and the Secretary of the Interior.

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

(4) INCLUDED PROJECTS.—

(A) IN GENERAL.—A transportation improvement program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

(B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.—All projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.

(C) CONSISTENCY WITH STATEWIDE TRANSPORTATION PLAN.—Each project shall be—

(i) consistent with the statewide transportation plan developed under this section for the State;

(ii) identical to the project or phase of the project as described in an approved metropolitan transportation plan; and

(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act (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.

(D) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The transportation improvement program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

(E) FINANCIAL PLAN.—The transportation improvement program may include a financial plan that demonstrates how the approved transportation improvement program can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the transportation improvement program, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

(F) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

(i) NO REQUIRED SELECTION.—Notwithstanding subparagraph (E), a State shall not be required to select any project from the illustrative list of additional

projects included in the financial plan under subparagraph (E).

(ii) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (E) for inclusion in an approved transportation improvement program.

(G) PRIORITIES.—The transportation improvement program shall reflect the priorities for programming and expenditures of funds, including transportation enhancement activities, required by title 23 and chapter 53.

(H) PRIORITIZATION OF CONGESTION RELIEF ACTIVITIES.—The transportation improvement program shall reflect the priorities for congestion relief activities included in the metropolitan transportation plan to meet the requirements of section 139 of title 23.

(5) PROJECT SELECTION FOR AREAS OF LESS THAN 50,000 POPULATION.—Projects carried out in areas with populations of less than 50,000 individuals shall be selected, from the approved transportation improvement program (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program under title 23 or sections 5310, 5311, 5316, and 5317), by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation. Projects carried out in areas with populations of less than 50,000 individuals on the National Highway System or under the bridge program or the Interstate maintenance program under title 23 or under sections 5310, 5311, 5316, and 5317 shall be selected, from the approved statewide transportation improvement program, by the State in consultation with the affected nonmetropolitan local officials with responsibility for transportation.

(6) TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL.—Every 4 years, a transportation improvement program developed under this subsection shall be reviewed and approved by the Secretary if based on a current planning finding.

(7) PLANNING FINDING.—A finding shall be made by the Secretary at least every 4 years that the transportation planning process through which statewide transportation plans and programs are developed is consistent with this section and section 5213.

(8) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved transportation improvement program in place of another project in the program.

(h) FUNDING.—

(1) SET-ASIDE.—Funds set aside pursuant to section 104(i) of title 23 shall be available to carry out this section.

(2) OTHER FUNDING.—Funds made available under section 5338(c) shall be available to carry out this section.

(i) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT PROCESSES.—For purposes of this section and section 5213, State laws, rules, or regulations pertaining to congestion man-

agement systems or programs may constitute the congestion management process under section 5213(i)(3) if the Secretary finds that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of section 5213, as appropriate.

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

SUBCHAPTER C—EFFICIENT ENVIRONMENTAL REVIEWS FOR PROJECT DECISIONMAKING

§ 5251. Definitions and applicability

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

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

(2) ENVIRONMENTAL IMPACT STATEMENT.—The term "environmental impact statement" means the detailed statement of environmental impacts required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) ENVIRONMENTAL REVIEW PROCESS.—

(A) IN GENERAL.—The term "environmental review process" means the process for preparing for a project an environmental impact statement, environmental assessment, categorical exclusion, or other document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) INCLUSIONS.—The term includes the process for and completion of any environmental permit, approval, review, or study required for a project under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) LEAD AGENCY.—The term "lead agency" means the Department of Transportation and, if applicable, any State or local governmental entity serving as a joint lead agency pursuant to this section.

(5) MULTIMODAL PROJECT.—The term "multimodal project" means a project funded, in whole or in part, under title 23 or chapter 53 and involving the participation of more than one Department of Transportation administration or agency.

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

(7) PROJECT SPONSOR.—The term "project sponsor" means the agency or other entity, including any private or public-private entity, that seeks approval of the Secretary for a project.

(8) STATE TRANSPORTATION DEPARTMENT.—The term "State transportation department" means any statewide agency of a State with responsibility for one or more modes of transportation.

(b) APPLICABILITY.—This subchapter is applicable to all projects for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). This subchapter may be applied, to the extent determined appropriate by the Secretary, to other projects for which an environmental document is prepared pursuant to such Act. Any authorities granted in this subchapter may be exercised for a project, class of projects, or program of projects.

§ 5252. Project development procedures

(a) LEAD AGENCIES.—

(1) FEDERAL LEAD AGENCY.—The Department of Transportation shall be the Federal lead agency in the environmental review process for a project.

(2) PROJECT SPONSOR AS JOINT LEAD AGENCY.—Any project sponsor that is a State or local governmental entity receiving funds under title 23 or chapter 53 for the project shall serve as a joint lead agency with the Department for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and may prepare any such environmental document required in support of any action or approval by the Secretary if the Federal lead agency furnishes guidance in such preparation and independently evaluates such document and the document is approved and adopted by the Secretary prior to the Secretary taking any subsequent action or making any approval based on such document, whether or not the Secretary's action or approval results in Federal funding.

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

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

(b) PARTICIPATING AGENCIES.—

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

(2) INVITATION.—The lead agency shall identify, as early as practicable in the environmental review process for a project, any other Federal and non-Federal agencies that may have an interest in the project, and shall invite such agencies to become

participating agencies in the environmental review process for the project. The invitation shall set a deadline for responses to be submitted. The deadline may be extended by the lead agency for good cause.

(3) FEDERAL PARTICIPATING AGENCIES.—Any Federal agency that is invited by the lead agency to participate in the environmental review process for a project shall be designated as a participating agency by the lead agency unless the invited agency informs the lead agency, in writing, by the deadline specified in the invitation that the invited agency—

(A) has no jurisdiction or authority with respect to the project;

(B) has no expertise or information relevant to the project; and

(C) does not intend to submit comments on the project.

(4) EFFECT OF DESIGNATION.—Designation as a participating agency under this subsection shall not imply that the participating agency—

(A) supports a proposed project; or

(B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

(5) COOPERATING AGENCY.—A participating agency may also be designated by a lead agency as a "cooperating agency" under the regulations contained in part 1500 of title 40, Code of Federal Regulations.

(6) DESIGNATIONS FOR CATEGORIES OF PROJECTS.—The Secretary may exercise the authorities granted under this subsection for a project, class of projects, or program of projects.

(c) PROJECT INITIATION.—

(1) IN GENERAL.—The project sponsor shall initiate the environmental review process for a project by submitting an initiation notice to the Secretary.

(2) CONTENTS OF NOTICE.—The initiation notice shall include, at a minimum, a brief description of the type of work, termini, length, and general location of the proposed project, together with a statement of any Federal approvals anticipated to be needed for the project.

(d) PURPOSE AND NEED.—

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

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

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

(A) achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan;

(B) supporting land use, economic development, or growth objectives established in applicable Federal, State, local, or tribal plans; and

(C) serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.

(e) ALTERNATIVES ANALYSIS.—

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

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

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

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

(f) COMMENT DEADLINES.—The lead agency shall establish the following deadlines for comment during the environmental review process for a project:

(1) For comments by agencies and the public on a draft environmental impact statement, a period of no more than 60 days from the date of public availability of such document, unless—

(A) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

(B) the deadline is extended by the lead agency for good cause.

(2) For all other comment periods established by the lead agency for agency or public comments in the environmental review process, a period of no more than 30 days from availability of the materials on which comment is requested, unless—

(A) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

(B) the deadline is extended by the lead agency for good cause.

(g) ISSUE IDENTIFICATION AND RESOLUTION.—

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

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

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

(4) ISSUE RESOLUTION.—Whenever issues of concern are identified or at any time upon request of a project sponsor, the lead agency shall promptly convene a meeting with the relevant participating agencies. If a resolution cannot be achieved within 30 days following such a meeting and a determination by the lead agency that all information necessary to resolve the issue has been obtained, the lead agency shall notify the heads of all Federal agencies involved in the meeting and the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and shall publish such notification in the Federal Register.

(h) PARTICIPATION OF STATE AGENCIES.—For any project eligible for assistance under title 23 or chapter 53, a State may require, under procedures established by State law, that all State agencies that have jurisdiction by State or Federal law over environmental-related issues that may be affected by the project, or that are required to issue any environmental-related reviews, analyses, opinions, or determinations on issuing any permits, licenses, or approvals for the project, be subject to the coordinated environmental review process established under this section unless the Secretary determines that a State agency's participation would not be in the public interest. A State participating in the review process must require all State agencies with jurisdiction to be subject to and comply with the review process to the same extent as a Federal agency.

(i) ASSISTANCE TO AFFECTED STATE AND FEDERAL AGENCIES.—

(1) IN GENERAL.—For a project that is subject to the environmental review process established under this section and for which funds are made available to a State under title 23 or chapter 53, the Secretary may approve a request by the State to provide funds so made available to affected Federal agencies (including the Department of Transportation), State agencies, and Indian tribes participating in the environmental review process for the project. Such funds may be provided only to support activities that directly and meaningfully contribute to expediting and improving transportation project planning and delivery. Such activities may include dedicated staffing, training of agency personnel, information gathering and mapping, and development of programmatic agreements. The Secretary may also use funds made available under section 204 of title 23 for

a project for the purposes specified in this subsection with respect to the environmental review process for the project.

(2) AMOUNTS.—Requests under paragraph (1) may be approved only for the additional amounts that the Secretary determines are necessary for the Federal agencies, State agencies, or Indian tribes participating in the environmental review process to meet the time limits for environmental review.

(3) CONDITION.—A request under paragraph (1) to expedite time limits for environmental review may be approved only if such time limits are less than the customary time necessary for such review.

(j) JUDICIAL REVIEW AND SAVINGS CLAUSE.—

(1) JUDICIAL REVIEW.—Except as set forth under subsection (k), nothing in this section shall affect the reviewability of any final Federal agency action in a court of the United States.

(2) SAVINGS CLAUSE.—Nothing in this section shall be construed as superseding, amending, or modifying the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or any other Federal environmental statute or affect the responsibility of any Federal officer to comply with or enforce any such statute.

(3) LIMITATIONS.—Nothing in this section shall preempt or interfere with—

(A) any practice of seeking, considering, or responding to public comment; or

(B) any power, jurisdiction, responsibility, or authority that a Federal, State, or local government agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to projects, plans, or programs.

(k) LIMITATIONS ON CLAIMS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or approval issued by a Federal agency for a highway or public transportation capital project shall be barred unless it is filed within 90 days after the permit, license, or approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law pursuant to which judicial review is allowed. Nothing in this subsection shall create a right to judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

(2) NEW INFORMATION.—The Secretary shall consider new information received after the close of a comment period if the information satisfies the requirements for a supplemental environmental impact statement under section 771.130 of title 23, Code of Federal Regulations. The preparation of a supplemental environmental impact statement when required shall be considered a separate final agency action and the deadline for filing a claim for judicial review of such action shall be 90 days after the date of such action.

CHAPTER 53—[MASS] *PUBLIC* TRANSPORTATION

Sec.

5301. Policies, findings, and purposes.

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§ 5301. Policies, findings, and purposes

[(a) DEVELOPMENT OF TRANSPORTATION SYSTEMS.—It is in the interest of the United States to encourage and promote the development of transportation systems that embrace various modes of transportation and efficiently maximize mobility of individuals and goods in and through urbanized areas and minimize transportation-related fuel consumption and air pollution.]

(a) DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.—It is in the interest of the United States to foster the development and revitalization of public transportation systems that—

(1) maximize the safe, secure, and efficient mobility of individuals;

(2) minimize environmental impacts; and

(3) minimize transportation-related fuel consumption and reliance on foreign oil.

* * * * * * *

(b) GENERAL FINDINGS.—Congress finds that—

(1) * * *

* * * * * * *

(4) for many years the [mass] *public* transportation industry capably and profitably satisfied the transportation needs of the urban areas of the United States but in the early 1970's continuing even minimal [mass] *public* transportation service in urban areas was threatened because maintaining that transportation service was financially burdensome;

* * * * * * *

(6) some urban areas were developing preliminary plans for, or carrying out, projects in the early 1970's to revitalize their [mass] *public* transportation operations;

(7) significant [mass] *public* transportation improvements are necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly individuals, individuals with disabilities, and economically disadvantaged individuals in urban and rural areas of the United States;

(8) financial assistance by the Government to develop efficient and coordinated [mass] *public* transportation systems is essential to solve the urban transportation problems referred to in clause (2) of this subsection; and

(9) immediate substantial assistance by the Government is needed to enable [mass] *public* transportation systems to continue providing vital transportation service.

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(d) ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES.—It is the policy of the Government that elderly individuals and individuals with disabilities have the same right as other individuals to use [mass] *public* transportation service and facilities. Special efforts shall be made in planning and designing [mass] *public* transportation service and facilities to ensure that [mass] *public* transportation can be used by elderly individuals and individuals with disabilities. All programs of the Government assisting [mass] *public* transportation shall carry out this policy.

(e) PRESERVING THE ENVIRONMENT.—It is the policy of the Government that special effort shall be made to preserve the natural beauty of the countryside, public park and recreation lands, wildlife and waterfowl refuges, and important historical and cultural assets when planning, designing, and carrying out [an urban mass] *a public* transportation capital project with assistance from the Government [under sections 5309 and 5310 of this title].

(f) GENERAL PURPOSES.—The purposes of this chapter are—

(1) to assist in developing improved [mass] *public* transportation equipment, facilities, techniques, and methods with the cooperation of [public and private mass transportation companies] *both public transportation companies and private companies engaged in public transportation*;

(2) to encourage the planning and establishment of areawide [urban mass] *public* transportation systems needed for economical and desirable urban development with the cooperation of [public and private mass transportation companies] *both public transportation companies and private companies engaged in public transportation*;

(3) to assist States and local governments and their authorities in financing areawide [urban mass] *public* transportation systems that are to be operated by [public or private mass transportation companies] *public transportation companies or private companies engaged in public transportation* as decided by local needs;

* * * * * * *

(5) to establish a partnership that allows a community, with financial assistance from the Government, to satisfy its [urban mass] *public* transportation requirements.

§ 5302. Definitions

(a) IN GENERAL.—[In this chapter] *Except as otherwise specifically provided, in this chapter*, the following definitions apply:

(1) CAPITAL PROJECT.—The term "capital project" means a project for—

(A) acquiring, constructing, supervising, or inspecting equipment or a facility for use in [mass] *public* transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, transit-related intelligent transportation systems, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;

* * * * * * *

(F) leasing equipment or a facility for use in [mass] *public* transportation, subject to regulations that the Secretary prescribes limiting the leasing arrangements to those that are more cost-effective than purchase or construction;

(G) a [mass] *public* transportation improvement that enhances economic development or incorporates private investment, including commercial and residential development, pedestrian and bicycle access to a [mass] *public* transportation facility, *construction, renovation, and improvement of intercity bus stations and terminals,* and the renovation and improvement of historic transportation facilities, because the improvement enhances the effectiveness of a [mass] *public* transportation project and is related physically or functionally to that [mass] *public* transportation project, or establishes new or enhanced coordination between [mass] *public* transportation and other transportation, and provides a fair share of revenue for [mass] *public* transportation that will be used for [mass] *public* transportation—

(i) * * *

(ii) excluding construction of a commercial revenue-producing facility *(other than an intercity bus station or terminal)* or a part of a public facility not related to [mass] *public* transportation;

(H) the introduction of new technology, through innovative and improved products, into [mass] *public* transportation; [or]

(I) the provision of nonfixed route paratransit transportation services in accordance with section 223 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12143), but only for grant recipients that are in compliance with applicable requirements of that Act, including both fixed route and demand responsive service, and only for amounts not to exceed 10 percent of such recipient"s annual formula apportionment under sections 5307 and 5311[.]*;*

(J) crime prevention and security—

(i) including—

(I) projects to refine and develop security and emergency response plans;

(II) projects aimed at detecting chemical and biological agents in public transportation;

(III) the conduct of emergency response drills with public transportation agencies and local first response agencies; and

(IV) security training for public transportation employees; but

(ii) excluding all expenses related to operations, other than such expenses incurred in conducting activities described in subclauses (III) and (IV);

(K) establishment of a debt service reserve made up of deposits with a bondholders' trustee in a noninterest bearing account for the purpose of ensuring timely payment of principal and interest on bonds issued by a grant recipient for purposes of financing an eligible project under this chapter; or

(L) mobility management—

(i) consisting of short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a governmental entity, under this chapter (other than section 5309); but

(ii) excluding operating public transportation services.

* * * * * * *

(4) FIXED GUIDEWAY.—The term "fixed guideway" means a [mass] *public* transportation facility—

(A) using and occupying a separate right-of-way or rail for the exclusive use of [mass] *public* transportation and other high occupancy vehicles; or

* * * * * * *

(5) [HANDICAPPED INDIVIDUAL] *INDIVIDUAL WITH A DISABILITY*.—The term "[handicapped individual] *individual with*

a disability" means an individual who, because of illness, injury, age, congenital malfunction, or other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semiambulatory capability), cannot use effectively, without special facilities, planning, or design, [mass] *public* transportation service or a [mass] *public* transportation facility.

* * * * * * *

[(7) MASS TRANSPORTATION.—The term "mass transportation" means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or sightseeing transportation.]

(7) MASS TRANSPORTATION.—The term "mass transportation" means public transportation.

* * * * * * *

(9) NEW BUS MODEL.—The term "new bus model" means a bus model (including a model using alternative fuel)—

(A) that has not been used in [mass] *public* transportation in the United States before the date of production of the model; or

(B) used in [mass] *public* transportation in the United States, but being produced with a major change in configuration or components.

[(10) PUBLIC TRANSPORTATION.—The term "public transportation" means mass transportation.]

(10) PUBLIC TRANSPORTATION.—The term "public transportation" means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, or sightseeing transportation.

* * * * * * *

(14) TRANSIT.—The term "transit" means [mass] *public* transportation.

(15) TRANSIT ENHANCEMENT.—The term "transit enhancement" means, with respect to any project or an area to be served by a project, projects that are designed to enhance [mass] *public* transportation service or use and that are physically or functionally related to transit facilities. Eligible projects are—

(A) historic preservation, rehabilitation, and operation of historic [mass] *public* transportation buildings, structures, and facilities (including historic bus and railroad facilities);

* * * * * * *

(F) bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on [mass] *public* transportation vehicles;

(G) transit connections to parks within the recipient's transit service area;

(H) signage; and

(I) enhanced access for persons with disabilities to [mass] *public* transportation.

(16) URBAN AREA.—The term "urban area" means an area that includes a municipality or other built-up place that the Secretary, after considering local patterns and trends of urban growth, decides is appropriate for a local [mass] *public* transportation system to serve individuals in the locality.

[(17) URBANIZED AREA.—The term "urbanized area" means an area—

[(A) encompassing at least an urbanized area within a State that the Secretary of Commerce designates; and

[(B) designated as an urbanized area within boundaries fixed by State and local officials and approved by the Secretary.]

(17) URBANIZED AREA.—The term "urbanized area" means an area encompassing a population of at least 50,000 people that has been defined and designated in the latest decennial census as an urbanized area by the Secretary of Commerce.

(b) AUTHORITY TO MODIFY "[HANDICAPPED INDIVIDUAL] *INDIVIDUAL WITH A DISABILITY*".—The Secretary may by regulation modify the definition of the term "[handicapped individual] *individual with a disability*" in subsection (a)(5) as it applies to section 5307(d)(1)(D).

[§ 5303. Metropolitan planning

[(a) GENERAL REQUIREMENTS.—

[(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To carry out section 5301(a), metropolitan planning organizations designated under subsection (c), in cooperation with the States and mass transportation operators, shall develop transportation plans and programs for urbanized areas of the State.

[(2) CONTENTS.—The plans and programs developed under paragraph (1) for each metropolitan 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 area and as an integral part of an intermodal transportation system for the State and the United States.

[(3) PROCESS.—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.

[(b) SCOPE OF PLANNING PROCESS.—

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

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

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

[(C) increase the accessibility and mobility options available to people and for freight;

[(D) protect and enhance the environment, promote energy conservation, and improve quality of life;

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

[(F) promote efficient system management and operation; and

[(G) emphasize the preservation of the existing transportation system.

[(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title, 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.

[(c) DESIGNATING METROPOLITAN PLANNING ORGANIZATIONS.—(1) To carry out the planning process required by this section and sections 5304–5306 of this title, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000—

[(A) by agreement of the chief executive officer of a State and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities, as defined by the Bureau of the Census); or

[(B) under procedures established by State or local law.

[(2) Each policy board of a metropolitan planning organization that serves an area designated as a transportation management area when designated or redesignated under this subsection shall consist of local elected officials, officials of public agencies that administer or operate major modes of transportation in the metropolitan area (including all transportation authorities included in the organization on June 1, 1991), and appropriate State officials.

[(3) More than one metropolitan planning organization may be designated within an existing metropolitan planning area only if the chief executive officer of the State and the existing metropolitan organization determine that the size and complexity of the existing metropolitan planning area make designation of more than one organization appropriate.

[(4) A designation is effective until—

[(A) the organization is redesignated under paragraph (5) of this subsection; or

[(B) revoked—

[(i) by agreement of the chief executive officer and units of general local government representing at least 75 percent of the affected population; or

[(ii) as otherwise provided by State or local procedures.

[(5)(A) The chief executive officer and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities, as defined by the Bureau of the Census) may redesignate by agreement a metropolitan planning organization when appropriate to carry out this section and sections 5304–5306 of this title.

[(B) A metropolitan planning organization shall be redesignated on request of one or more units of general local government representing at least 25 percent of the affected population (including the central city or cities, as defined by the Bureau of the Census)

in an urbanized area with a population of more than 5,000,000, but less than 10,000,000 or that is an extreme nonattainment area for ozone or carbon monoxide (as defined in the Clean Air Act (42 U.S.C. 7401 et seq.)).

[(C) A metropolitan planning organization shall be redesignated using procedures established to carry out this paragraph.

[(D) Designations of metropolitan planning organizations, whether made under this section or under any other provision of law, shall remain in effect until redesignation under this paragraph.

[(6) This subsection does not affect the authority, under State law in effect on December 18, 1991, of a public authority with multimodal transportation responsibilities—

[(A) to develop plans and programs for a metropolitan planning organization to adopt; and

[(B) to develop long-range capital plans, coordinate mass transportation services and projects, and carry out other activities under State law.

[(d) METROPOLITAN PLANNING AREA BOUNDARIES.—

[(1) IN GENERAL.—To carry out this section, the metropolitan planning organization and the chief executive officer shall decide by agreement on the boundaries of a metropolitan planning area.

[(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; and

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

[(3) 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 this paragraph shall be retained, except that the boundaries may be adjusted by agreement of the chief executive officer of the State and any affected metropolitan planning organizations, in the manner described in subsection (c)(5).

[(4) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—In the case of an urbanized area designated after the date of enactment of this paragraph as a nonattainment area for ozone or carbon monoxide under the Clean Air Act, the boundaries of the metropolitan planning area—

[(A) shall be established in the manner described in 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 area identified under the Clean Air Act for ozone or carbon monoxide.

[(e) COORDINATION.—(1) The Secretary of Transportation shall establish requirements the Secretary considers appropriate to encourage chief executive officers and metropolitan planning organi-

zations with responsibility for part of a multi-State metropolitan area to provide coordinated transportation planning for the entire area.

[(2) Congress consents to at least 2 States making an agreement or compact, not in conflict with a law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

[(3) If more than one metropolitan planning organization has authority in a metropolitan area or an area designated a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each organization shall consult with the other organizations designated for the area and the State to coordinate plans and projects required by this section and sections 5304–5306 of this title.

[(4) The Secretary shall encourage each metropolitan planning organization to coordinate, to the maximum extent practicable, the design and delivery of transportation services within the metropolitan planning area that are provided—

[(A) by recipients of assistance under this chapter; and

[(B) by governmental agencies and non-profit organizations (including representatives of the agencies and organizations) that receive Governmental assistance from a source other than the Department of Transportation to provide non-emergency transportation services.

[(5) COORDINATION.—If a project is located within the boundaries of more than 1 metropolitan planning organization, the metropolitan planning organizations shall coordinate plans regarding the project.

[(6) 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 chapter and sections 134 and 135 of title 23.

[(C) INTERSTATE COMPACT.—

[(i) IN GENERAL.—Subject to clause (ii) and notwithstanding subsection (b), to carry out the transportation planning process required by this section, the consent of Congress is granted to the States of California and Nevada to designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governors of the States of California and Nevada and units of general purpose local government

that together represent at least 75 percent of the affected population (including the central city or cities (as defined by the Bureau of the Census)), or in accordance with procedures established by applicable State or local law.

[(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

[(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

[(II) FUNDING.—In addition to funds made available to the metropolitan planning organization under other provisions of this chapter and under title 23, 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) DEVELOPING LONG-RANGE TRANSPORTATION PLANS.—(1) Each metropolitan planning organization shall prepare and update periodically, according to a schedule the Secretary of Transportation decides is appropriate, a long-range plan for its metropolitan area under the requirements of this section. The plan shall be in the form the Secretary considers appropriate and at least shall—

[(A) identify transportation facilities (including major roadways, mass transportation, and multimodal and intermodal facilities) that should function as an integrated metropolitan transportation system, emphasizing transportation facilities that serve important national, regional, and metropolitan transportation functions;

[(B) include a financial plan that—

[(i) demonstrates how the long-range plan can be carried out;

[(ii) indicates resources from public and private sources reasonably expected to be made available to carry out the plan; and

[(iii) recommends any additional financing strategies for needed projects and programs;

[(C) identify transportation strategies necessary—

[(i) to ensure preservation, including requirements for management, operation, modernization, and rehabilitation, of the existing and future transportation system; and

[(ii) to use existing transportation facilities most efficiently to relieve congestion, to efficiently serve the mobil-

ity needs of people and goods, and to enhance access within the metropolitan planning area;

[(D) indicate appropriate proposed transportation enhancement activities; and

[(E) the financial plan may include, for illustrative purposes, additional projects that would be included in the adopted long-range plan if reasonable additional resources beyond those identified in the financial plan were available, except that, for the purpose of developing the long-range plan, the metropolitan planning organization and the State shall cooperatively develop estimates of funds that will be available to support plan implementation.

[(2) When formulating a long-range transportation plan, the metropolitan planning organization shall consider the factors described in subsection (b) of this section and any State or local goals developed within the cooperative metropolitan planning process as they relate to a 20-year forecast period and to other forecast periods as determined by the participants in the planning process.

[(3) In a metropolitan area that is in a nonattainment area 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 the long-range plan with the development of the transportation control measures of the State Implementation Plan required by the Act.

[(4) Before approving a long-range plan, each metropolitan planning organization shall provide citizens, affected public agencies, representatives of mass transportation authority employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the plan in a way the Secretary of Transportation considers appropriate.

[(5) A long-range plan shall be—

[(A) published or otherwise made readily available for public review; and

[(B) submitted for information purposes to the chief executive officer of the State at the time and in the way the Secretary of Transportation establishes.

[(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (1)(E), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (1)(B).

[(g) GRANTS.—Under criteria the Secretary of Transportation establishes, the Secretary may make contracts for, and grants to, States, local governmental authorities, and authorities of the States and governmental authorities, or may make agreements with other departments, agencies, and instrumentalities of the Government, to plan, engineer, design, and evaluate a mass transportation project and for other technical studies, including—

[(1) studies related to management, operations, capital requirements, and economic feasibility;

[(2) evaluating previously financed projects; and

[(3) other similar and related activities preliminary to and in preparation for constructing, acquiring, or improving the operation of facilities and equipment.

[(h) BALANCED AND COMPREHENSIVE PLANNING.—(1) To the extent practicable, the Secretary of Transportation shall ensure that amounts made available under subsection (c) or (h)(1) of section 5338 of this title to carry out this section and sections 5304 and 5305 of this title 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.

[(2)(A) The Secretary of Transportation shall apportion 80 percent of the amount made available under subsection (c) or (h)(1) of section 5338 of this title to States 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. A State may not receive less than .5 percent of the amount apportioned under this subparagraph.

[(B) Amounts apportioned to a State under subparagraph (A) of this paragraph shall be allocated to metropolitan planning organizations in the State designated under this section under a formula—

[(i) the State develops in cooperation with the metropolitan planning organizations;

[(ii) the Secretary of Transportation approves; and

[(iii) that considers population in urbanized areas and provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section.

[(C) A State shall make amounts available promptly to eligible metropolitan planning organizations according to procedures the Secretary of Transportation approves.

[(3)(A) The Secretary of Transportation shall apportion 20 percent of the amount made available under subsection (c) or (h)(1) of section 5338 of this title to States to supplement allocations made under paragraph (2)(B) of this subsection for metropolitan planning organizations.

[(B) Amounts under this paragraph shall be allocated under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities under this section and sections 5304–5306 of this title in those areas.

[(4) To the maximum extent practicable, the Secretary of Transportation shall ensure that no metropolitan planning organization is allocated less than the amount it received by administrative formula under this section in the fiscal year that ended September 30, 1991. To carry out this subsection, the Secretary may make a proportionate reduction in other amounts made available to carry out subsection (c) or (h)(1) of section 5338 of this title.

[(5) Amounts available for an activity under this subsection are for 80 percent of the cost of the activity unless the Secretary of Transportation decides it is in the interests of the Government not to require a State or local match.

[(6) An amount apportioned under this subsection—

[(A) remains available for 3 years after the fiscal year in which the amount is apportioned, and

[(B) that is unobligated at the end of the 3-year period shall be reapportioned among the States for the next fiscal year.

[§ 5304. Transportation improvement program

[(a) DEVELOPMENT AND UPDATE.—

[(1) IN GENERAL.—In cooperation with the State and affected mass transportation operators, a metropolitan planning organization designated for a metropolitan area shall develop a transportation improvement program for the area. In developing the program, the metropolitan planning organization, in cooperation with the chief executive officer of the State and any affected mass transportation operator, shall provide citizens, affected public agencies, representatives of transportation authority employees, other affected employee representatives, freight shippers, providers of freight transportation services, other affected employee representatives, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the proposed program. The program shall be updated at least once every 2 years and shall be approved by the organization and the chief executive officer of the State.

[(2) FUNDING ESTIMATE.—For the purpose of developing the transportation improvement program, the metropolitan planning organization, public transit agency, and the State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

[(b) CONTENTS.—A transportation improvement program for a metropolitan area shall include—

[(1) a priority list of projects and parts of projects to be carried out in each 3-year period after the program is adopted; and

[(2) a financial plan that—

[(A) demonstrates how the program can be carried out;

[(B) indicates resources from public and private sources that reasonably are expected to be made available to carry out the plan;

[(C) identifies innovative financing techniques to finance projects, programs, and strategies; and

[(D) may include, for illustrative purposes, additional projects that would be included in the approved transportation improvement program if reasonable additional resources beyond those identified in the financial plan were available.

[(c) PROJECT SELECTION.—(1) Except as otherwise provided in section 5305(d)(1) and in addition to the transportation improvement program development required under subsection (b), the selection of federally funded projects for implementation in metropolitan areas shall be carried out, from the approved transportation improvement program—

[(A) by—

[(i) in the case of projects under title 23, the State; and

[(ii) in the case of projects under this chapter, the designated transit funding recipients; and

[(B) in cooperation with the metropolitan planning organization.

[(2) A transportation improvement program for a metropolitan area shall include—

[(A) projects within the area that are proposed for financing under this chapter and title 23 and that are consistent with the long-range plan developed under section 5303(f) of this title; and

[(B) a project or an identified phase of a project only if full financing reasonably can be anticipated to be available for the project in the period estimated for completion.

[(3) Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved transportation improvement program in place of another project in the program.

[(4) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

[(A) IN GENERAL.—Notwithstanding subsection (b)(2)(D), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subsection (b)(2)(D).

[(B) ACTION BY SECRETARY.—Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the plan under subsection (b)(2) for inclusion in an approved transportation improvement plan.

[(5) PUBLICATION.—(A) A transportation improvement program involving Government participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.

[(B) An annual listing of projects for which Government funds have been obligated in the preceding year shall be published or otherwise made available by the metropolitan planning organization for public review. The listing shall be consistent with the categories identified in the transportation improvement program.

[(6) Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program. All other projects funded under chapter 2 of title 23 shall be grouped in 1 line item or identified individually in the transportation improvement program.

[(d) NOTICE AND COMMENT.—Before approving a transportation improvement program, a metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, and other interested parties with reasonable notice and an opportunity to comment on the proposed program.

[(e) REGULATORY PROCEEDING.—Not later than June 18, 1992, the Secretary of Transportation shall begin a regulatory proceeding to conform review requirements for mass transportation projects under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to comparable requirements under that Act applicable to highway projects. This section and sections 5303, 5305, and 5306 of this title do not affect the applicability of the Act to mass transportation or highway projects. A mass transportation project that has an approved draft Environmental Impact Statement is exempt

from complying with requirements under the Act applicable to highway projects.

[§ 5305. Transportation management areas

[(a) DESIGNATION.—The Secretary of Transportation shall designate as a transportation management area—

[(1) each urbanized area with a population of more than 200,000; and

[(2) any other area, if requested by the chief executive officer and the metropolitan planning organization designated for the area.

[(b) TRANSPORTATION PLANS AND PROGRAMS.—Transportation plans and programs in a transportation management area shall be based on a continuing and comprehensive transportation planning process the metropolitan planning organization carries out in cooperation with the State and affected mass transportation operators.

[(c) CONGESTION MANAGEMENT SYSTEM.—The transportation planning process under sections 5303, 5304, and 5306 of this title in a transportation management area shall include a congestion management system providing for effective management, through travel demand reduction and operational management strategies, of new and existing transportation facilities eligible for financing under this chapter and title 23.

[(d) PROJECT SELECTION.—(1)(A) All federally funded projects carried out within the boundaries of a transportation management area under title 23 (excluding projects carried out on the National Highway System and projects carried out under the bridge and interstate maintenance program) or under this chapter shall be selected 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) Projects carried out within the boundaries of a transportation management area on the National Highway System and projects carried out within such boundaries under the bridge program or the interstate maintenance program shall be selected from the approved transportation improvement program by the State in cooperation with the metropolitan planning organization designated for the area.

[(2)(A) A selection under this subsection must comply with the transportation improvement program for the area.

[(B) A selection under paragraph (1)(A) of this subsection must comply with priorities established in the program.

[(e) CERTIFICATION.—(1) At least once every 3 years, the Secretary shall ensure and certify that each metropolitan planning organization in each transportation management area is carrying out its responsibilities under applicable laws of the United States. The Secretary may make the certification only if the organization is complying with section 134 of title 23 and other applicable requirements of laws of the United States and the organization and chief executive officer have approved a transportation improvement program for the area.

[(2)(A) If a metropolitan planning process is not certified, the Secretary may withhold not more than 20 percent of the appor-

tioned funds attributable to the transportation management area under this chapter and title 23.

[(B) Any apportionments withheld under subparagraph (A) shall be restored to the metropolitan area at such time as the metropolitan planning organization is certified by the Secretary.

[(3) The Secretary may not withhold certification based on the policies and criteria a metropolitan planning organization or mass transportation grant recipient establishes under section 5306(a) of this title for deciding the feasibility of private enterprise participation.

[(4) In making certification determinations under this subsection, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

[(f) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—Government amounts may be made available for a mass transportation project resulting in a significant increase in carrying capacity for single occupant vehicles in a transportation management area classified as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) only if the project is part of an approved congestion management system.

[(g) AREAS NOT DESIGNATED TRANSPORTATION MANAGEMENT AREAS.—(1) The Secretary may provide for the development of abbreviated metropolitan transportation plans and programs the Secretary decides are appropriate to carry out this section and sections 5303, 5304, and 5306 of this title for metropolitan areas not designated transportation management areas under this section. The Secretary shall consider the complexity of transportation problems in those areas, including transportation-related air quality problems.

[(2) The Secretary may not provide an abbreviated plan or program for a metropolitan area in a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

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

§ 5303. Metropolitan planning

(a) IN GENERAL.—Grants made under sections 5307, 5308, 5309, 5310, 5311, 5316, and 5317 shall be carried out in accordance with the metropolitan planning provisions of chapter 52.

(b) CERTIFICATION.—

(1) IN GENERAL.—The Secretary shall ensure and certify that each metropolitan planning organization in each transportation management area is carrying out its responsibilities under applicable laws of the United States. The Secretary may make the certification only if the organization is complying with chapter 52 and other applicable requirements of laws of the United

States and the organization and chief executive officer have approved a transportation improvement program for the area.

(2) LIMITATION ON WITHHOLDING CERTIFICATION.—The Secretary may not withhold certification based on the policies and criteria a metropolitan planning organization or mass transportation grant recipient establishes under section 5306(a) for deciding the feasibility of private enterprise participation.

§ 5304. Statewide planning

Grants made under sections 5307, 5308, 5309, 5310, 5311, 5316, and 5317 shall be carried out in accordance with the statewide planning provisions of chapter 52.

§ 5305. Planning programs

(a) STATE DEFINED.—In this section the term "State" means a State of the United States, the District of Columbia, and Puerto Rico.

(b) GENERAL AUTHORITY.—

(1) ASSISTANCE.—Under criteria to be established by the Secretary, the Secretary may provide assistance for—

(A) the development of transportation plans and programs;

(B) planning, engineering, designing, and evaluating a public transportation project; and

(C) for other technical studies.

(2) GRANTS, AGREEMENTS, AND CONTRACTS.—The Secretary may provide assistance under paragraph (1)—

(A) by making grants to States, authorities of States, metropolitan planning organizations, and local governmental authorities; or

(B) by making agreements with other departments, agencies, and instrumentalities of the Government.

(3) ELIGIBLE ACTIVITIES.—Activities eligible for assistance under paragraph (1) include the following:

(A) Studies related to management, planning, operations, capital requirements, and economic feasibility.

(B) Evaluating previously financed projects.

(C) Peer reviews and exchanges of technical data, information, assistance, and related activities in support of planning and environmental analyses among metropolitan planning organizations and other transportation planners.

(D) Other similar and related activities preliminary to and in preparation for constructing, acquiring, or improving the operation of facilities and equipment.

(c) PURPOSE.—To the extent practicable, the Secretary shall ensure that amounts appropriated or made available under section 5338 to carry out this section and sections 5303 and 5304 are used to support balanced and comprehensive transportation planning that considers the relationships among land use and all transportation modes, without regard to the programmatic source of the planning amounts.

(d) METROPOLITAN PLANNING PROGRAM.—

(1) APPORTIONMENT TO STATES.—

(A) IN GENERAL.—The Secretary shall apportion 80 percent of the amounts made available under subsection (g)(1)

among the States to carry out sections 5303 and 5306 in the ratio that—

(i) the population of urbanized areas in each State, as shown by the latest available decennial census of population; bears to

(ii) the total population of urbanized areas in all States, as shown by that census.

(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), a State may not receive less than 0.5 percent of the amount apportioned under this paragraph.

(2) ALLOCATION TO MPO'S.—Amounts apportioned to a State under paragraph (1) shall be made available within 30 days after allocation to metropolitan planning organizations in the State designated under this section under a formula that—

(A) considers population of urbanized areas;

(B) provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section;

(C) the State develops in cooperation with the metropolitan planning organizations; and

(D) the Secretary approves.

(3) SUPPLEMENTAL AMOUNTS.—

(A) IN GENERAL.—The Secretary shall apportion 20 percent of the amounts made available under subsection (g)(1) among the States to supplement allocations made under paragraph (1) for metropolitan planning organizations.

(B) FORMULA.—The Secretary shall apportion amounts referred to in subparagraph (A) under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities under sections 5303 and 5306 in certain urbanized areas.

(e) STATE PLANNING AND RESEARCH PROGRAM.—

(1) APPORTIONMENT TO STATES.—

(A) IN GENERAL.—The Secretary shall apportion the amounts made available under subsection (g)(2) among the States for grants and contracts to carry out sections 5303 through 5306, 5312, 5315, and 5322 in the ratio that—

(i) the population of urbanized areas in each State, as shown by the latest available decennial census; bears to

(ii) the population of urbanized areas in all States, as shown by that census.

(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), a State may not receive less than 0.5 percent of the amount apportioned under this paragraph.

(2) SUPPLEMENTAL AMOUNTS.—A State, as the State considers appropriate, may authorize part of the amount made available under this subsection to be used to supplement amounts made available under subsection (d).

(f) GOVERNMENT'S SHARE OF COSTS.—The Government's share of the cost of an activity funded using amounts made available under this section may not exceed 80 percent of the cost of the activity unless the Secretary determines that it is in the interests of the Government not to require a State or local match.

(g) ALLOCATION OF FUNDS.—Of the funds made available by or appropriated to carry out this section under section 5338(c) for fiscal years 2004 through 2009—

(1) 82.72 percent shall be available for the metropolitan planning program under subsection (d); and

(2) 17.28 percent shall be available to carry out subsection (e).

(h) AVAILABILITY OF FUNDS.—Funds apportioned under this section in a State shall remain available for obligation in that State for a period of 3 years after the last day of the fiscal year for which the funds are authorized. Any amounts so apportioned that remain unobligated at the end of that period shall be reapportioned among the States.

[§ 5306. Private enterprise participation in metropolitan planning and transportation improvement programs and relationship to other limitations]

§ 5306. Private enterprise participation in planning; relationship to other limitations

(a) * * *

* * * * * * *

§ 5307. Urbanized area formula grants

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

(1) * * *

(2) DESIGNATED RECIPIENT.—The term "designated recipient" means—

(A) [a person] *an entity* designated, consistent with the planning process under sections 5303–5306 of this title, by the chief executive officer of a State, responsible local officials, and publicly owned operators of [mass] *public* transportation to receive and apportion amounts under section 5336 of this title that are attributable to transportation management areas established under [section 5305(a) of this title] *chapter 52*; or

(B) a State or regional authority if the authority is responsible under the laws of a State for a capital project and for financing and directly providing [mass] *public* transportation.

(b) GENERAL AUTHORITY.—[(1) The Secretary of Transportation may make grants under this section for capital projects and to finance the planning and improvement costs of equipment, facilities, and associated capital maintenance items for use in mass transportation, including the renovation and improvement of historic transportation facilities with related private investment. The Secretary may also make grants under this section to finance the operating cost of equipment and facilities for use in mass transportation in an urbanized area with a population of less than 200,000.]

(1) GRANTS.—The Secretary may make grants under this section for—

(A) capital projects and associated capital maintenance items;

(B) planning;

(C) transit enhancements; and

(D) operating costs of equipment and facilities for use in public transportation in an urbanized area with a population of less than 200,000.

(2) SPECIAL RULE FOR [FISCAL YEAR 2003 AND FOR THE PERIOD OF OCTOBER 1, 2003, THROUGH APRIL 30, 2004] *FISCAL YEARS 2003 THROUGH 2005*.—

(A) INCREASED FLEXIBILITY.—The Secretary may make grants under this section, from funds made available to carry out this section for [fiscal year 2003, and for the period of October 1, 2003, through April 30, 2004] *fiscal years 2003, 2004, and 2005,* to finance the operating cost of equipment and facilities for use in [mass] *public* transportation in an urbanized area with a population of at least 200,000 as determined under the 2000 decennial census of population if—

(i) * * *

* * * * * * *

(3) In a transportation management area designated under [section 5305(a) of this title] *chapter 52*, amounts that cannot be used to pay operating expenses under this section also are available for a highway project if—

(A) that use is approved, in writing, by the metropolitan planning organization under [section 5303 of this title] *chapter 52* after appropriate notice and an opportunity for comment and appeal is provided to affected [mass] *public* transportation providers;

* * * * * * *

(c) PUBLIC PARTICIPATION REQUIREMENTS.—Each recipient of a grant shall—

(1) * * *

* * * * * * *

(5) ensure that the proposed program of projects provides for the coordination of [mass] *public* transportation services assisted under section 5336 of this title with transportation services assisted from other United States Government sources;

* * * * * * *

(d) GRANT RECIPIENT REQUIREMENTS.—A recipient may receive a grant in a fiscal year only if—

(1) the recipient, within the time the Secretary prescribes, submits a final program*, including safety and security aspects of the program* of projects prepared under subsection (c) of this section and a certification for that fiscal year that the recipient (including a person receiving amounts from a chief executive officer of a State under this section)—

(A) * * *

* * * * * * *

(H) will comply with [sections 5301(a) and (d), 5303–5306, and 5310(a)–(d) of this title] *subsections (a) and (d) of section 5301 and sections 5303 through 5306*;

(I) has a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation; [and]

(J)(i) will expend for each fiscal year for [mass] *public* transportation security projects, including increased lighting in or adjacent to a [mass] *public* transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned [mass] *public* transportation system, at least one percent of the amount the recipient receives for each fiscal year under section 5336 of this title; or

(ii) has decided that the expenditure for security projects is not necessary; and

(K) in the case of a recipient for an urbanized area with a population of at least 200,000—

(i) will expend one percent of the amount the recipient receives each fiscal year under this section for projects for transit enhancements, as defined in section 5302(a); and

(ii) will submit an annual report listing projects carried out in the preceding fiscal year with those funds; and

* * * * * * *

[(e) GOVERNMENT'S SHARE OF COSTS.—A grant of the Government for a capital project (including associated capital maintenance items) under this section is for 80 percent of the net project cost of the project. A recipient may provide additional local matching amounts. A grant for operating expenses may not be more than 50 percent of the net project cost of the project. The remainder of the net project cost shall be provided in cash from sources other than amounts of the Government or revenues from providing mass transportation (excluding revenues derived from the sale of advertising and concessions that are more than the amount of those revenues in the fiscal year that ended September 30, 1985). Transit system amounts that make up the remainder shall be from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.]

(e) GOVERNMENT'S SHARE OF COSTS.—

(1) CAPITAL PROJECTS.—A grant for a capital project (including associated capital maintenance items) under this section shall be for 80 percent of the net project cost of the project. The recipient may provide additional local matching amounts.

(2) OPERATING EXPENSES.—A grant for operating expenses under this section may not exceed 50 percent of the net project cost of the project.

(3) REMAINDER.—The remainder of the net project cost shall be provided—

(A) in cash from sources other than amounts of the Government or revenues from providing public transportation (excluding revenues derived from the sale of advertising and concessions);

(B) from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital; and

(C) from amounts received under a service agreement with a State or local social service agency or private social service organization.

(f) STATEWIDE OPERATING ASSISTANCE.—(1) A State authority that is a designated recipient and providing [mass] *public* transportation in at least 2 urbanized areas may apply for operating assistance in an amount not more than the amount for all urbanized areas in which it provides transportation.

* * * * * * *

[(h) STREAMLINED ADMINISTRATIVE PROCEDURES.—The Secretary shall prescribe streamlined administrative procedures for complying with the certification requirement under subsection (d)(1)(B) and (C) of this section for track and signal equipment used in existing operations.]

[(i)] *(h)* REVIEWS, AUDITS, AND EVALUATIONS.—(1)(A) At least annually, the Secretary [shall] *may* carry out, or require a recipient to have carried out independently, reviews and audits the Secretary considers appropriate to establish whether the recipient has carried out—

(i) * * *

* * * * * * *

[(j)] *(i)* REPORTS.—A recipient (including a person receiving amounts from a chief executive officer of a State under this section) shall submit annually to the Secretary a report on the revenues the recipient derives from the sale of advertising and concessions.

[(k) TRANSIT ENHANCEMENT ACTIVITIES.—

[(1) IN GENERAL.—One percent of the funds apportioned to urbanized areas with a population of at least 200,000 under section 5336 for a fiscal year shall be made available for transit enhancement activities in accordance with section 5302(a)(15).

[(2) PERIOD OF AVAILABILITY.—Funds apportioned under paragraph (1) shall be available for obligation for 3 years following the fiscal year in which the funds are apportioned. Funds that are not obligated at the end of such period shall be reapportioned under the urbanized area formula program of section 5336.

[(3) REPORT.—A recipient of funds apportioned under paragraph (1) shall submit, as part of the recipient's annual certification to the Secretary, a report listing the projects carried out during the preceding fiscal year with those funds.]

[(l)] *(j)* PROCUREMENT SYSTEM APPROVAL.—A recipient may request the Secretary to approve its procurement system. The Secretary shall approve the system for use for procurements financed under section 5336 of this title if, after consulting with the Administrator for Federal Procurement Policy, the Secretary decides the system provides for competitive procurement. Approval of a system under this subsection does not relieve a recipient of the duty to certify under subsection (d)(1)(E) of this section.

[(m)] *(k)* OPERATING FERRIES OUTSIDE URBANIZED AREAS.—A vessel used in ferryboat operations financed under section 5336 of this title that is part of a State-operated ferry system may be operated occasionally outside the urbanized area in which service is

provided to accommodate periodic maintenance if existing ferry service is not reduced significantly by operating outside the area.

[(n)] *(l)* RELATIONSHIP TO OTHER LAWS.—[(1) Section 1001 of title 18 applies to a certificate or submission under this section. The Secretary may end a grant under this section and seek reimbursement, directly or by offsetting amounts available under section 5336 of this title, when a false or fraudulent statement or related act within the meaning of section 1001 is made in connection with a certification or submission.]

[(2)] *(1) THIS CHAPTER.*—Sections 5302, 5318, 5319, 5323(a)(1), (d), and (f), 5332, and 5333 of this title apply to this section and to a grant made under this section. Except as provided in this section, no other provision of this chapter applies to this section or to a grant made under this section.

(2) CHAPTER 15 OF 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.

(m) TREATMENT.—For purposes of this section, the United States Virgin Islands shall be treated as an urbanized area, as defined in section 5302.

[§ 5308. Clean fuels formula grant program

[(a) DEFINITIONS.—In this section—

[(1) the term "clean fuel vehicle" means a vehicle that—

[(A) is powered by—

[(i) compressed natural gas;

[(ii) liquefied natural gas;

[(iii) biodiesel fuels;

[(iv) batteries;

[(v) alcohol-based fuels;

[(vi) hybrid electric;

[(vii) fuel cell;

[(viii) clean diesel, to the extent allowed under this section; or

[(ix) other low or zero emissions technology; and

[(B) the Administrator of the Environmental Protection Agency has certified sufficiently reduces harmful emissions;

[(2) the term "designated recipient" has the same meaning as in section 5307(a)(2); and

[(3) the term "eligible project"—

[(A) means a project for—

[(i) purchasing or leasing clean fuel buses, including buses that employ a lightweight composite primary structure;

[(ii) constructing or leasing clean fuel buses or electrical recharging facilities and related equipment;

[(iii) improving existing mass transportation facilities to accommodate clean fuel buses;

[(iv) repowering pre-1993 engines with clean fuel technology that meets the current urban bus emission standards; or

[(v) retrofitting or rebuilding pre-1993 engines if before half life to rebuild; and

[(B) in the discretion of the Secretary, may include projects relating to clean fuel, biodiesel, hybrid electric, or zero emissions technology vehicles that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies.

[(b) AUTHORITY.—The Secretary shall make grants in accordance with this section to designated recipients to finance eligible projects.

[(c) APPLICATION.—

[(1) IN GENERAL.—Not later than January 1 of each year, any designated recipient seeking to apply for a grant under this section for an eligible project shall submit an application to the Secretary, in such form and in accordance with such requirements as the Secretary shall establish by regulation.

[(2) CERTIFICATION REQUIRED.—An application submitted under paragraph (1) shall contain a certification by the applicant that the grantee will operate vehicles purchased with a grant under this section only with clean fuels.

[(d) APPORTIONMENT OF FUNDS.—

[(1) FORMULA.—Not later than February 1 of each year, the Secretary shall apportion amounts made available to carry out this section to designated recipients submitting applications under subsection (c), of which—

[(A) two-thirds shall be apportioned to designated recipients with eligible projects in urban areas with a population of at least 1,000,000, of which—

[(i) 50 percent shall be apportioned, such that each such designated recipient receives a grant in an amount equal to the ratio between—

[(I) the number of vehicles in the bus fleet of the eligible project of the designated recipient, weighted by severity of nonattainment for the area in which the eligible project is located, as provided in paragraph (2); and

[(II) the total number of vehicles in the bus fleets of all eligible projects in areas with a population of at least 1,000,000 funded under this section, weighted by severity of nonattainment for all areas in which those eligible projects are located, as provided in paragraph (2); and

[(ii) 50 percent shall be apportioned, such that each such designated recipient receives a grant in an amount equal to the ratio between—

[(I) the number of bus passenger miles (as that term is defined in section 5336(c)) of the eligible project of the designated recipient, weighted by severity of nonattainment of the area in which the eligible project is located, as provided in paragraph (2); and

[(II) the total number of bus passenger miles of all eligible projects in areas with a population of at least 1,000,000 funded under this section, weighted by severity of nonattainment of all areas

in which those eligible projects are located, as provided in paragraph (2); and

[(B) one-third shall be apportioned to designated recipients with eligible projects in urban areas with a population of less than 1,000,000, of which—

[(i) 50 percent shall be apportioned, such that each such designated recipient receives a grant in an amount equal to the ratio between—

[(I) the number of vehicles in the bus fleet of the eligible project of the designated recipient, weighted by severity of nonattainment for the area in which the eligible project is located, as provided in paragraph (2); and

[(II) the total number of vehicles in the bus fleets of all eligible projects in areas with a population of less than 1,000,000 funded under this section, weighted by severity of nonattainment for all areas in which those eligible projects are located, as provided in paragraph (2); and

[(ii) 50 percent shall be apportioned, such that each such designated recipient receives a grant in an amount equal to the ratio between—

[(I) the number of bus passenger miles (as that term is defined in section 5336(c)) of the eligible project of the designated recipient, weighted by severity of nonattainment of the area in which the eligible project is located, as provided in paragraph (2); and

[(II) the total number of bus passenger miles of all eligible projects in areas with a population of less than 1,000,000 funded under this section, weighted by severity of nonattainment of all areas in which those eligible projects are located, as provided in paragraph (2).

[(2) WEIGHTING OF SEVERITY OF NONATTAINMENT.—

[(A) IN GENERAL.—For purposes of paragraph (1), subject to subparagraph (B) of this paragraph, the number of clean fuel vehicles in the fleet, or the number of passenger miles, shall be multiplied by a factor of—

[(i) 1.0 if, at the time of the apportionment, the area is a maintenance area (as that term is defined in section 101 of title 23) for ozone or carbon monoxide;

[(ii) 1.1 if, at the time of the apportionment, the area is classified as—

[(I) a marginal ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.); or

[(II) a marginal carbon monoxide nonattainment area under subpart 3 of part D of title I of the Clean Air Act (42 U.S.C. 7512 et seq.);

[(iii) 1.2 if, at the time of the apportionment, the area is classified as—

[(I) a moderate ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.); or

[(II) a moderate carbon monoxide nonattainment area under subpart 3 of part D of title I of the Clean Air Act (42 U.S.C. 7512 et seq.);

[(iv) 1.3 if, at the time of the apportionment, the area is classified as—

[(I) a serious ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.); or

[(II) a serious carbon monoxide nonattainment area under subpart 3 of part D of title I of the Clean Air Act (42 U.S.C. 7512 et seq.);

[(v) 1.4 if, at the time of the apportionment, the area is classified as—

[(I) a severe ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.); or

[(II) a severe carbon monoxide nonattainment area under subpart 3 of part D of title I of the Clean Air Act (42 U.S.C. 7512 et seq.); or

[(vi) 1.5 if, at the time of the apportionment, the area is classified as—

[(I) an extreme ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.); or

[(II) an extreme carbon monoxide nonattainment area under subpart 3 of part D of title I of the Clean Air Act (42 U.S.C. 7512 et seq.).

[(B) ADDITIONAL ADJUSTMENT FOR CARBON MONOXIDE AREAS.—If, in addition to being classified as a nonattainment or maintenance area (as that term is defined in section 101 of title 23) for ozone under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.), the area was also classified under subpart 3 of part D of title I of that Act (42 U.S.C. 7512 et seq.) as a nonattainment area for carbon monoxide, the weighted nonattainment or maintenance area fleet and passenger miles for the eligible project, as calculated under subparagraph (A), shall be further multiplied by a factor of 1.2.

[(3) MAXIMUM GRANT AMOUNT.—

[(A) IN GENERAL.—The amount of a grant made to a designated recipient under this section shall not exceed the lesser of—

[(i) for an eligible project in an area—

[(I) with a population of less than 1,000,000, $15,000,000; and

[(II) with a population of at least 1,000,000, $25,000,000; or

[(ii) 80 percent of the total cost of the eligible project.

[(B) REAPPORTIONMENT.—Any amounts that would otherwise be apportioned to a designated recipient under this subsection that exceed the amount described in subparagraph (A) shall be reapportioned among other designated recipients in accordance with paragraph (1).

[(e) ADDITIONAL REQUIREMENTS.—

[(1) LIMITATION ON USES.—Not less than 5 percent of the amount made available by or appropriated under section 5338 in each fiscal year to carry out this section shall be available for any eligible projects for which an application is received from a designated recipient, for—

[(A) the purchase or construction of hybrid electric or battery-powered buses; or

[(B) facilities specifically designed to service those buses.

[(2) CLEAN DIESEL BUSES.—Not more than 35 percent of the amount made available by or appropriated under section 5338 in each fiscal year to carry out this section may be made available to fund clean diesel buses.

[(3) BUS RETROFITTING AND REPLACEMENT.—Not more than 5 percent of the amount made available by or appropriated under section 5338 in each fiscal year to carry out this section may be made available to fund retrofitting or replacement of the engines of buses that do not meet the clean air standards of the Environmental Protection Agency, as in effect on the date on which the application for such retrofitting or replacement is submitted under subsection (c)(1).

[(f) AVAILABILITY OF FUNDS.—Any amount made available or appropriated under this section—

[(1) shall remain available to a project for 1 year after the fiscal year for which the amount is made available or appropriated; and

[(2) that remains unobligated at the end of the period described in paragraph (1), shall be added to the amount made available in the following fiscal year.]

§ 5308. Clean fuels formula grant program

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

(1) CLEAN FUEL BUS.—The term "clean fuel bus" means a passenger vehicle used to provide public transportation that—

(A) is powered by—

(i) compressed natural gas;

(ii) liquefied natural gas;

(iii) biodiesel fuels;

(iv) batteries;

(v) alcohol-based fuels;

(vi) hybrid electric;

(vii) fuel cell;

(viii) clean diesel, to the extent allowed under this section; or

(ix) other low or zero emissions technology; and

(B) the Administrator of the Environmental Protection Agency has certified sufficiently reduces harmful emissions.

(2) ELIGIBLE PROJECT.—The term "eligible project"—

(A) means a project in a nonattainment or maintenance area described in paragraph (4)(A) for—

(i) purchasing or leasing clean fuel buses, including buses that employ a lightweight composite primary structure;

(ii) constructing or leasing clean fuel buses or electrical recharging facilities and related equipment for such buses; or

(iii) improving existing public transportation facilities to accommodate clean fuel buses; and

(B) at the discretion of the Secretary, may include a project located in a nonattainment or maintenance area described in paragraph (3)(A) relating to clean fuel, biodiesel, hybrid electric, or zero emissions technology buses that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies.

(3) MAINTENANCE AREA.—The term "maintenance area" has the meaning such term has under section 101 of title 23.

(4) RECIPIENT.—

(A) IN GENERAL.—The term "recipient" means a designated recipient (as defined in section 5307(a)(2)) for an area that, and a recipient for an urbanized area with a population of less than 200,000 that—

(i) is designated as a nonattainment area for ozone or carbon monoxide under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)); or

(ii) is a maintenance area for ozone or carbon monoxide.

(B) SMALLER URBANIZED AREAS.—In the case of an urbanized area with a population of less than 200,000, the State in which the area is located shall act as the recipient for the area under this section.

(b) AUTHORITY.—The Secretary shall make grants in accordance with this section to recipients to finance eligible projects.

(c) APPORTIONMENT OF FUNDS.—

(1) FORMULA.—The Secretary shall apportion among recipients amounts made available to carry out this section for a fiscal year. Of such amounts—

(A) two-thirds shall be apportioned to recipients serving urbanized areas with a population of at least 1,000,000, of which—

(i) 50 percent shall be apportioned so that each such recipient receives a grant under this section in an amount equal to the ratio that—

(I) the number of vehicles in the bus fleet of the recipient, weighted by severity of nonattainment for the area served by the recipient; bears to

(II) the total number of vehicles in the bus fleets of all such recipients, weighted by severity of nonattainment for all areas served by such recipients; and

(ii) 50 percent shall be apportioned so that each such recipient receives a grant under this section in an amount equal to the ratio that—

(I) the number of bus passenger miles (as defined in section 5336(c)) of the recipient, weighted by severity of nonattainment of the area served by the recipient; bears to

(II) the total number of bus passenger miles (as defined in section 5336(c)) of all such recipients, weighted by severity of nonattainment of all areas served by such recipients; and

(B) one-third shall be apportioned to recipients serving urbanized areas with a population of less than 1,000,000, of which—

(i) 50 percent shall be apportioned so that each such recipient receives a grant under this section in an amount equal to the ratio that—

(I) the number of vehicles in the bus fleet of the recipient, weighted by severity of nonattainment for the area served by the recipient; bears to

(II) the total number of vehicles in the bus fleets of all such recipients, weighted by severity of nonattainment for all areas served by such recipients; and

(ii) 50 percent shall be apportioned so that each such recipient receives a grant under this section in an amount equal to the ratio that—

(I) the number of bus passenger miles (as defined in section 5336(c)) of the recipient, weighted by severity of nonattainment of the area served by the recipient; bears to

(II) the total number of bus passenger miles (as defined in section 5336(c)) of all such recipients, weighted by severity of nonattainment of all areas served by such recipients.

(2) WEIGHTING OF SEVERITY OF NONATTAINMENT.—

(A) IN GENERAL.—For purposes of paragraph (1), subject to subparagraph (B), the number of buses in the bus fleet, or the number of passenger miles, shall be multiplied by a factor of—

(i) 1.0 if, at the time of the apportionment, the area is a maintenance area for ozone or carbon monoxide;

(ii) 1.1 if, at the time of the apportionment, the area is classified as a marginal ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.);

(iii) 1.2 if, at the time of the apportionment, the area is classified as—

(I) a moderate ozone nonattainment area under subpart 2 of such part; or

(II) a moderate carbon monoxide nonattainment area under subpart 3 of such part;

(iv) 1.3 if, at the time of the apportionment, the area is classified as a serious ozone nonattainment area under subpart 2 of such part; or

(v) 1.4 if, at the time of the apportionment, the area is classified as a severe ozone nonattainment area under subpart 2 of such part; or

(vi) 1.5 if, at the time of the apportionment, the area is classified as an extreme ozone nonattainment area under subpart 2 of such part.

(B) ADDITIONAL ADJUSTMENT FOR CARBON MONOXIDE AREAS.—If, in addition to being classified as a nonattainment or maintenance area for ozone under subpart 2 of such part, the area was also classified under subpart 3 of such part as a nonattainment area for carbon monoxide,

the weighted nonattainment or maintenance area fleet and passenger miles for the recipient, as calculated under subparagraph (A), shall be further multiplied by a factor of 1.2.

(d) CLEAN DIESEL BUSES.—Not more than 35 percent of the amount made available by or appropriated under section 5338 in each fiscal year to carry out this section may be made available to fund clean diesel buses.

(e) GRANT REQUIREMENTS.—

(1) IN GENERAL.—A grant under this section shall be subject to the requirements of section 5307.

(2) GOVERNMENT'S SHARE OF COSTS FOR CERTAIN PROJECTS.—Section 5323(i) applies to projects carried out under this section.

(f) AVAILABILITY OF FUNDS.—Any amount made available or appropriated under this section—

(1) shall remain available to a project for 1 year after the fiscal year for which the amount is made available or appropriated; and

(2) that remains unobligated at the end of the period described in paragraph (1) shall be added to the amount made available in the following fiscal year.

[§ 5309. Capital investment grants and loans]

§ 5309. Capital investment grants

(a) GENERAL AUTHORITY.—(1) The Secretary of Transportation may make grants [and loans] under this section to assist State and local governmental authorities in financing—

(A) capital projects for new fixed guideway systems, and extensions to existing fixed guideway systems, including the acquisition of real property, the initial acquisition of rolling stock for the systems, alternatives analysis related to the development of the systems, and the acquisition of rights of way, and relocation, for fixed guideway corridor development for projects in the advanced stages of alternatives analysis or preliminary engineering;

(B) capital projects, including property and improvements (except public highways other than fixed guideway facilities), needed for an efficient and coordinated [mass] *public* transportation system;

(C) the capital costs of coordinating [mass] *public* transportation with other transportation;

(D) the introduction of new technology, through innovative and improved products, into [mass] *public* transportation;

(E) capital projects to modernize existing fixed guideway systems;

(F) capital projects to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities;

(G) [mass] *public* transportation projects planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities; and

(H) the development of corridors to support fixed guideway systems, including protecting rights of way through acquisi-

tion, construction of dedicated bus and high occupancy vehicle lanes and park and ride lots, and other nonvehicular capital improvements that the Secretary may decide would result in increased [mass] *public* transportation usage in the corridor.

(2) The Secretary of Transportation shall require that all grants [and loans] under this subsection be subject to all terms, conditions, requirements, and provisions the Secretary decides are necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in value of real property resulting from the project assisted under this section.

[(b) LOANS FOR REAL PROPERTY INTERESTS.—(1) The Secretary of Transportation may make loans under this section to State and local governmental authorities to acquire interests in real property for use on urban mass transportation systems as rights of way, station sites, and related purposes, including reconstruction, renovation, the net cost of property management, and relocation payments made under section 5324(a) of this title.

[(2) The Secretary of Transportation may make a loan under paragraph (1) of this subsection for an approved project only after finding that the property reasonably is expected to be required for a mass transportation system and that it will be used for that system within a reasonable time.

[(3) An applicant for a loan under this subsection shall provide a copy of the application to the planning agency for the community affected by the project at the same time the application is submitted to the Secretary of Transportation. If the planning agency submits comments to the Secretary not later than 30 days after the application is submitted, or, if the agency requests more time within those 30 days, within a period the Secretary establishes, the Secretary shall consider those comments before taking final action on the application.

[(4) A loan agreement under this subsection shall provide that a capital project on the property will be started not later than 10 years after the fiscal year in which the agreement is made. If an interest in property acquired under this subsection is not used for the purpose for which it was acquired, an appraisal of the current value of the property or interest shall be made when a decision is made about the use. The decision shall be made within the 10-year period. Two-thirds of the increase in value shall be paid to the Secretary of Transportation for deposit in the Treasury as miscellaneous receipts.

[(5) A loan under this subsection must be repaid not later than 10 years after the date of the loan agreement or on the date a grant agreement for a capital project on the property is made, whichever is earlier. Payments made to repay the loan shall be deposited in the Treasury as miscellaneous receipts.

[(c) [Reserved.]]

[(d)] *(b)* PROJECT AS PART OF APPROVED PROGRAM OF PROJECTS.—[Except as provided in subsections (b)(2) and (e) of this section, the] *The* Secretary of Transportation may approve a grant [or loan] for a project under this section only after finding that the project is part of the approved program of projects required under sections 5303–5306 of this title and that an applicant—

(1) * * *

* * * * * * *

[(e) CRITERIA FOR GRANTS AND LOANS FOR FIXED GUIDEWAY SYSTEMS.—

[(1) IN GENERAL.—The Secretary may approve a grant or loan under this section for a capital project for a new fixed guideway system or extension of an existing fixed guideway system only if 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, and operating efficiencies; and

[(C) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct, maintain, and operate the system or extension.

[(2) ALTERNATIVES ANALYSIS AND PRELIMINARY ENGINEERING.—In evaluating a project under paragraph (1)(A), the Secretary shall analyze and consider the results of the alternatives analysis and preliminary engineering for the project.

[(3) PROJECT JUSTIFICATION.—In evaluating a project under paragraph (1)(B), the Secretary shall—

[(A) consider the direct and indirect costs of relevant alternatives;

[(B) consider factors such as congestion relief, improved mobility, air pollution, noise pollution, energy consumption, and all associated ancillary and mitigation costs necessary to carry out each alternative analyzed, and recognize reductions in local infrastructure costs achieved through compact land use development;

[(C) identify and consider mass transportation supportive existing land use policies and future patterns, and the cost of suburban sprawl;

[(D) consider the degree to which the project increases the mobility of the mass transportation dependent population or promotes economic development;

[(E) consider population density and current transit ridership in the corridor;

[(F) consider the technical capability of the grant recipient to construct the project;

[(G) adjust the project justification to reflect differences in local land, construction, and operating costs; and

[(H) consider other factors that the Secretary determines appropriate to carry out this chapter.

[(4) LOCAL FINANCIAL COMMITMENT.—

[(A) EVALUATION OF PROJECT.—In evaluating a project under paragraph (1)(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 operate the overall proposed mass transportation system (including essential feeder bus and other services necessary to achieve the projected ridership levels) without requiring a reduction in existing mass transportation services to operate the proposed project.

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

[(i) existing grant commitments;

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

[(iii) any debt obligation that exists or is proposed by the recipient for the proposed project or other mass transportation purpose; and

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

[(5) REGULATIONS.—Not later than 120 days after the date of enactment of the Federal Transit Act of 1998, the Secretary shall issue regulations on the manner in which the Secretary will evaluate and rate the projects based on the results of alternatives analysis, project justification, and the degree of local financial commitment, as required under this subsection.

[(6) PROJECT EVALUATION AND RATING.—A proposed project may advance from alternatives analysis to preliminary engineering, and may advance from preliminary engineering to final design and construction, only if the Secretary finds that the project meets the requirements of this section and there is a reasonable likelihood that the project will continue to meet such requirements. In making such findings, the Secretary shall evaluate and rate the project as "highly recommended", "recommended", or "not recommended", based on the results of 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 under the regulations issued under paragraph (5).

[(7) FULL FUNDING GRANT AGREEMENT.—A project financed under this subsection shall be carried out through a full funding grant agreement. The Secretary shall enter into a full funding grant agreement based on the evaluations and ratings required under this subsection. The Secretary shall not enter into a full funding grant agreement for a project unless that project is authorized for final design and construction.

[(8) LIMITATIONS ON APPLICABILITY.—

[(A) PROJECTS WITH A SECTION 5309 FEDERAL SHARE OF LESS THAN $25,000,000.—A project for a new fixed guideway system or extension of an existing fixed guideway system is not subject to the requirements of this subsection, and the simultaneous evaluation of similar projects in at least 2 corridors in a metropolitan area may not be limited, if the assistance provided under this section with respect to the project is less than $25,000,000.

[(B) PROJECTS IN NONATTAINMENT AREAS.—The simultaneous evaluation of projects in at least 2 corridors in a metropolitan area may not be limited and the Secretary shall make decisions under this subsection with expedited procedures that will promote carrying out an approved State Implementation Plan in a timely way if a project is—

[(i) located in a nonattainment area;

[(ii) a transportation control measure (as defined by the Clean Air Act (42 U.S.C. 7401 et seq.)); and

[(iii) required to carry out the State Implementation Plan.

[(C) PROJECTS FINANCED WITH HIGHWAY FUNDS.—This subsection does not apply to a part of a project financed completely with amounts made available from the Highway Trust Fund (other than the Mass Transit Account).

[(D) PREVIOUSLY ISSUED LETTER OF INTENT OR FULL FUNDING GRANT AGREEMENT.—This subsection does 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 Transit Act of 1998.

[(f) [Reserved.]

[(g) LETTERS OF INTENT, FULL FUNDING GRANT AGREEMENTS, AND EARLY SYSTEMS WORK AGREEMENTS.—(1)(A) The Secretary of Transportation may issue a letter of intent to an applicant announcing an intention to obligate, for a project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project. The amount shall be sufficient to complete at least an operable segment when a letter is issued for a fixed guideway project.

[(B) At least 60 days before issuing a letter under subparagraph (A) of this paragraph or entering into a full funding grant agreement, the Secretary of Transportation shall notify in writing the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate and the House and Senate Committees on Appropriations of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement as well as the evaluations and ratings for the project.

[(C) The issuance of a letter is deemed not to be an obligation under sections 1108(c) and (d), 1501, and 1502(a) of title 31 or an administrative commitment.

[(D) An obligation or administrative commitment may be made only when amounts are appropriated.

[(2)(A) The Secretary of Transportation may make a full funding grant agreement with an applicant. The agreement shall—

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

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

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

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

[(B) An agreement under this paragraph obligates an amount of available budget authority specified in law and may include a commitment, contingent on amounts to be specified in law in advance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law. The agreement shall state that the contingent commitment is not an obligation of the Government. Interest and other financing costs of efficiently carrying out a part of the project within a reasonable time are a cost of carrying out the project under a full funding grant agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary of Transportation, that the applicant has shown reasonable diligence in seeking the most favorable financing terms. The amount stipulated in an agreement under this paragraph for a fixed guideway project shall be sufficient to complete at least an operable segment.

[(3)(A) The Secretary of Transportation may make an early systems work agreement with an applicant if a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary finds there is reason to believe—

[(i) a full funding grant agreement for the project will be made; and

[(ii) the terms of the work agreement will promote ultimate completion of the project more rapidly and at less cost.

[(B) A work agreement under this paragraph obligates an amount of available budget authority specified in law and shall provide for reimbursement of preliminary costs of carrying out the project, including land acquisition, timely procurement of system elements for which specifications are decided, and other activities the Secretary of Transportation decides are appropriate to make efficient, long-term project management easier. A work agreement shall cover the period of time the Secretary considers appropriate. The period may extend beyond the period of current authorization. Interest and other financing costs of efficiently carrying out the work agreement within a reasonable time are a cost of carrying out the agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms. If an applicant does not carry out the project for reasons within the control of the applicant, the applicant shall repay all Government payments made under the work agreement plus reasonable interest and penalty charges the Secretary establishes in the agreement.

[(4)(A) The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all outstanding letters of intent, full funding grant agreements, and early systems work agreements may be not more than the greater of the amount authorized under section 5338(b) of this title for new fixed guideway systems and extensions to existing fixed guideway systems and the amount appropriated under section

5338(h)(5) or an amount equivalent to the last 2 fiscal years of funding authorized under section 5338(b) for new fixed guideway systems and extensions to existing fixed guideway systems, less an amount the Secretary of Transportation reasonably estimates is necessary for grants under this section not covered by a letter. The total amount covered by new letters and contingent commitments included in full funding grant agreements and early systems work agreements may be not more than a limitation specified in law.

[(B) For fiscal year 2001 and thereafter, the amount equivalent to the last 2 fiscal years of funding authorized under section 5338(b) for new fixed guideway systems and extensions to existing fixed guideway systems referred to in subparagraph (A) shall be the amount equivalent to the last 3 fiscal years of such authorized funding.

[(C) Any increase in the total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all outstanding letters of intent, full funding grant agreements, and early systems work agreements as a result of application of subparagraph (B) instead of subparagraph (A) shall be available as follows:

[(1) $269,100,000 for the Chicago, Illinois Metra commuter rail project, that consists of the following elements: the Kane County extension; the North Central double-tracking project; and the Southwest corridor extension.

[(2) $565,600,000 for the Chicago Transit Authority project that consists of the following elements: Ravenswood Branch station and line improvements and the Douglas Branch reconstruction project.

[(3) For new fixed guideways and extensions to existing fixed guideway systems other than for projects referred to in paragraphs (1) and (2); except that for fiscal year 2001, such increase under this paragraph shall not be available for allocation by the department or for making future obligations of the Government and contingent commitments until April 1, 2001.

[(D) Of the amount that would be available under subparagraph (A) if subparagraph (B) were not in effect and would have otherwise been allocated by the Federal Transit Administration to those projects referred to in subparagraphs (C)(1) and (C)(2) shall be available as follows:

[(1) $60,000,000 for the Minneapolis Hiawatha corridor light rail project, which shall be in addition to amounts otherwise allocated under subparagraph (A), for a total of $334,300,000.

[(2) $217,800,000 for the Dulles corridor bus rapid transit project, that consists of a rail extension from the West Falls Church metrorail station to Tysons Corner, Virginia and bus rapid transit from Tysons Corner to the Dulles International Airport.

[(E) Any amount that would be available under subparagraph (A) if subparagraph (B) were not in effect and would have otherwise been allocated by the Federal Transit Administration to those projects referred to in subparagraphs (C)(1) and (C)(2), shall not be available for allocation by the department or for making future obligations of the Government and

contingent commitments until April 1, 2001, except for those projects referred to in subparagraph (D)(1) and (D)(2).

[(F) Future obligations of the Government and contingent commitments made against the contingent commitment authority under section 3032(g)(2) of the Intermodal Surface Transportation Efficiency Act of 1991 for the San Francisco BART to the Airport project for fiscal years 2002, 2003, 2004, 2005 and 2006 shall be charged against section 3032(g)(2) of the Intermodal Surface Transportation Efficiency Act of 1991.

[(G) Any amount that would be available under subparagraph (A) if subparagraph (F) were not in effect and would otherwise have been allocated by the Federal Transit Administration to the project in subparagraph (F) shall not be available for allocation by the department or for making future obligations of the Government and contingent commitments until April 1, 2001.

[(h) GOVERNMENT'S SHARE OF NET PROJECT COST.—Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary of Transportation shall estimate the net project cost. A grant for the project is for 80 percent of the net project cost, unless the grant recipient requests a lower grant percentage. The remainder shall be provided in cash from a source other than amounts of the Government. Transit system amounts that make up the remainder must be from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital. The remainder for a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the applicant satisfies the Secretary that only amounts other than amounts of the Government were used and that the purchase was made for use on the extension. A refund or reduction of the remainder may be made only if a refund of a proportional amount of the grant of the Government is made at the same time.

[(i) LOAN TERM REQUIREMENTS.—Except for a loan under subsection (b) of this section, a loan, including a renewal or extension of the loan, may be made, and a security or obligation may be bought, only if it has a maturity date of not more than 40 years. Interest on a loan may not be less than—

[(1) a rate the Secretary of the Treasury establishes, considering the current average yield on outstanding marketable obligations of the Government that have remaining periods of maturity comparable to the average maturity of the loan, adjusted to the nearest .125 percent; plus

[(2) an allowance the Secretary of Transportation considers adequate to cover administrative costs and probable losses.

[(j) LOAN PAYMENT FORGIVENESS.—A grant agreement for a capital project may forgive repaying the loan and interest in place of a cash grant for the amount forgiven. The amount is part of the grant and part of the contribution of the Government to the cost of the project.

[(k) LIMITATION ON MAKING LOANS AND GRANTS FOR PROJECTS.—The Secretary of Transportation may not make a loan under this section for a project for which a grant (except a relocation payment grant) is made under this section. However, the Secretary may make a project grant even though real property for the

project has been or will be acquired through a loan under subsection (b) of this section.

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

[(m) ALLOCATING AMOUNTS.—

[(1) IN GENERAL.—Of the amounts made available by or appropriated under section 5338(b) for grants and loans under this section for each of fiscal years 1998 through 2003 and for the period of October 1, 2003, through April 30, 2004—

[(A) 40 percent shall be available for fixed guideway modernization, except for the period beginning on October 1, 2003, and ending on April 30, 2004, during which $699,642,775 will be available;

[(B) 40 percent shall be available for capital projects for new fixed guideway systems and extensions to existing fixed guideway systems, except for the period beginning on October 1, 2003, and ending on April 30, 2004, during which $767,657,109 will be available; and

[(C) 20 percent shall be available to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities, except for the period beginning on October 1, 2003 and ending on April 30, 2004, during which $352,110,220 will be available.

[(2) NEW FIXED GUIDEWAY GRANTS.—

[(A) LIMITATION ON AMOUNTS AVAILABLE FOR ACTIVITIES OTHER THAN FINAL DESIGN AND CONSTRUCTION.—Not more than 8 percent of the amounts made available in each fiscal year by paragraph (1)(B) shall be available for activities other than final design and construction.

[(B) FUNDING FOR FERRY BOAT SYSTEMS.—

[(i) AMOUNTS UNDER (1)(B).—Of the amounts made available under paragraph (1)(B), $10,400,000 shall be available in each of fiscal years 1999 through 2003 for capital projects in Alaska or Hawaii, for new fixed guideway systems and extensions to existing fixed guideway systems that are ferry boats or ferry terminal facilities, or that are approaches to ferry terminal facilities.

[(ii) AMOUNTS UNDER 5338(h)(5).—Of the amounts appropriated under section 5338(h)(5), $3,600,000 shall be available in each of fiscal years 1999 through 2003 for capital projects in Alaska or Hawaii, for new fixed guideway systems and extensions to existing fixed guideway systems that are ferry boats or ferry terminal facilities, or that are approaches to ferry terminal facilities.

[(iii) OCTOBER 1, 2003 THROUGH APRIL 30, 2004.—Of the amounts made available under paragraph (1)(B), $6,066,667 shall be available for the period beginning on October 1, 2003, and ending on April 30, 2004, for capital projects described in clause (i).

[(3) BUS AND BUS FACILITY GRANTS.—

[(A) CONSIDERATION.—In making grants under paragraph (1)(C), the Secretary shall consider the age of buses, bus fleets, related equipment, and bus-related facilities.

[(B) FUNDING FOR BUS TESTING FACILITY.—Of the amounts made available under paragraph (1)(C), $3,000,000 shall be available in each of fiscal years 1998 through 2003 (and $1,750,000 shall be available for the period October 1, 2003, through April 30, 2004) to carry out section 5318.

[(C) FUNDING FOR CLEAN FUELS.—Of the amounts made available under paragraph (1)(C), $50,000,000 shall be available in each of fiscal years 1999 through 2003 (and $20,833,334 shall be available for the period October 1, 2003, through February 29, 2004) to carry out section 5308.

[(D) OTHER THAN URBANIZED AREAS.—Of amounts made available by paragraph (1)(C), not less than 5.5 percent shall be available in each fiscal year for other than urbanized areas.

[(4) ELIGIBILITY FOR ASSISTANCE FOR MULTIPLE PROJECTS.—A person applying for or receiving assistance for a project described in subparagraph (A), (B), or (C) of paragraph (1) may receive assistance for a project described in any other of such subparagraphs.

[(n) UNDERTAKING PROJECTS IN ADVANCE.—(1) The Secretary of Transportation may pay the Government's share of the net project cost to a State or local governmental authority that carries out any part of a project described in this section or a substitute transit project described in section 103(e)(4) of title 23 without the aid of amounts of the Government and according to all applicable procedures and requirements if—

[(A) the State or local governmental authority applies for the payment;

[(B) the Secretary approves the payment; and

[(C) before carrying out the part of the project, the Secretary approves the plans and specifications for the part in the same way as other projects under this section or section 103(e)(4) of title 23.

[(2) The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the State or local governmental authority to the extent proceeds of the bonds are expended in carrying out the part. However, the amount of interest under this paragraph may not be more than the most favorable interest terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a manner satisfactory to the Secretary of Transportation, that the applicant has shown reasonable diligence in seeking the most favorable financial terms.

[(3) The Secretary of Transportation shall consider changes in capital project cost indices when determining the estimated cost under paragraph (2) of this subsection.

[(o) USE OF DEOBLIGATED AMOUNTS.—An amount available under this section that is deobligated may be used for any purpose under this section.

[(o) REPORTS.—

[(1) FUNDING LEVELS AND ALLOCATIONS OF FUNDS FOR FIXED GUIDEWAY SYSTEMS.—

[(A) ANNUAL REPORT.—Not later than the first Monday in February of each year, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report that includes a proposal on the allocation of amounts to be made available to finance grants and loans for capital projects for new fixed guideway systems and extensions to existing fixed guideway systems among applicants for those amounts.

[(B) RECOMMENDATIONS ON FUNDING.—The annual report under this paragraph shall include evaluations and ratings, as required under subsection (e), for each project that is authorized or has received funds under this section since the date of enactment of the Federal Transit Act of 1998 or October 1 of the preceding fiscal year, whichever date is earlier. The report shall also include recommendations of projects for funding based on the evaluations and ratings and on existing commitments and anticipated funding levels for the next 3 fiscal years and for the next 10 fiscal years based on information currently available to the Secretary.

[(2) SUPPLEMENTAL REPORT ON NEW STARTS.—The Secretary shall submit a report to Congress on the 31st day of August of each year that describes the Secretary's evaluation and rating of each project that has completed alternatives analysis or preliminary engineering since the date of the last report. The report shall include all relevant information that supports the evaluation and rating of each project, including a summary of each project's financial plan.

[(3) ANNUAL GAO REVIEW.—The General Accounting Office shall—

[(A) conduct an annual review of—

[(i) the processes and procedures for evaluating and rating projects and recommending projects; and

[(ii) the Secretary's implementation of such processes and procedures; and

[(B) shall report to Congress on the results of such review by April 30 of each year.

[(p) PROJECT DEFINED.—In this section, the term "project" means, with respect to a new fixed guideway system or extension to an existing fixed guideway system, a minimum operable segment of the project.]

(c) MAJOR CAPITAL INVESTMENT GRANTS OF $75,000,000 OR MORE.—

(1) FULL FUNDING GRANT AGREEMENT.—A major new fixed guideway capital project financed under this subsection shall be carried out through a full funding grant agreement. The Secretary shall enter into a full funding grant agreement based on the evaluations and ratings required under this subsection. The Secretary shall not enter into a full funding grant agreement

for a project unless that project is authorized for final design and construction.

(2) APPROVAL OF GRANTS.—The Secretary may approve a grant under this section for a major new fixed guideway capital project only if the Secretary, based upon evaluations and considerations set forth in paragraph (3), determines that the proposal 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, transit supportive policies, and existing land use; and

(C) supported by an acceptable degree of local financial commitment (including evidence of stable and dependable financing sources) to construct, maintain, and operate the system or extension.

(3) CONSIDERATIONS.—

(A) RESULTS OF ALTERNATIVES ANALYSIS AND PRELIMINARY ENGINEERING.—In evaluating a proposed project for purposes of making the finding required by paragraph (2)(A), the Secretary shall analyze and consider the results of the alternatives analysis and preliminary engineering for the project.

(B) PROJECT JUSTIFICATION.—In evaluating a proposed project for purposes of making the finding required by paragraph (2)(B), the Secretary shall—

(i) consider the direct and indirect costs of relevant alternatives;

(ii) consider factors such as congestion relief, improved mobility, air pollution, noise pollution, energy consumption, and all associated ancillary and mitigation costs necessary to carry out each alternative analyzed and recognize reductions in local infrastructure costs achieved through compact land use development;

(iii) identify and consider public transportation supportive existing land use policies and future patterns and the cost of suburban sprawl;

(iv) consider the degree to which the project increases the mobility of the public transportation dependent population or promotes economic development;

(v) consider population density and current transit ridership in the corridor;

(vi) consider the technical capability of the grant recipient to construct the project;

(vii) adjust the project justification to reflect differences in local land, construction, and operating costs; and

(viii) consider other factors that the Secretary determines appropriate to carry out this chapter.

(C) LOCAL FINANCIAL COMMITMENT.—In evaluating a proposed 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 deter-

mines 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 operate the overall proposed public transportation system (including essential feeder bus and other services necessary to achieve the projected ridership levels) without requiring a reduction in existing public transportation services to operate the proposed project.

(D) ASSESSMENT OF LOCAL FINANCING.—In assessing the stability, reliability, and availability of proposed sources of local financing under paragraph (2)(C), the Secretary shall consider—

(i) existing grant commitments;

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

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

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

(4) EVALUATION AND RATING OF PROJECTS.—A proposed project under this subsection may advance from alternatives analysis to preliminary engineering, and may advance from preliminary engineering to final design and construction, only if the Secretary finds that the project meets the requirements of this section and there is a reasonable likelihood that the project will continue to meet such requirements. In making the findings, the Secretary shall evaluate and rate the project as "highly recommended", "recommended", or "not recommended" based on the results of 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.

(5) MAJOR DEFINED.—In this section, the term "major", as used with respect to a new fixed guideway capital project, means the Federal assistance provided or to be provided under this section for the project is $75,000,000 or more.

(d) CAPITAL INVESTMENT GRANTS LESS THAN $75,000,000.—

(1) IN GENERAL.—Subject to the provisions of this subsection, if the Federal assistance provided or to be provided under this section with respect to a new fixed guideway capital project is less than $75,000,000, and not less than $25,000,000, the project shall be subject to the requirements in this subsection.

(2) SELECTION CRITERIA.—The Secretary may provide Federal assistance under this subsection with respect to a proposed project only if the Secretary finds that the project is—

(A) based on the results of planning and alternatives analysis;

(B) justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development; and

(C) supported by an acceptable degree of local financial commitment.

(3) PLANNING AND ALTERNATIVES.—In evaluating a project under paragraph (2)(A), the Secretary shall analyze and consider the results of planning and alternatives analysis for the project.

(4) PROJECT JUSTIFICATION.—For purposes of making the finding under paragraph (2)(B), the Secretary shall—

(A) determine the degree to which the project is consistent with local land use policies and is likely to achieve local developmental goals;

(B) determine the cost effectiveness of the project at the time of the initiation of revenue service;

(C) determine the degree to which the project will have a positive effect on local economic development;

(D) consider the reliability of the forecasts of costs and ridership associated with the project; and

(E) consider other factors that the Secretary determines appropriate to carry out this subsection.

(5) LOCAL FINANCIAL COMMITMENT.—For purposes of paragraph (2)(C), the Secretary shall require that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable.

(6) ADVANCEMENT OF PROJECT TO DEVELOPMENT AND CONSTRUCTION.—

(A) GENERAL RULE.—A proposed project under this subsection may advance from planning and alternatives analysis to project development and construction only if—

(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 "recommended" or "not recommended" based on the results of the analysis of the project justification criteria and the degree of local financial commitment, as required by this subsection.

(7) CONTENTS OF PROJECT CONSTRUCTION GRANT AGREEMENT.—A project construction grant agreement under this subsection shall specify the scope of the project to be constructed, the estimated net project cost of the project, the schedule under which the project shall be constructed, the maximum amount of funding to be obtained under this subsection, the proposed schedule for obligation of future Federal grants, and the sources of funding from other than the Government. The agreement may include a commitment on the part of the Secretary to provide funding for the project in future fiscal years.

(8) LIMITATION ON ENTRY INTO CONSTRUCTION GRANT AGREEMENT.—The Secretary may enter into a project construction grant agreement for a project under this subsection only if the project is authorized for construction and has been rated as "recommended" under this subsection.

(9) REGULATIONS.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations establishing an evaluation and rating process for proposed projects under this subsection that is based on the results of project justification and local financial commitment, as required under this subsection.

(10) FIXED GUIDEWAY CAPITAL PROJECT.—In this subsection, the term "fixed guideway capital project" includes a corridor-based public transportation bus capital project if the majority of the project's corridor right-of-way is dedicated alignment for exclusive use by public transportation vehicles for all or part of the day.

(e) PREVIOUSLY ISSUED LETTER OF INTENT OR FULL FUNDING GRANT AGREEMENT.—Subsections (c) and (d) do not apply to projects for which the Secretary has issued a letter of intent or entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 2004.

(f) LETTERS OF INTENT, FULL FUNDING GRANT AGREEMENTS, AND EARLY SYSTEMS WORK AGREEMENTS.—

(1) LETTERS OF INTENT.—

(A) AMOUNTS INTENDED TO BE OBLIGATED.—The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a capital project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project. When a letter is issued for fixed guideway projects, the amount shall be sufficient to complete at least an operable segment.

(B) TREATMENT.—The issuance of a letter under subparagraph (A) is deemed not to be an obligation under sections 1108(c), 1108(d), 1501, and 1502(a) of title 31 or an administrative commitment.

(2) FULL FUNDING GRANT AGREEMENTS.—

(A) TERMS.—The Secretary may make a full funding grant agreement with an applicant. The agreement shall—

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

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

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

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

(B) SPECIAL FINANCIAL RULES.—

(i) IN GENERAL.—An agreement under this paragraph obligates an amount of available budget authority specified in law and may include a commitment, contingent on amounts to be specified in law in ad-

vance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law.

(ii) STATEMENT OF CONTINGENT COMMITMENT.—The agreement shall state that the contingent commitment is not an obligation of the Government.

(iii) INTEREST AND OTHER FINANCING COSTS.—Interest and other financing costs of efficiently carrying out a part of the project within a reasonable time are a cost of carrying out the project under a full funding grant agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

(iv) COMPLETION OF OPERABLE SEGMENT.—The amount stipulated in an agreement under this paragraph for a fixed guideway project shall be sufficient to complete at least an operable segment.

(3) EARLY SYSTEM WORK AGREEMENTS.—

(A) CONDITIONS.—The Secretary may make an early systems work agreement with an applicant if a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary finds there is reason to believe—

(i) a full funding grant agreement for the project will be made; and

(ii) the terms of the work agreement will promote ultimate completion of the project more rapidly and at less cost.

(B) CONTENTS.—

(i) IN GENERAL.—A work agreement under this paragraph obligates an amount of available budget authority specified in law and shall provide for reimbursement of preliminary costs of carrying out the project, including land acquisition, timely procurement of system elements for which specifications are decided, and other activities the Secretary decides are appropriate to make efficient, long-term project management easier.

(ii) PERIOD COVERED.—A work agreement under this paragraph shall cover the period of time the Secretary considers appropriate. The period may extend beyond the period of current authorization.

(iii) INTEREST AND OTHER FINANCING COSTS.—Interest and other financing costs of efficiently carrying out the work agreement within a reasonable time are a cost of carrying out the agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

(iv) FAILURE TO CARRY OUT PROJECT.—If an applicant does not carry out the project for reasons within the control of the applicant, the applicant shall repay all Government payments made under the work agreement plus reasonable interest and penalty charges the Secretary establishes in the agreement.

(4) LIMITATION ON AMOUNTS.—

(A) MAJOR CAPITAL INVESTMENT GRANTS CONTINGENT COMMITMENT AUTHORITY.—The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all outstanding letters of intent, full funding grant agreements, and early systems work agreements under this subsection for major new fixed guideway capital projects may be not more than the greater of the amount authorized under sections 5338(b) and 5338(h)(1) for such projects or an amount equivalent to the last 3 fiscal years of funding allocated under subsections (m)(1)(B) and (m)(2)(B)(ii) for such projects, less an amount the Secretary reasonably estimates is necessary for grants under this section for those of such projects that are not covered by a letter or agreement. The total amount covered by new letters and contingent commitments included in full funding grant agreements and early systems work agreements for such projects may be not more than a limitation specified in law.

(B) OTHER CONTINGENT COMMITMENT AUTHORITY.—The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all project construction grant agreements and early system work agreements under this subsection for small capital projects described in subsection (d) may be not more than the greater of the amount allocated under subsection (m)(2)(A) for such projects or an amount equivalent to the last fiscal year of funding allocated under subsection (m)(2)(A) for such projects, less an amount the Secretary reasonably estimates is necessary for grants under this section for those of such projects that are not covered by an agreement. The total amount covered by new contingent commitments included in project construction grant agreements and early systems work agreements for such projects may be not more than a limitation specified in law.

(C) INCLUSION OF CERTAIN COMMITMENTS.—Future obligations of the Government and contingent commitments made against the contingent commitment authority under section 3032(g)(2) of the Intermodal Surface Transportation Efficiency Act of 1991 (106 Stat. 2125) for the San Francisco BART to the Airport project for fiscal years 2002, 2003, 2004, 2005, and 2006 shall be charged against section 3032(g)(2) of that Act.

(D) APPROPRIATION REQUIRED.—An obligation may be made under this subsection only when amounts are appropriated for the obligation.

(5) NOTIFICATION OF CONGRESS.—At least 60 days before issuing a letter of intent or entering into a full funding grant agreement or project construction grant agreement under this

section, the Secretary shall notify, in writing, the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement as well as the evaluations and ratings for the project.

(g) GOVERNMENT'S SHARE OF NET PROJECT COST.—

(1) FEDERAL SHARE.—Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net project cost. A grant for the project shall be for 80 percent of the net capital project cost, unless the grant recipient requests a lower grant percentage.

(2) REMAINDER OF NET PROJECT COST.—The remainder of net project costs shall be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

(3) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section, including paragraph (1) and subsections (c)(3)(D)(iv) and (c)(4), shall be construed as authorizing the Secretary to require a non-Federal financial commitment for a project that is more than 20 percent of the net capital project cost.

(4) SPECIAL RULE FOR ROLLING STOCK COSTS.—In addition to amounts allowed pursuant to paragraph (1), a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the applicant satisfies the Secretary that only amounts other than amounts of the Government were used and that the purchase was made for use on the extension. A refund or reduction of the remainder may be made only if a refund of a proportional amount of the grant of the Government is made at the same time.

(5) LIMITATION ON APPLICABILITY.—This subsection does not apply to projects for which the Secretary has entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 2004.

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

(i) REPORTS ON NEW STARTS.—

(1) ANNUAL DOT REPORT.—Not later than the first Monday in February of each year, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report that includes—

(A) a proposal of allocations of amounts to be available to finance grants for new fixed guideway capital projects among applicants for these amounts;

(B) evaluations and ratings, as required under subsection (c), for each such project that is authorized by the Federal Public Transportation Act of 2004; and

(C) recommendations of such projects for funding based on the evaluations and ratings and on existing commitments and anticipated funding levels for the next 3 fiscal years and for the next 10 fiscal years based on information currently available to the Secretary.

(2) ANNUAL GAO REVIEW.—The Comptroller General shall—

(A) conduct an annual review of—

(i) the processes and procedures for evaluating, rating, and recommending new fixed guideway capital projects; and

(ii) the Secretary's implementation of such processes and procedures; and

(B) report to Congress on the results of such review by May 31 of each year.

(j) UNDERTAKING PROJECTS IN ADVANCE.—

(1) IN GENERAL.—The Secretary may pay the Government's share of the net capital project cost to a State or local governmental authority that carries out any part of a project described in this section without the aid of amounts of the Government and according to all applicable procedures and requirements if—

(A) the State or local governmental authority applies for the payment;

(B) the Secretary approves the payment; and

(C) before carrying out the part of the project, the Secretary approves the plans and specifications for the part in the same way as other projects under this section.

(2) FINANCING COSTS.—

(A) IN GENERAL.—The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the State or local governmental authority to the extent proceeds of the bonds are expended in carrying out the part.

(B) LIMITATION ON AMOUNT OF INTEREST.—The amount of interest under this paragraph may not be more than the most favorable interest terms reasonably available for the project at the time of borrowing.

(C) CERTIFICATION.—The applicant shall certify, in a manner satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financial terms.

(3) CAPITAL PROJECT COST INDICES.—The Secretary shall consider changes in capital project cost indices when determining the estimated cost under paragraph (2).

(k) BUS AND BUS FACILITIES PROJECTS.—

(1) CONSIDERATIONS.—In making grants under subsections (m)(1)(C) and (m)(2)(B)(iii), the Secretary shall consider the age of buses, bus fleets, related equipment, and bus-related facilities.

(2) FUEL CELL BUS PROGRAM.—Of the amounts made available under subsections (m)(1)(C) and (m)(2)(B)(iii) for a fiscal year, the following amounts shall be set aside for the national fuel cell bus technology development program under section 3039 of the Federal Public Transportation Act of 2004:

(A) $4,849,950 for fiscal year 2004.

(B) $10,000,000 for fiscal year 2005.
(C) $11,000,000 for fiscal year 2006.
(D) $12,000,000 for fiscal year 2007.
(E) $13,000,000 for fiscal year 2008.
(F) $14,000,000 for fiscal year 2009.

(l) AVAILABILITY OF AMOUNTS.—An amount made available or appropriated under section 5338(b), 5338(g), or 5338(h) for replacement, rehabilitation, and purchase of buses and related equipment and construction of bus-related facilities or for new fixed guideway capital projects shall remain available for 3 fiscal years, including the fiscal year in which the amount is made available or appropriated. Any of such amounts that are unobligated at the end of the 3-fiscal-year period shall be deobligated and may be used by the Secretary for any purpose under this section.

(m) ALLOCATING AMOUNTS.—

(1) FISCAL YEAR 2004.—Of the amounts made available by or appropriated under section 5338(b), $85,000,000 shall be allocated to new fixed guideway capital projects under subsection (d). Remaining amounts shall be allocated as follows:

(A) 40 percent for fixed guideway modernization;

(B) 40 percent for major new fixed guideway capital projects; and

(C) 20 percent to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities.

(2) FISCAL YEARS 2005–2009.—The total amount of funds made available by section 5338(g), and appropriated under section 5338(h), for each of fiscal years 2005 through 2009 shall be allocated in the fiscal year as follows:

(A) SMALL CAPITAL PROJECTS.—From funds appropriated under section 5338(h) for new fixed guideway capital projects described in subsection (d)—

(i) $135,000,000 in fiscal year 2005;
(ii) $175,000,000 in fiscal year 2006;
(iii) $200,000,000 in fiscal year 2007;
(iv) $200,000,000 in fiscal year 2008; and
(v) $225,000,000 in fiscal year 2009.

(B) REMAINDER.—After the allocation under subparagraph (A), the remainder of such total amount shall be allocated as follows:

(i) 40 percent for fixed guideway modernization, to be derived from funds made available under section 5338(g).

(ii) 40 percent for major new fixed capital guideway projects, to be derived from funds appropriated under section 5338(h).

(iii) 20 percent to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities, to be derived from funds made available under section 5338(g).

(3) FUNDING FOR FERRY BOAT SYSTEMS.—Of the amounts made available under paragraphs (1)(B) and (2)(B)(ii), $10,400,000 shall be available in each of fiscal years 2004 through 2009 for new fixed guideway capital projects in Alaska

or Hawaii that are for ferry boats or ferry terminal facilities or that are for approaches to ferry terminal facilities.

(n) NEW FIXED GUIDEWAY CAPITAL PROJECT DEFINED.—In this section, the term "new fixed guideway capital project" means a minimum operable segment of a capital project for a new fixed guideway system or extension to an existing fixed guideway system.

[§ 5310. Formula grants and loans for special needs of elderly individuals and individuals with disabilities

[(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants and loans to—

[(1) State and local governmental authorities to help them provide mass transportation service planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities; and

[(2) the chief executive officer of each State for allocation to—

[(A) private nonprofit corporations and associations to help them provide that transportation service when the transportation service provided under clause (1) of this subsection is unavailable, insufficient, or inappropriate; or

[(B) governmental authorities—

[(i) approved by the State to coordinate services for elderly individuals and individuals with disabilities; or

[(ii) that certify to the chief executive officer that no nonprofit corporation or association readily is available in an area to provide service under this subsection.

[(b) APPORTIONING AND TRANSFERRING AMOUNTS.—The Secretary shall apportion amounts made available under section 5338(a) of this title under a formula the Secretary administers that considers the number of elderly individuals and individuals with disabilities in each State. Any State's apportionment remaining available for obligation at the beginning of the 90-day period before the end of the period of availability of the apportionment is available to the chief executive officer of the State for transfer to supplement amounts apportioned to the State under section 5311(c) or 5336(a)(1) of this title.

[(c) STATE PROGRAM OF PROJECTS.—Amounts made available for this section may be used for transportation projects to assist in providing transportation services for elderly individuals and individuals with disabilities that are included in a State program of projects. A program shall be submitted annually to the Secretary for approval and shall contain an assurance that the program provides for maximum feasible coordination of transportation services assisted under this section with transportation services assisted by other United States Government sources.

[(d) ELIGIBLE CAPITAL EXPENSES.—A recipient of amounts under this section may include acquiring transportation services as an eligible capital expense.

[(e) APPLICATION OF SECTION 5309.—(1) A grant or loan under subsection (a)(1) of this section is subject to all requirements of a grant or loan under section 5309 of this title, and is deemed to have been made under section 5309.

[(2) A grant or loan under subsection (a)(2) of this section is subject to requirements similar to those under paragraph (1) of this subsection to the extent the Secretary considers appropriate.

[(f) MINIMUM REQUIREMENTS AND PROCEDURES FOR RECIPIENTS.—In carrying out section 5301(d) of this title, section 165(b) of the Federal-Aid Highway Act of 1973 (Public Law 93–87, 87 Stat. 282), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (consistent with Government-wide standards to carry out section 504), the Secretary shall prescribe regulations establishing minimum criteria a recipient of Government financial assistance under this chapter or a law referred to in section 165(b) shall comply with in providing mass transportation service to elderly individuals and individuals with disabilities and procedures for the Secretary to monitor compliance with the criteria. The regulations shall include provisions for ensuring that organizations and groups representing elderly individuals and individuals with disabilities are given adequate notice of, and an opportunity to comment on, the proposed activity of a recipient to achieve compliance with the regulations.

[(g) LEASING VEHICLES.—The Secretary shall prescribe guidelines allowing vehicles bought under this section to be leased to local governmental authorities to improve transportation services designed to meet the special needs of elderly individuals and individuals with disabilities.]

§ 5310. Formula grants for special needs of elderly individuals and individuals with disabilities

(a) GENERAL AUTHORITY.—

(1) GRANTS.—The Secretary may make grants to States and local governmental authorities under this section for public transportation capital projects, and operating costs associated with public transportation capital projects, planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities.

(2) SUBRECIPIENTS.—A State that receives a grant under this section may allocate the amounts of the grant to—

(A) a private nonprofit organization if the public transportation service provided under paragraph (1) is unavailable, insufficient, or inappropriate; or

(B) a governmental authority that—

(i) is approved by the State to coordinate services for elderly individuals and individuals with disabilities; or

(ii) certifies that there are not any nonprofit organizations readily available in the area to provide the services described under paragraph (1).

(3) ACQUIRING PUBLIC TRANSPORTATION SERVICES.—A public transportation capital project under this section may include acquisition of public transportation services as an eligible capital expense.

(4) ADMINISTRATIVE EXPENSES.—A State or local governmental authority may use not more than 10 percent of the amounts apportioned to the State under this section to administer, plan, and provide technical assistance for a project funded under this section.

(b) APPORTIONMENT AND TRANSFERS.—

(1) APPORTIONMENT.—

(A) FORMULA.—The Secretary shall apportion amounts made available to carry out this section under a formula the Secretary administers that considers the number of elderly individuals and individuals with disabilities in each State.

(B) LOW DENSITY ADJUSTMENT.—In administering the apportionment formula under subparagraph (A)—

(i) in the case of a State with a population density of 10 or fewer persons per square mile, the Secretary shall multiply by a factor of 2 the number of elderly individuals and individuals with disabilities in the State (as determined using the most recent decennial United States Census); and

(ii) in the case of a State with a population density of more than 10 but equal to or fewer than 30 persons per square mile, the Secretary shall multiply by a factor of 1.25 the number of elderly individuals and individuals with disabilities in the State (as determined using the most recent decennial United States Census).

(2) TRANSFERS.—Any State's apportionment remaining available for obligation at the beginning of the 90-day period before the end of the period of availability of the apportionment is available to the State for transfer to supplement amounts apportioned to the State under section 5311(c) or 5336(a)(1), or both. Any funds transferred pursuant to this paragraph shall be made available only for eligible projects as described in this section.

(c) GOVERNMENT'S SHARE OF COSTS.—

(1) CAPITAL PROJECTS.—A grant for a capital project under this section shall be for 80 percent of the net capital costs of the project, as determined by the Secretary; except that in the case of a State described in section 120(b)(1) of title 23, such percentage shall be increased in accordance with such section.

(2) OPERATING ASSISTANCE.—A grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

(3) REMAINDER.—The remainder of the net project costs—

(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and

(B) may be derived from amounts appropriated to or made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation.

(4) USE OF CERTAIN FUNDS.—For purposes of paragraph (3)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

(d) GRANT REQUIREMENTS.—

(1) IN GENERAL.—A grant under this section shall be subject to all requirements of a grant under section 5307. A grant to

a subrecipient under this section shall be subject to such requirements to the extent the Secretary considers appropriate.

(2) COORDINATION WITH NONPROFIT PROVIDERS.—A recipient that transfers funds to an apportionment under section 5336(a)(1) pursuant to subsection (b)(2) shall certify that the project for which the funds are requested under this section has been coordinated with nonprofit providers of services.

(3) PROJECT SELECTION AND PLANNING.—A recipient of funds under this section shall certify that—

(A) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and

(B) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

(4) FAIR AND EQUITABLE DISTRIBUTION.—A recipient of a grant under this section shall certify that allocations of the grant to subrecipients are distributed on a fair and equitable basis.

(e) STATE PROGRAM.—

(1) IN GENERAL.—Amounts made available to carry out this section may be used for transportation projects to assist in providing transportation services for elderly individuals and individuals with disabilities that are included in a State program of projects.

(2) SUBMISSION AND APPROVAL.—A program shall be submitted annually to the Secretary for approval and shall contain an assurance that the program provides for maximum feasible coordination of transportation services assisted under this section with transportation services assisted by other Government sources.

(f) LEASING VEHICLES.—Vehicles acquired under this section may be leased to local governmental authorities to improve transportation services designed to meet the special needs of elderly individuals and individuals with disabilities.

[(h)**]** *(g)* MEAL DELIVERY SERVICE TO HOMEBOUND INDIVIDUALS.—**[**Mass**]** *Public* transportation service providers receiving assistance under this section or section 5311(c) of this title may coordinate and assist in regularly providing meal delivery service for homebound individuals if the delivery service does not conflict with providing **[**mass**]** *public* transportation service or reduce service to **[**mass**]** *public* transportation passengers.

[(i)**]** *(h)* TRANSFER OF FACILITIES AND EQUIPMENT.—With the consent of the recipient currently having a facility or equipment acquired with assistance 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.

[(j)**]** *(i)* FARES NOT REQUIRED.—This chapter does not require that elderly individuals and individuals with disabilities be charged a fare.

§ 5311. Formula grants for other than urbanized areas

[(a) DEFINITION.—In this section, "recipient" includes a State authority, a local governmental authority, a nonprofit organization, and an operator of mass transportation service.

[(b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may make grants for transportation projects that are included in a State program of mass transportation service projects (including service agreements with private providers of mass transportation service) for areas other than urbanized areas. The program shall be submitted annually to the Secretary. The Secretary may approve the program only if the Secretary finds that the program provides a fair distribution of amounts in the State, including Indian reservations, and the maximum feasible coordination of mass transportation service assisted under this section with transportation service assisted by other United States Government sources.

[(2) The Secretary of Transportation shall carry out a rural transportation assistance program in nonurbanized areas. In carrying out this paragraph, the Secretary may make grants and contracts for transportation research, technical assistance, training, and related support services in nonurbanized areas.

[(c) APPORTIONING AMOUNTS.—The Secretary of Transportation shall apportion amounts made available under section 5338(a) of this title so that the chief executive officer of each State receives an amount equal to the total amount apportioned multiplied by a ratio equal to the population of areas other than urbanized areas in a State divided by the population of all areas other than urbanized areas in the United States, as shown by the most recent of the following: the latest Government census, the population estimate the Secretary of Commerce prepares after the 4th year after the date the latest census is published, or the population estimate the Secretary of Commerce prepares after the 8th year after the date the latest census is published. The amount may be obligated by the chief executive officer for 2 years after the fiscal year in which the amount is apportioned. An amount that is not obligated at the end of that period shall be reapportioned among the States for the next fiscal year.]

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

(1) RECIPIENT.—The term "recipient" means a State that receives a Federal transit program grant directly from the Government.

(2) SUBRECIPIENT.—The term "subrecipient" means a State or local governmental authority, nonprofit organization, or operator of public transportation services that receives a Federal transit program grant indirectly through a recipient.

(b) GENERAL AUTHORITY.—

(1) GRANTS.—Except as provided in paragraph (2), the Secretary may make grants to other than urbanized areas under this section for the following:

(A) Public transportation capital projects.

(B) Operating costs of equipment and facilities for use in public transportation.

(C) Acquisition of public transportation services, including service agreements with private providers of public transportation services.

(2) STATE PROGRAM.—

(A) IN GENERAL.—Amounts made available to carry out this section shall be used for projects included in a State program for public transportation projects, including service agreements with private providers of public transportation.

(B) SUBMISSION.—The program shall be submitted annually to the Secretary for approval.

(C) APPROVAL.—The Secretary may approve the program only if the Secretary finds that the program provides a fair distribution of amounts in the State, including Indian reservations, and the maximum feasible coordination of public transportation service assisted under this section with transportation service assisted by other Federal sources.

(3) RURAL TRANSPORTATION ASSISTANCE PROGRAM.—

(A) IN GENERAL.—The Secretary shall carry out a rural transportation assistance program in other than urbanized areas.

(B) GRANTS AND CONTRACTS.—In carrying out this paragraph, the Secretary may use not more than 2 percent of the amount made available to carry out this section to make grants and contracts for transportation research, technical assistance, training, and related support services in other than urbanized areas.

(C) PROJECTS OF A NATIONAL SCOPE.—Not more than 15 percent of the amounts available under subparagraph (B) may be used by the Secretary to carry out projects of a national scope, with the remaining balance provided to the States.

(c) APPORTIONMENTS.—

(1) IN GENERAL.—The Secretary shall apportion amounts made available to carry out this section among the States in the ratio that—

(A) the population of other than urbanized areas in each State, as shown by the most recent Government decennial census of population; bears to

(B) the population of all other than urbanized areas in the United States, as shown by that census.

(2) LOW DENSITY ADJUSTMENT.—In administering the apportionment formula under paragraph (1)—

(A) in the case of a State with a population density of 10 or fewer persons per square mile in other than urbanized areas of the State, the Secretary shall multiply by a factor of 1.5 the population of such other than urbanized areas (as determined using the most recent decennial United States Census); and

(B) in the case of a State with a population density of more than 10 but equal to or fewer than 12 persons per square mile in other than urbanized areas of the State, the Secretary shall multiply by a factor of 1.25 the population of such other than urbanized areas (as determined using the most recent decennial United States Census).

(3) AVAILABILITY.—The amount apportioned to a State under this subsection may be obligated by the State for 2 fiscal years after the fiscal year in which the amount is apportioned. An

amount that is not obligated at the end of that period shall be reapportioned among the States for the next fiscal year.

* * * * * * *

(e) USE FOR ADMINISTRATION, *PLANNING,* AND TECHNICAL ASSISTANCE.—[(1)] The Secretary of Transportation may allow a State to use not more than 15 percent of the amount apportioned under this section to administer this section and provide technical assistance to a [recipient] *subrecipient*, including project planning, program and management development, coordination of [mass] *public* transportation programs, and research the State considers appropriate to promote effective delivery of [mass] *public* transportation to an area other than an urbanized area.

[(2) Except as provided in this section, 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.]

(f) INTERCITY BUS TRANSPORTATION.—(1) A State shall expend at least 15 percent of the amount made available in each fiscal year [after September 30, 1993,] to carry out a program to develop and support intercity bus transportation. Eligible activities under the program include—

(A) * * *

* * * * * * *

(E) coordinating rural connections between small [mass] *public* transportation operations and intercity bus carriers.

(2) [A State] *After consultation with affected intercity bus service providers, a State* does not have to comply with paragraph (1) of this subsection in a fiscal year in which the chief executive officer of the State certifies to the Secretary of Transportation that the intercity bus service needs of the State are being met adequately.

[(g) GOVERNMENT'S SHARE OF COSTS.—(1) In this subsection, "amounts of the Government or revenues" do not include amounts received under a service agreement with a State or local social service agency or a private social service organization.

[(2) A grant of the Government for a capital project under this section may not be more than 80 percent of the net cost of the project, as determined by the Secretary of Transportation. A grant to pay a subsidy for operating expenses may not be more than 50 percent of the net cost of the operating expense project. At least 50 percent of the remainder shall be provided in cash from sources other than amounts of the Government or revenues from providing mass transportation. Transit system amounts that make up the remainder shall be from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

[(h) AMOUNTS FOR OPERATING ASSISTANCE.—An amount made available under this section may be used for operating assistance.]

(g) GOVERNMENT'S SHARE OF COSTS.—

(1) CAPITAL PROJECTS.—A grant for a capital project under this section shall be for 80 percent of the net capital costs of the project, as determined by the Secretary; except that in the case of a State described in section 120(b)(1) of title 23, such percentage shall be increased in accordance with such section.

(2) OPERATING ASSISTANCE.—A grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

(3) REMAINDER.—The remainder of net project costs—

(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and

(B) may be derived from amounts appropriated to or made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation.

(4) USE OF CERTAIN FUNDS.—For purposes of paragraph (3)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

(5) LIMITATION ON OPERATING ASSISTANCE.—A 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.

[(i)] *(h)* TRANSFER OF FACILITIES AND EQUIPMENT.—With the consent of the recipient currently having a facility or equipment acquired with assistance 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.

[(j)] *(i)* RELATIONSHIP TO OTHER LAWS.—(1) Sections 5323(a)(1)(D) and 5333(b) of this title apply to this section but the Secretary of Labor may waive the application of section 5333(b).

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[§ 5312. Research, development, demonstration, and training projects]

§ 5312. Research, development, demonstration, and deployment projects

(a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS.—The Secretary of Transportation [(or the Secretary of Housing and Urban Development when required by section 5334(i) of this title)] may undertake, or make grants [or contracts]*, contracts, cooperative agreements, or other transactions* (including agreements with departments, agencies, and instrumentalities of the United States Government) for, research, development, [and demonstration projects]*, demonstration or deployment projects, or evaluation of technology of national significance* related to [urban mass] *public* transportation that the Secretary decides will [help reduce urban transportation needs, improve mass transportation service,] *improve transportation service* or help [mass] *public* transportation service meet the total [urban] transportation needs at a minimum cost. The Secretary may request and receive appropriate information from any source. This subsection does not limit the authority of the Secretary under another law.

[(b) RESEARCH, INVESTIGATIONS, AND TRAINING.—(1) The Secretary of Transportation (or the Secretary of Housing and Urban

Development when required by section 5334(i) of this title) may make grants to nonprofit institutions of higher learning—

[(A) to conduct competent research and investigations into the theoretical or practical problems of urban transportation; and

[(B) to train individuals to conduct further research or obtain employment in an organization that plans, builds, operates, or manages an urban transportation system.

[(2) Research and investigations under this subsection include—

[(A) the design and use of urban mass transportation systems and urban roads and highways;

[(B) the interrelationship between various modes of urban and interurban transportation;

[(C) the role of transportation planning in overall urban planning;

[(D) public preferences in transportation;

[(E) the economic allocation of transportation resources; and

[(F) the legal, financial, engineering, and esthetic aspects of urban transportation.

[(3) When making a grant under this subsection, the appropriate Secretary shall give preference to an institution that brings together knowledge and expertise in the various social science and technical disciplines related to urban transportation problems.

[(c) TRAINING FELLOWSHIPS AND INNOVATIVE TECHNIQUES AND METHODS.—(1) The Secretary of Transportation may make grants to States, local governmental authorities, and operators of mass transportation systems to provide fellowships to train personnel employed in managerial, technical, and professional positions in the mass transportation field.

[(2) The Secretary of Transportation may make grants to State and local governmental authorities for projects that will use innovative techniques and methods in managing and providing mass transportation.

[(3) A fellowship under this subsection may be for not more than one year of training in an institution that offers a program applicable to the mass transportation industry. The recipient of the grant shall select an individual on the basis of demonstrated ability and for the contribution the individual reasonably can be expected to make to an efficient mass transportation operation. A grant for a fellowship may not be more than the lesser of $24,000 or 75 percent of—

[(A) tuition and other charges to the fellowship recipient;

[(B) additional costs incurred by the training institution and billed to the grant recipient; and

[(C) the regular salary of the fellowship recipient for the period of the fellowship to the extent the salary is actually paid or reimbursed by the grant recipient.]

[(d)] *(b)* JOINT PARTNERSHIP PROGRAM FOR DEPLOYMENT OF INNOVATION.—

(1) DEFINITION OF CONSORTIUM.—In this subsection, the term "consortium"—

(A) means 1 or more public or private organizations located in the United States that provide [mass] *public* transportation service to the public and 1 or more businesses, including small- and medium-sized businesses, in-

corporated in a State, offering goods or services or willing to offer goods and services to [mass] *public* transportation operators; and

(B) may include, as additional members, public or private research organizations located in the United States, or State or local governmental authorities.

(2) GENERAL AUTHORITY.—The Secretary may, under terms and conditions that the Secretary prescribes, enter into grants, contracts, cooperative agreements, and [other agreements] *other transactions* with consortia selected in accordance with paragraph (4), to promote the early deployment of innovation in [mass] *public* transportation services, management, operational practices, or technology that has broad applicability. This paragraph shall be carried out in consultation with the transit industry by competitively selected consortia that will share costs, risks, and rewards of early deployment of innovation.

* * * * * * *

[(e)] *(c)* INTERNATIONAL MASS TRANSPORTATION PROGRAM.—

(1) ACTIVITIES.—The Secretary is authorized to engage in activities to inform the United States domestic [mass] *public* transportation community about technological innovations available in the international marketplace and activities that may afford domestic businesses the opportunity to become globally competitive in the export of [mass] *public* transportation products and services. Such activities may include—

(A) development, monitoring, assessment, and dissemination domestically of information about worldwide [mass] *public* transportation market opportunities;

(B) cooperation with foreign public sector entities in research, development, demonstration, training, and other forms of technology transfer and exchange of experts and information;

(C) advocacy, in international [mass] *public* transportation markets, of firms, products, and services available from the United States;

(D) informing the international market about the technical quality of [mass] *public* transportation products and services through participation in seminars, expositions, and similar activities; and

(E) offering those Federal Transit Administration technical services which cannot be readily obtained from the United States private sector to foreign public authorities planning or undertaking [mass] *public* transportation projects if the cost of these services will be recovered under the terms of each project.

(2) COOPERATION.—The Secretary may carry out activities under this subsection in cooperation with other Federal agencies, State or local agencies, [public and] *public or* private nonprofit institutions, government laboratories, foreign governments, or any other organization the Secretary determines is appropriate.

* * * * * * *

[§ 5313. State planning and research programs]

§ 5313. Cooperative research program

(a) COOPERATIVE RESEARCH PROGRAM.—[(1) The amounts made available under paragraphs (1) and (2)(C)(ii) of section 5338(d) of this title] *The amounts made available under paragraphs (1)(C)(iv) and (2)(C) of section 5338(d)* are available for a [mass] *public* transportation cooperative research program. The Secretary of Transportation shall establish an independent governing board for the program. The board shall recommend [mass] *public* transportation research, development, and technology transfer activities the Secretary considers appropriate.

[(2) The] *(b) FEDERAL ASSISTANCE.—The* Secretary may make grants to, and cooperative agreements with, the National Academy of Sciences to carry out activities under this subsection that the Secretary decides are appropriate.

[(b) STATE PLANNING AND RESEARCH.—(1) The amounts made available under paragraphs (1) and (2)(C)(ii) of section 5338(c) of this title shall be apportioned to States for grants and contracts consistent with the purposes of sections 5303–5306, 5312, 5315, 5317, and 5322 of this title. The amounts shall be apportioned so that each State receives an amount equal to the population in urbanized areas in the State, divided by the population in urbanized areas in all States, as shown by the latest available decennial census. However, a State must receive at least .5 percent of the amount apportioned under this subsection.

[(2) A State, as the State considers appropriate, may authorize part of the amount made available under this subsection to be used to supplement amounts available under subsection (a) of this section.

[(3) An amount apportioned under this subsection—

[(A) remains available for 3 years after the fiscal year in which the amount is apportioned; and

[(B) that is unobligated at the end of the 3-year period shall be reapportioned among the States for the next fiscal year.]

(c) GOVERNMENT'S SHARE.—When there would be a clear and direct financial benefit to an entity under a grant or contract financed under [subsection (a) of] this section, the Secretary shall establish a United States Government share consistent with the benefit.

[§ 5314. National planning and research programs]

§ 5314. National research and technology programs

(a) PROGRAM.—(1) The amounts made available under [subsections (d) and (h)(7) of section 5338 of this title] *section 5338(d)* are available to the Secretary of Transportation for grants [and contracts]*, contracts, cooperative agreements, or other transactions* for the purposes of sections [5303–5306,] 5312, 5315, [5317,] and 5322 of this title, as the Secretary considers appropriate.

(2) [Of the amounts made available under paragraph (1) of this subsection, the Secretary shall make available at least $3,000,000 to] *The Secretary shall* provide [mass] *public* transportation-related technical assistance, demonstration programs, research, public education, and other activities the Secretary considers appro-

priate to help [mass] *public* transportation providers comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). To the extent practicable, the Secretary shall carry out this paragraph through a contract with a national nonprofit organization serving individuals with disabilities that has a demonstrated capacity to carry out the activities.

* * * * * * *

(4)(A) The Secretary may undertake a program of [mass] *public* transportation technology development in coordination with affected entities.

[(B) The Secretary shall establish an Industry Technical Panel composed of representatives of transportation suppliers and operators and others involved in technology development. A majority of the Panel members shall represent the supply industry. The Panel shall assist the Secretary in identifying priority technology development areas and in establishing guidelines for project development, project cost sharing, and project execution.]

[(C)] *(B)* The Secretary shall develop guidelines for cost sharing in technology development projects financed under this paragraph. The guidelines shall be flexible and reflect the extent of technical risk, market risk, and anticipated supplier benefits and payback periods.

* * * * * * *

(b) GOVERNMENT'S SHARE.—When there would be a clear and direct financial benefit to an entity under a grant [or contract financed under subsection (a) of this section,]*, contract, cooperative agreement, or other transaction under subsection (a) or section 5312,* the Secretary shall establish a United States Government share consistent with the benefit.

§ 5315. National transit institute

(a) ESTABLISHMENT AND DUTIES.—The Secretary of Transportation shall make grants to Rutgers University to establish a national transit institute. In cooperation with the Federal Transit Administration, State transportation departments, public [mass] transportation authorities, and national and international entities, the institute shall develop and conduct training programs of instruction for United States Government, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Government-aid mass transportation work. The programs may include courses in recent developments, techniques, and procedures related to—

(1) * * *

* * * * * * *

(d) AVAILABILITY OF AMOUNTS.—Not more than .5 percent of the amounts made available for a fiscal year beginning after September 30, 1991, to a State or public [mass] transportation authority in the State to carry out sections 5307 and 5309 of this title is available for expenditure by the State and public [mass] transportation authorities in the State, with the approval of the Secretary, to pay not more than 80 percent of the cost of tuition and direct educational expenses related to educating and training State and local transportation employees under this section.

§ 5316. Job access and reverse commute formula grants

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

(1) ACCESS TO JOBS PROJECT.—The term "access to jobs project" means a project relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, including—

(A) transportation projects to finance planning, capital, and operating costs of providing access to jobs under this chapter;

(B) promoting public transportation by low-income workers, including the use of public transportation by workers with nontraditional work schedules;

(C) promoting the use of transit vouchers for welfare recipients and eligible low-income individuals; and

(D) promoting the use of employer-provided transportation, including the transit pass benefit program under section 132 of the Internal Revenue Code of 1986.

(2) ELIGIBLE LOW-INCOME INDIVIDUAL.—The term "eligible low-income individual" means an individual whose family income is at or below 150 percent of the poverty line (as that term is defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section) for a family of the size involved.

(3) RECIPIENT.—The term "recipient" means a designated recipient (as defined in section 5307(a)(2)) and a State that receives a grant under this section directly.

(4) REVERSE COMMUTE PROJECT.—The term "reverse commute project" means a public transportation project designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities, including any projects to—

(A) subsidize the costs associated with adding reverse commute bus, train, carpool, van routes, or service from urbanized areas and other than urbanized areas to suburban workplaces;

(B) subsidize the purchase or lease by a nonprofit organization or public agency of a van or bus dedicated to shuttling employees from their residences to a suburban workplace; or

(C) otherwise facilitate the provision of public transportation services to suburban employment opportunities.

(5) SUBRECIPIENT.—The term "subrecipient" means a State or local governmental authority, nonprofit organization, or operator of public transportation services that receives a grant under this section indirectly through a recipient.

(6) WELFARE RECIPIENT.—The term "welfare recipient" means an individual who has received assistance under a State or tribal program funded under part A of title IV of the Social Security Act at any time during the 3-year period before the date on which the applicant applies for a grant under this section.

(b) GENERAL AUTHORITY.—

(1) GRANTS.—The Secretary may make grants under this section to a recipient for access to jobs and reverse commute projects carried out by the recipient or a subrecipient.

(2) ADMINISTRATIVE EXPENSES.—A recipient may use not more than 10 percent of the amounts apportioned to the recipient under this section to administer, plan, and provide technical assistance for a project funded under this section.

(c) APPORTIONMENTS.—

(1) FORMULA.—The Secretary shall apportion amounts made available to carry out this section as follows:

(A) 60 percent of the funds shall be apportioned among designated recipients (as defined in section 5307(a)(2)) for urbanized areas with a population of 200,000 or more in the ratio that—

(i) the number of eligible low-income individuals and welfare recipients in each such urbanized area; bears to

(ii) the number of eligible low-income individuals and welfare recipients in all such urbanized areas.

(B) 20 percent of the funds shall be apportioned among the States in the ratio that—

(i) the number of eligible low-income individuals and welfare recipients in urbanized areas with a population of less than 200,000 in each State; bears to

(ii) the number of eligible low-income individuals and welfare recipients in urbanized areas with a population of less than 200,000 in all States.

(C) 20 percent of the funds shall be apportioned among the States in the ratio that—

(i) the number of eligible low-income individuals and welfare recipients in other than urbanized areas in each State; bears to

(ii) the number of eligible low-income individuals and welfare recipients in other than urbanized areas in all States.

(2) USE OF APPORTIONED FUNDS.—Except as provided in paragraph (3)—

(A) funds apportioned under paragraph (1)(A) shall be used for projects serving urbanized areas with a population of 200,000 or more;

(B) funds apportioned under paragraph (1)(B) shall be used for projects serving urbanized areas with a population of less than 200,000; and

(C) funds apportioned under paragraph (1)(C) shall be used for projects serving other than urbanized areas.

(3) EXCEPTIONS.—A State may use funds apportioned under paragraphs (1)(B) and (1)(C)—

(A) for projects serving areas other than the area specified in paragraph (2)(B) or (2)(C), as the case may be, if the Governor of the State certifies that all of the objectives of this section are being met in the specified area; or

(B) for projects anywhere in the State if the State has established a statewide program for meeting the objectives of this section.

(d) COMPETITIVE PROCESS FOR GRANTS TO SUBRECIPIENTS.—

(1) AREAWIDE SOLICITATIONS.—A recipient of funds apportioned under subsection (c)(1)(A) shall conduct, in cooperation with the appropriate metropolitan planning organization, an

areawide solicitation for applications for grants to the recipient and subrecipients under this section.

(2) STATEWIDE SOLICITATION.—A recipient of funds apportioned under subsection (c)(1)(B) or (c)(1)(C) shall conduct a statewide solicitation for applications for grants to the recipient and subrecipients under this section.

(3) APPLICATION.—Recipients and subrecipients seeking to receive a grant from funds apportioned under subsection (c) shall submit to the recipient an application in the form and in accordance with such requirements as the recipient shall establish.

(4) GRANT AWARDS.—The recipient shall award grants under paragraphs (1) and (2) on a competitive basis.

(e) TRANSFERS.—

(1) IN GENERAL.—A State may transfer any funds apportioned to it under subsection (c)(1)(B) or (c)(1)(C), or both, to an apportionment under section 5311(c) or 5336, or both.

(2) LIMITED TO ELIGIBLE PROJECTS.—Any apportionment transferred under this subsection shall be made available only for eligible job access and reverse commute projects as described in this section.

(3) CONSULTATION.—A State may make a transfer of an amount under this subsection only after consulting with responsible local officials and publicly owned operators of public transportation in each area for which the amount originally was awarded under subsection (d)(4).

(f) GRANT REQUIREMENTS.—

(1) IN GENERAL.—A grant under this section shall be subject to the requirements of section 5307.

(2) FAIR AND EQUITABLE DISTRIBUTION.—A recipient of a grant under this section shall certify to the Secretary that allocations of the grant to subrecipients are distributed on a fair and equitable basis.

(g) COORDINATION.—

(1) IN GENERAL.—The Secretary shall coordinate activities under this section with related activities under programs of other Federal departments and agencies.

(2) WITH NONPROFIT PROVIDERS.—A State that transfers funds to an apportionment under section 5336 pursuant to subsection (e) shall certify to the Secretary that any project for which the funds are requested under this section has been coordinated with nonprofit providers of services.

(3) PROJECT SELECTION AND PLANNING.—A recipient of funds under this section shall certify to the Secretary that—

(A) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and

(B) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

(h) GOVERNMENT'S SHARE OF COSTS.—

(1) CAPITAL PROJECTS.—A grant for a capital project under this section may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

(2) OPERATING ASSISTANCE.—A grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

(3) REMAINDER.—The remainder of the net project costs—

(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and

(B) may be derived from amounts appropriated to or made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation.

(4) USE OF CERTAIN FUNDS.—For purposes of paragraph (3)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

(5) LIMITATION ON OPERATING ASSISTANCE.—A recipient carrying out a program of operating assistance under this section may not limit the level or extent of use of the Government grant for the payment of operating expenses.

(i) PROGRAM EVALUATION.—

(1) COMPTROLLER GENERAL.—Beginning 1 year after the date of enactment of the Federal Public Transportation Act of 2004, and every 2 years thereafter, the Comptroller General shall—

(A) conduct a study to evaluate the grant program authorized by this section; and

(B) transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the results of the study under subparagraph (A).

(2) DEPARTMENT OF TRANSPORTATION.—Not later than 3 years after the date of enactment of Federal Public Transportation Act of 2004, the Secretary shall—

(A) conduct a study to evaluate the effectiveness of the grant program authorized by this section and the effectiveness of recipients making grants to subrecipients under this section; and

(B) transmit to the committees referred to in paragraph (1)(B) a report describing the results of the study under subparagraph (A).

§ 5317. New Freedom program

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

(1) RECIPIENT.—The term "recipient" means a designated recipient (as defined in section 5307(a)(2)) and a State that receives a grant under this section directly.

(2) SUBRECIPIENT.—The term "subrecipient" means a State or local governmental authority, nonprofit organization, or operator of public transportation services that receives a grant under this section indirectly through a recipient.

(b) GENERAL AUTHORITY.—

(1) GRANTS.—The Secretary may make grants under this section to a recipient for new public transportation services and

public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

(2) ADMINISTRATIVE EXPENSES.—A recipient may use not more than 10 percent of the amounts apportioned to the recipient under this section to administer, plan, and provide technical assistance for a project funded under this section.

(c) APPORTIONMENTS.—

(1) FORMULA.—The Secretary shall apportion amounts made available to carry out this section as follows:

(A) 60 percent of the funds shall be apportioned among designated recipients (as defined in section 5307(a)(2)) for urbanized areas with a population of 200,000 or more in the ratio that—

(i) the number of individuals with disabilities in each such urbanized area; bears to

(ii) the number of individuals with disabilities in all such urbanized areas.

(B) 20 percent of the funds shall be apportioned among the States in the ratio that—

(i) the number of individuals with disabilities in urbanized areas with a population of less than 200,000 in each State; bears to

(ii) the number of individuals with disabilities in urbanized areas with a population of less than 200,000 in all States.

(C) 20 percent of the funds shall be apportioned among the States in the ratio that—

(i) the number of individuals with disabilities in other than urbanized areas in each State; bears to

(ii) the number of individuals with disabilities in other than urbanized areas in all States.

(2) USE OF APPORTIONED FUNDS.—Except as provided in paragraph (3)—

(A) funds apportioned under paragraph (1)(A) shall be used for projects serving urbanized areas with a population of 200,000 or more;

(B) funds apportioned under paragraph (1)(B) shall be used for projects serving urbanized areas with a population of less than 200,000; and

(C) funds apportioned under paragraph (1)(C) shall be used for projects serving other than urbanized areas.

(3) LOW DENSITY ADJUSTMENT.—

(A) SMALLER URBANIZED AREAS.—In administering the apportionment formula under paragraph (1)(B)—

(i) in the case of a State with a population density of 10 persons per square mile or fewer, the Secretary shall multiply by a factor of 2 the number of individuals with disabilities in urbanized areas of the State with a population of less than 200,000 (as determined using the most recent decennial United States Census); and

(ii) in the case of a State with a population density of more than 10 but equal to or fewer than 30 persons per square mile, the Secretary shall multiply by a factor of 1.25 the number of individuals with disabilities in urbanized areas of the State with a population of less than 200,000 (as determined using the most recent decennial United States Census).

(B) OTHER THAN URBANIZED AREAS.—In administering the apportionment formula under paragraph (1)(C)—

(i) in the case of a State with a population density of 10 persons per square mile or fewer, the Secretary shall multiply by a factor of 1.5 the number of individuals with disabilities in other than urbanized areas of the State (as determined using the most recent decennial United States Census); and

(ii) in the case of a State with a population density of more than 10 but equal to or fewer than 12 persons per square mile in other than urbanized areas of the State, the Secretary shall multiply by a factor of 1.25 the number of individuals with disabilities in other than urbanized areas of the State (as determined using the most recent decennial United States Census).

(4) TRANSFERS.—

(A) IN GENERAL.—A State may transfer any funds apportioned to it under paragraph (1)(B) or (1)(C), or both, to an apportionment under section 5311(c) or 5336, or both.

(B) LIMITED TO ELIGIBLE PROJECTS.—Any funds transferred pursuant to this paragraph shall be made available only for eligible projects selected under this section.

(C) CONSULTATION.—A State may make a transfer of an amount under this subsection only after consulting with responsible local officials and publicly owned operators of public transportation in each area for which the amount originally was awarded under subsection (d)(4).

(d) COMPETITIVE PROCESS FOR GRANTS TO SUBRECIPIENTS.—

(1) AREAWIDE SOLICITATIONS.—A recipient of funds apportioned under subsection (c)(1)(A) shall conduct, in cooperation with the appropriate metropolitan planning organization, an areawide solicitation for applications for grants to the recipient and subrecipients under this section.

(2) STATEWIDE SOLICITATION.—A recipient of funds apportioned under subsection (c)(1)(B) or (c)(1)(C) shall conduct a statewide solicitation for applications for grants to the recipient and subrecipients under this section.

(3) APPLICATION.—Recipients and subrecipients seeking to receive a grant from funds apportioned under subsection (c) shall submit to the recipient an application in the form and in accordance with such requirements as the recipient shall establish.

(4) GRANT AWARDS.—The recipient shall award grants under paragraphs (1) and (2) on a competitive basis.

(e) GRANT REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a grant under this section shall be subject to all the requirements of section 5307.

(2) EMPLOYEE PROTECTIVE ARRANGEMENTS.—Section 5333(b) shall apply to grants under this section, except that the Secretary of Labor shall utilize, for urbanized areas with a population of less than 200,000 and for other than urbanized areas, a special warranty described in section 215.7 of title 29, Code of Federal Regulations (as in effect on the date of enactment of the Federal Public Transportation Act of 2004), that provides a fair and equitable arrangement to protect the interest of employees.

(3) FAIR AND EQUITABLE DISTRIBUTION.—A recipient of a grant under this section shall certify that allocations of the grant to subrecipients are distributed on a fair and equitable basis.

(f) COORDINATION.—

(1) IN GENERAL.—The Secretary shall coordinate activities under this section with related activities under programs of other Federal departments and agencies.

(2) WITH NONPROFIT PROVIDERS.—A recipient that transfers funds to an apportionment under section 5336 pursuant to subsection (c)(2) shall certify that the project for which the funds are requested under this section has been coordinated with nonprofit providers of services.

(3) PROJECT SELECTION AND PLANNING.—A recipient of funds under this section shall certify that—

(A) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and

(B) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

(g) GOVERNMENT'S SHARE OF COSTS.—

(1) CAPITAL PROJECTS.—A grant for a capital project under this section may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

(2) OPERATING ASSISTANCE.—A grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

(3) REMAINDER.—The remainder of the net project costs—

(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and

(B) may be derived from amounts appropriated to or made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation.

(4) USE OF CERTAIN FUNDS.—For purposes of paragraph (3)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

(5) LIMITATION ON OPERATING ASSISTANCE.—A recipient carrying out a program of operating assistance under this section

may not limit the level or extent of use of the Government grant for the payment of operating expenses.

§ 5318. Bus testing facility

[(a) ESTABLISHMENT.—The Secretary of Transportation shall establish one facility for testing a new bus model for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise. The facility shall be established by renovating a facility built with assistance of the United States Government to train rail personnel.]

(a) FACILITY.—The Secretary of Transportation shall maintain one facility for testing a new bus model for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise.

(b) OPERATION AND MAINTENANCE.—The Secretary shall enter into a contract or cooperative agreement with, or make a grant to, a qualified person or organization to operate and maintain the facility. The contract, cooperative agreement, or grant may provide for the testing of rail cars and other [mass] *public* transportation vehicles at the facility.

* * * * * * *

(d) AVAILABILITY OF AMOUNTS TO PAY FOR TESTING.—The Secretary shall enter into a contract or cooperative agreement with, or make a grant to, the operator of the facility under which the Secretary shall pay 80 percent of the cost of testing a vehicle at the facility from amounts available [under section 5309(m)(1)(C) of this title] *to carry out this section*. The entity having the vehicle tested shall pay 20 percent of the cost.

[(e) REVOLVING LOAN FUND.—The Secretary has a bus testing revolving loan fund consisting of amounts authorized for the fund under section 317(b)(5) of the Surface Transportation and Uniform Relocation Assistance Act of 1987. The Secretary shall make available as repayable advances from the fund to the person operating and maintaining the facility amounts to operate and maintain the facility.]

(e) ACQUIRING NEW BUS MODELS.—Amounts appropriated or made available under this chapter may be obligated or expended to acquire a new bus model only if a bus of that model has been tested at the facility maintained by the Secretary under subsection (a).

§ 5319. Bicycle facilities

A project to provide access for bicycles to [mass] *public* transportation facilities, to provide shelters and parking facilities for bicycles in or around [mass] *public* transportation facilities, or to install equipment for transporting bicycles on [mass] *public* transportation vehicles is a capital project eligible for assistance under sections 5307, 5309, [and 5311] *5311, and 5320* of this title. Notwithstanding sections 5307(e), [5309(h),] *5309(g),* and 5311(g) of this title, a grant of the United States Government under this chapter for a project made eligible by this section is for 90 percent of the cost of the project, except that, if the grant or any portion of the grant is made with funds required to be expended under section 5307(k) and the project involves providing bicycle access to

[mass] *public* transportation, that grant or portion of that grant shall be at a Federal share of 95 percent.

[§ 5320. Suspended light rail system technology pilot project

[(a) PURPOSE.—The purpose of this section is to provide for the construction by a public entity of a suspended light rail system technology pilot project—

[(1) to assess the state of new technology for a suspended light rail system; and

[(2) to establish the feasibility, costs, and benefits of using the system to transport passengers.

[(b) GENERAL REQUIREMENTS.—The project shall—

[(1) use new rail technology with individual vehicles on a prefabricated elevated steel guideway;

[(2) be stability-seeking with a center of gravity for the detachable passenger vehicles located below the point of wheel-rail contact; and

[(3) use vehicles that are driven by overhead bogies with high efficiency, low maintenance electric motors for each wheel, operating in a slightly sloped plane from vertical for the wheels and the running rails, to further increase stability, acceleration, and braking performance.

[(c) COMPETITION.—(1) The Secretary of Transportation shall conduct a national competition to select a public entity with which to make a full funding grant agreement to construct the project. Not later than April 16, 1992, the Secretary shall select 3 public entities to be finalists in the competition. In conducting the competition and selecting public entities, the Secretary shall consider—

[(A) the public entity's demonstrated understanding and knowledge of the project and its technical, managerial, and financial capacity to construct, manage, and operate the project; and

[(B) maximizing potential contributions to the cost of the project by State, local, and private sector entities, including donation of in-kind services and materials.

[(2) The Secretary shall award a grant to each finalist to be used to participate in the final phase of the competition under procedures the Secretary prescribes. A grant may not be more than 80 percent of the cost of participating. A finalist may not receive more than one-third of the amount made available under subsection (h)(1)(A) of this section.

[(3) Not later than July 15, 1992, the Secretary shall select from among the 3 finalists a public entity with which to make a full funding grant agreement.

[(d) ENVIRONMENTAL IMPACT.—Not later than 270 days after a public entity is selected under subsection (c) of this section, the Secretary shall approve and publish in the Federal Register a notice announcing either a finding of no significant impact or a draft environmental impact statement for the project. The alternatives analysis for the project shall include a decision on whether to construct the project. If a draft statement is published, the Secretary, not later than 180 days after publication, shall approve and publish in the Federal Register a notice of completion of a final environmental impact statement.

[(e) FULL FUNDING GRANT AGREEMENT.—Not later than 60 days after carrying out the requirements of subsection (d) of this section, the Secretary shall make a full funding grant agreement under section 5309 of this title with the public entity selected under subsection (c) of this section to construct the project. The agreement shall provide that the system vendor for the project shall finance—

[(1) 100 percent of any deficit incurred in operating the project in the first 2 years of revenue operations of the project; and

[(2) 50 percent of any deficit incurred in operating the project in the 3d year of revenue operations of the project.

[(f) NOTICE TO PROCEED.—Not later than 30 days after making the full funding grant agreement, the Secretary shall issue a notice to proceed with construction.

[(g) OPTION NOT TO CONSTRUCT AND REAWARDING THE GRANT.—(1) Not later than 30 days after completing preliminary engineering and design, the selected public entity shall decide whether to proceed to constructing the project. If the entity decides not to proceed—

[(A) the Secretary shall not make the full funding grant agreement;

[(B) remaining amounts received shall be returned to the Secretary and credited to the Mass Transit Account of the Highway Trust Fund; and

[(C) the Secretary shall use the credited amount and other amounts to be provided under this section to award to another entity selected under subsection (c)(1) of this section a grant under section 5309 of this title to construct the project.

[(2) Not later than 60 days after a decision is made under paragraph (1) of this subsection, a grant shall be awarded under paragraph (1)(C) of this subsection after completing a competitive process for selecting the grant recipient.

[(h) FINANCING.—(1) The Secretary shall pay from amounts provided under section 5309 of this title the following:

[(A) at least $1,000,000 for the fiscal year ending September 30, 1992, for grants under subsection (c)(2) of this section.

[(B) at least $4,000,000 for the fiscal year ending September 30, 1993, for the United States Government share of the costs (as determined under section 5309 of this title) if the systems planning, alternatives analysis, preliminary engineering, and design and environmental impact statement are required by law for the project.

[(C) at least $30,000,000 for the fiscal year ending September 30, 1994, as provided in the grant agreement under subsection (e) of this section, for the Government share of the construction costs of the project.

[(2) The grant agreement under subsection (e) of this section shall provide that for the 3d year of revenue operations of the project, the Secretary shall pay from amounts provided under this section the Government share of operating costs in an amount equal to the lesser of 50 percent of the deficit incurred in operating the project in that year or $300,000.

[(3) Amounts not expended under paragraph (1)(A) of this subsection are available for the Government share of costs described in paragraph (1)(B) and (C) of this subsection.

[(4) Amounts under paragraph (1)(B) and (C) of this subsection remain available until expended.

[(i) GOVERNMENT'S SHARE OF COSTS.—The Government share of the cost of constructing the project is 80 percent of the net cost of the project.

[(j) PROJECT NOT SUBJECT TO MAJOR CAPITAL INVESTMENT POLICY.—The project is not subject to the major capital investment policy of the Federal Transit Administration.

[(k) REPORT.—Not later than January 30, 1993, and each year after that date, the Secretary shall submit to Congress a report on the progress and results of the project.]

§ 5320. Transit in the parks pilot program

(a) PUBLIC TRANSPORTATION DEFINED.—In this section, the term "public transportation" means general or special transportation to the public by a conveyance that is publicly or privately owned. Such term does not include schoolbus or charter transportation but does include sightseeing transportation.

(b) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary of Transportation and the Secretary of the Interior shall enter into a memorandum of understanding to establish a transit in the parks pilot program in accordance with the requirements of this section.

(c) PURPOSE.—The purpose of the pilot program shall be to encourage and promote the development of transportation systems described in section 5301(a) within units of the National Park System to improve visitor mobility and enjoyment (including visitors with disabilities), reduce pollution and congestion, and enhance resource protection through the use of public transportation.

(d) ADMINISTRATION OF PROGRAM.—The program shall be administered by the Secretary of Transportation, in consultation with the Secretary of the Interior.

(e) MEMORANDUM OF UNDERSTANDING.—

(1) PLANNING.—The memorandum of understanding under subsection (b) shall include transportation planning procedures that are consistent with the metropolitan and statewide planning processes required under chapter 52.

(2) PROGRAMS.—The memorandum of understanding shall include descriptions of programs and activities eligible for assistance under the pilot program.

(3) EXCEPTIONS.—The memorandum of understanding shall limit or modify the applicability of the provisions referred to in subsection (f) to the extent necessary to carry out the objectives of this section and to be compatible with the laws and regulations governing units of the National Park System.

(f) ELIGIBLE USE OF FUNDS.—Except as provided under subsection (e)(3), the Secretary may provide funds made available to carry out this section to the Secretary of the Interior under interagency agreements for the following purposes:

(1) PLANNING, ENGINEERING, DESIGN, AND EVALUATION.—Planning, engineering, design, and evaluation of public transportation projects in units of the National Park System, and for technical studies, in accordance with section 5305(b)(2).

(2) PUBLIC TRANSPORTATION CAPITAL PROJECTS.—Public transportation capital projects (as defined in section 5302(a)(1)) for such units in accordance with all the terms and conditions to which a grant is made under subsections (a), (b), (c), and (d) of section 5307 and such other terms and conditions as are determined by the Secretary. The Secretary of the Interior shall act as the designated recipient for the purposes of subsection (a)(2) of section 5307.

(3) OPERATING COSTS.—Operating costs of equipment and facilities used in public transportation for such units.

(g) GOVERNMENT'S SHARE OF COSTS.—

(1) CAPITAL PROJECTS.—The Government share of the cost of any capital project or activity under this section shall be 100 percent of the costs of the project, as determined by the Secretary.

(2) OPERATING ASSISTANCE.—A grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

(h) SAVINGS CLAUSE.—Nothing in this section shall be construed as superseding, amending, modifying, or repealing any provision of law applicable to units of the National Park System.

§ 5321. Crime prevention and security

The Secretary of Transportation may make capital grants from amounts available under section 5338 of this title to [mass] *public* transportation systems for crime prevention and security. This chapter does not prevent the financing of a project under this section when a local governmental authority other than the grant applicant has law enforcement responsibilities.

§ 5322. Human resource programs

(a) IN GENERAL.—The Secretary of Transportation may undertake, or make grants and contracts for, programs that address human resource needs as they apply to [mass] *public* transportation activities. A program may include—

(1) an employment training program;

(2) an outreach program to increase minority and female employment in [mass] *public* transportation activities;

(3) research on [mass] *public* transportation personnel and training needs; and

(4) training and assistance for minority business opportunities.

(b) GRANTS TO HIGHER LEARNING INSTITUTIONS.—

(1) AUTHORITY TO MAKE GRANTS.—The Secretary may make grants to nonprofit institutions of higher learning—

(A) to conduct research and investigations into the theoretical or practical problems of public transportation; and

(B) to train individuals to conduct further research or obtain employment in an organization that plans, builds, operates, or manages a public transportation system.

(2) RESEARCH AND INVESTIGATIONS.—Research and investigations under this subsection include—

(A) the design and use of public transportation systems and public roads and highways;

(B) the interrelationship between various modes of urban, suburban, rural, and intercity transportation;

(C) the role of transportation planning in overall urban planning;

(D) public preferences in transportation;

(E) the economic allocation of transportation resources; and

(F) the legal, financial, engineering, and esthetic aspects of public transportation.

(3) PREFERENCE.—When making a grant under this subsection, the Secretary shall give preference to an institution that brings together knowledge and expertise in the various social science and technical disciplines related to public transportation problems.

(c) FELLOWSHIPS.—

(1) AUTHORITY TO MAKE GRANTS.—The Secretary may make grants to States, local governmental authorities, and operators of public transportation systems to provide fellowships to train personnel employed in managerial, technical, and professional positions in the public transportation field.

(2) TERMS.—

(A) PERIOD OF TRAINING.—A fellowship under this subsection may be for not more than one year of training in an institution that offers a program applicable to the public transportation industry.

(B) SELECTION OF INDIVIDUALS.—The recipient of the grant shall select an individual on the basis of demonstrated ability and for the contribution the individual reasonably can be expected to make to an efficient public transportation operation.

(C) AMOUNT.—A grant for a fellowship may not be more than the lesser of $65,000 or 75 percent of—

(i) tuition and other charges to the fellowship recipient;

(ii) additional costs incurred by the training institution and billed to the grant recipient; and

(iii) the regular salary of the fellowship recipient for the period of the fellowship to the extent the salary is actually paid or reimbursed by the grant recipient.

§ 5323. General provisions on assistance

(a) INTERESTS IN PROPERTY.—(1) Financial assistance provided under this chapter to a State or a local governmental authority may be used to acquire an interest in, or buy property of, a [private mass transportation company] *private company engaged in public transportation*, for a capital project for property acquired from a [private mass transportation company] *private company engaged in public transportation* after July 9, 1964, or to operate [mass transportation equipment or a mass transportation facility] *a public transportation facility or equipment* in competition with, or in addition to, transportation service provided by an existing [mass transportation company] *public transportation company*, only if—

(A) the Secretary of Transportation finds the assistance is essential to a program of projects required under sections 5303–5306 of this title;

(B) the Secretary of Transportation finds that the program, to the maximum extent feasible, provides for the participation of [private mass transportation companies] *private companies engaged in public transportation*;

(C) just compensation under State or local law will be paid to the company for its franchise or property; and

(D) the Secretary of Labor certifies that the assistance complies with section 5333(b) of this title.

(2) A governmental authority may not use financial assistance of the United States Government to acquire land, equipment, or a facility used in [mass] *public* transportation from another governmental authority in the same geographic area.

(b) NOTICE AND PUBLIC HEARING.—[(1) An application]

(1) APPLICATIONS.—An application for a grant [or loan] under this chapter for a capital project that will affect substantially a community, or the [mass] *public* transportation service of a community, must include a certificate of the applicant that the applicant has—

(A) provided an adequate opportunity for a public hearing with adequate prior notice;

(B) held that hearing unless no one with a significant economic, social, or environmental interest requested one;

(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) Notice of]

(2) NOTICE.—Notice of a hearing under this subsection shall include a concise description of the proposed project and shall be published in a newspaper of general circulation in the geographic area the project will serve. If a hearing is held, a copy of the transcript of the hearing shall be submitted with the application.

(3) ENVIRONMENTAL RECORD.—An applicant shall include in the environmental record for a project under this chapter evidence that the applicant has complied with the requirements of subparagraphs (A) through (D) of paragraph (1).

[(c) ACQUIRING NEW BUS MODELS.—Amounts appropriated or made available under this chapter after September 30, 1989, may be obligated or expended to acquire a new bus model only if a bus of the model has been tested at the facility established under section 5318 of this title.]

(d) CONDITION ON CHARTER BUS TRANSPORTATION SERVICE.—[(1) Financial assistance]

(1) AGREEMENTS.—Financial assistance under this chapter may be used to buy or operate a bus only if the applicant, governmental authority, or publicly owned operator that receives the assistance agrees that, except as provided in the agreement, the governmental authority or an operator of [mass] *public* transportation for the governmental authority will not provide charter bus transportation service outside the urban area in which it provides regularly scheduled [mass] *public* transportation service. An agreement shall provide for a fair arrangement the Secretary of Transportation considers appropriate to ensure that the assistance will not enable a govern-

mental authority or an operator for a governmental authority to foreclose a private operator from providing intercity charter bus service if the private operator can provide the service.

[(2) On receiving a complaint about a violation of an agreement, the Secretary of Transportation shall investigate and decide whether a violation has occurred. If the Secretary decides that a violation has occurred, the Secretary shall correct the violation under terms of the agreement. In addition to a remedy specified in the agreement, the Secretary may bar a recipient under this subsection or an operator from receiving further assistance when the Secretary finds a continuing pattern of violations of the agreement.]

(2) VIOLATIONS.—

(A) INVESTIGATIONS.—On receiving a complaint about a violation of the agreement required under paragraph (1), the Secretary shall investigate and decide whether a violation has occurred.

(B) ENFORCEMENT OF AGREEMENTS.—If the Secretary decides that a violation has occurred, the Secretary shall correct the violation under terms of the agreement.

(C) ADDITIONAL REMEDIES.—In addition to any remedy specified in the agreement, the Secretary shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate if the Secretary finds a pattern of violations of the agreement.

[(e) BUS PASSENGER SEAT FUNCTIONAL SPECIFICATIONS.—The initial advertising by a State or local governmental authority for bids to acquire buses using financial assistance under this chapter may include passenger seat functional specifications that are at least equal to performance specifications the Secretary of Transportation prescribes. The specifications shall be based on a finding by the State or local governmental authority of local requirements for safety, comfort, maintenance, and life cycle costs.]

(e) BOND PROCEEDS ELIGIBLE FOR LOCAL SHARE.—

(1) USE AS LOCAL MATCHING FUNDS.—Notwithstanding any other provision of law, a recipient of assistance under section 5307 or 5309 may use the proceeds from the issuance of revenue bonds as part of the local matching funds for a capital project.

(2) MAINTENANCE OF EFFORT.—The Secretary shall approve of the use of the proceeds from the issuance of revenue bonds for the remainder of the net project cost only if the Secretary finds that the aggregate amount of financial support for public transportation in the urbanized area provided by the State and affected local governmental authorities during the next 3 fiscal years, as programmed in the State transportation improvement program under chapter 52 is not less than the aggregate amount provided by the State and affected local governmental authorities in the urbanized area during the preceding 3 fiscal years.

(3) DEBT SERVICE RESERVE.—The Secretary may reimburse an eligible recipient for deposits of bond proceeds in a debt service reserve that recipient established pursuant to section 5302(a)(1)(K) from amounts made available to the recipient under section 5307 or 5309, or both; except that such reimbursement in a fiscal year may not exceed 10 percent of the amounts

made available to the recipient under section 5307 in such fiscal year.

(f) SCHOOLBUS TRANSPORTATION.—[(1) Financial assistance]

(1) AGREEMENTS.—Financial assistance under this chapter may be used for a capital project, or to operate [mass] *public* transportation equipment or a [mass] *public* transportation facility, only if the applicant agrees not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator. This subsection does not apply—

(A) to an applicant that operates a school system in the area to be served and a separate and exclusive schoolbus program for the school system;

(B) unless a private schoolbus operator can provide adequate transportation that complies with applicable safety standards at reasonable rates; and

(C) to a State or local governmental authority if it or a direct predecessor in interest from which it acquired the duty of transporting school children and personnel, and facilities to transport them, provided schoolbus transportation at any time after November 25, 1973, but before November 26, 1974.

[(2) An applicant violating an agreement under this subsection may not receive other financial assistance under this chapter.]

(2) VIOLATIONS.—If the Secretary finds that an applicant, governmental authority, or publicly owned operator has violated the agreement required under paragraph (1), the Secretary shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate.

(g) BUYING BUSES UNDER OTHER LAWS.—Subsections (d) and (f) of this section apply to financial assistance to buy a bus under sections [103(e)(4)] *133* and 142(a) or (c) of title 23. However, subsection (f)(1)(C) of this section applies to sections [103(e)(4)] *133* and 142(a) or (c) only if schoolbus transportation was provided at any time after August 12, 1972, but before August 13, 1973.

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(j) BUY AMERICA.—(1) * * *

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(3) WRITTEN JUSTIFICATION FOR PUBLIC INTEREST WAIVER.—When issuing a waiver based on a public interest determination under paragraph (2)(A), the Secretary shall issue a detailed written justification as to why the waiver is in the public interest. The Secretary shall publish such justification in the Federal Register and provide the public with a reasonable period of time for notice and comment.

[(3)] *(4)* In this subsection, labor costs involved in final assembly are not included in calculating the cost of components.

[(4)] *(5)* The Secretary of Transportation may not make a waiver under paragraph (2) of this subsection for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country—

(A) has an agreement with the United States Government under which the Secretary has waived the requirement of this subsection; and

(B) has violated the agreement by discriminating against goods to which this subsection applies that are produced in the United States and to which the agreement applies.

[(5)] *(6)* A person is ineligible under subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations, to receive a contract or subcontract made with amounts authorized under the [Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 1914)] *Federal Public Transportation Act of 2004* if a court or department, agency, or instrumentality of the Government decides the person intentionally—

(A) affixed a "Made in America" label, or a label with an inscription having the same meaning, to goods sold in or shipped to the United States that are used in a project to which this subsection applies but not produced in the United States; or

(B) represented that goods described in clause (A) of this paragraph were produced in the United States.

[(6)] *(7)* The Secretary of Transportation may not impose any limitation on assistance provided under this chapter that restricts a State from imposing more stringent requirements than this subsection on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with that assistance or restricts a recipient of that assistance from complying with those State-imposed requirements.

[(7)] *(8)* OPPORTUNITY TO CORRECT INADVERTENT ERROR.—The Secretary may allow a manufacturer or supplier of steel, iron, or manufactured goods to correct after bid opening any certification of noncompliance or failure to properly complete the certification (but not including failure to sign the certification) under this subsection if such manufacturer or supplier attests under penalty of perjury that such manufacturer or supplier submitted an incorrect certification as a result of an inadvertent or clerical error. The burden of establishing inadvertent or clerical error is on the manufacturer or supplier.

(9) ADMINISTRATIVE REVIEW.—A party adversely affected by an agency action under this subsection shall have the right to seek review under section 702 of title 5, United States Code.

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[(l) APPLICATION OF SECTION 135 OF TITLE 23.—The planning and programming requirements of section 135 of title 23 apply to a grant made under sections 5307–5311 of this title.]

(l) RELATIONSHIP TO OTHER LAWS.—Section 1001 of title 18 applies to a certificate, submission, or statement provided under this chapter. The Secretary may terminate financial assistance under this chapter and seek reimbursement directly, or by offsetting amounts, available under this chapter, when a false or fraudulent statement or related act within the meaning of section 1001 is made in connection with a Federal transit program.

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(o) GRANT REQUIREMENTS.—The grant requirements under sections 5307 and 5309 apply to any project under this chapter that receives any assistance or other financing under [the Transpor-

tation Infrastructure Finance and Innovation Act of 1998] *chapter 6 (other than section 609) of title 23.*

(p) TRANSFER OF LANDS OR INTERESTS IN LANDS OWNED BY THE UNITED STATES.—

(1) IDENTIFICATION OF LANDS NECESSARY FOR TRANSIT PURPOSES.—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 public transportation purposes eligible under this chapter, including corridor preservation, the Secretary shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which is desired to be transferred for public transportation purposes.

(2) DEADLINE FOR CERTIFICATION.—If, within 4 months of such filing, the Secretary of such Department has not certified to the Secretary that the proposed transfer of such land is contrary to the public interest or inconsistent with the purposes for which such land has been reserved or has agreed to the transfer under conditions that the Secretary of such Department considers necessary for the adequate protection and utilization of the reserve, then such land and materials may be appropriated and transferred to a State, or local government, or public transportation operator for such purposes and subject to the conditions so specified.

(3) REVERSION.—If at any time such lands are no longer needed for public transportation purposes, notice shall be given to the Secretary by the State, local government, or public transportation operator that received the land, and such lands shall immediately revert to the control of the Secretary of the Department from which the land was originally transferred.

[§ 5324. Limitations on discretionary and special needs grants and loans

[(a) RELOCATION PROGRAM REQUIREMENTS.—Financial assistance may be provided under section 5309 of this title only if the Secretary of Transportation decides that—

[(1) an adequate relocation program is being carried out for families displaced by a project; and

[(2) an equal number of decent, safe, and sanitary dwellings are being, or will be, provided to those families in the same area or in another area generally not less desirable for public utilities and public and commercial facilities, at rents or prices within the financial means of those families, and with reasonable access to their places of employment.

[(b) ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—(1) In carrying out section 5301(e) of this title, the Secretary of Transportation shall cooperate and consult with the Secretaries of Agriculture, Health and Human Services, Housing and Urban Development, and the Interior and the Council on Environmental Quality on each project that may have a substantial impact on the environment.

[(2) In carrying out section 5309 of this title, the Secretary of Transportation shall review each transcript of a hearing submitted under section 5323(b) of this title to establish that an adequate op-

portunity to present views was given to all parties with a significant economic, social, or environmental interest and that the project application includes a statement on—

[(A) the environmental impact of the proposal;

[(B) adverse environmental effects that cannot be avoided;

[(C) alternatives to the proposal; and

[(D) irreversible and irretrievable impacts on the environment.

[(3)(A) The Secretary of Transportation may approve an application for financial assistance under section 5309 of this title only if the Secretary makes written findings, after reviewing the application and any hearings held before a State or local governmental authority under section 5323(b) of this title, that—

[(i) an adequate opportunity to present views was given to all parties with a significant economic, social, or environmental interest;

[(ii) the preservation and enhancement of the environment, and the interest of the community in which a project is located, were considered; and

[(iii) no adverse environmental effect is likely to result from the project, or no feasible and prudent alternative to the effect exists and all reasonable steps have been taken to minimize the effect.

[(B) If a hearing has not been conducted or the Secretary of Transportation decides that the record of the hearing is inadequate for making the findings required by this subsection, the Secretary shall conduct a hearing on an environmental issue raised by the application after giving adequate notice to interested persons.

[(C) A finding of the Secretary of Transportation under subparagraph (A) of this paragraph shall be made a matter of public record.

[(c) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—The Secretary of Transportation may not regulate the operation of a mass transportation system for which a grant is made under section 5309 of this title and, after a grant is made, may not regulate any charge for the system. However, the Secretary may require the local governmental authority, corporation, or association to comply with any undertaking provided by it related to its grant application.]

§ 5324. Special provisions for capital projects

(a) RELOCATION PROGRAM REQUIREMENTS.—Financial assistance may be provided under section 5309 only if the Secretary decides that—

(1) an adequate relocation program is being carried out for families displaced by a project; and

(2) an equal number of decent, safe, and sanitary dwellings are being, or will be, provided to those families in the same area or in another area generally not less desirable for public utilities and public and commercial facilities, at rents or prices within the financial means of those families, and with reasonable access to their places of employment.

(b) CONSIDERATION OF ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—

(1) COOPERATION AND CONSULTATION.—In carrying out the policy of section 5301(e), the Secretary shall cooperate and consult with the Secretaries of the Interior, Health and Human Services, and Housing and Urban Development and the Administrator of the Environmental Protection Agency on each project that may have a substantial impact on the environment.

(2) PUBLIC PARTICIPATION IN ENVIRONMENTAL REVIEWS.—In performing environmental reviews, the Secretary shall review each transcript of a hearing submitted under section 5323(b) to establish that an adequate opportunity to present views was given to all parties having a significant economic, social, or environmental interest in the project, and that the project application includes a record of—

(A) the environmental impact of the proposal;

(B) adverse environmental effects that cannot be avoided;

(C) alternatives to the proposal; and

(D) irreversible and irretrievable impacts on the environment.

(3) APPROVAL OF APPLICATIONS FOR ASSISTANCE.—

(A) FINDINGS BY THE SECRETARY.—The Secretary may approve an application for financial assistance for a capital project in accordance with this chapter only if the Secretary makes written findings, after reviewing the application and the transcript of any hearing held before a State or local governmental authority under section 5323(b), that—

(i) an adequate opportunity to present views was given to all parties having a significant economic, social, or environmental interest;

(ii) the preservation and enhancement of the environment and the interest of the community in which the project is located were considered; and

(iii) no adverse environmental effect is likely to result from the project, or no feasible and prudent alternative to the effect exists and all reasonable steps have been taken to minimize the effect.

(B) HEARING.—If a hearing has not been conducted or the Secretary decides that the record of the hearing is inadequate for making the findings required by this subsection, the Secretary shall conduct a hearing on an environmental issue raised by the application after giving adequate notice to interested persons.

(C) AVAILABILITY OF FINDINGS.—The Secretary's findings under subparagraph (A) shall be made a matter of public record.

§ 5325. Contract requirements

[(a) NONCOMPETITIVE BIDDING.—A capital project or improvement contract for which a grant or loan is made under this chapter, if the contract is not made through competitive bidding, shall provide that records related to the contract shall be made available to the Secretary of Transportation and the Comptroller General, or an officer or employee of the Secretary or Comptroller General, when conducting an audit and inspection.

[(b) ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS.—A contract or requirement for program management, construction

management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which a grant or loan is made under this chapter shall be awarded in the same way as a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or an equivalent qualifications-based requirement of a State. When awarding such contracts, recipients of assistance under this chapter shall maximize efficiencies of administration by accepting nondisputed audits conducted by other governmental agencies, as provided in subparagraphs (C) through (F) of section 112(b)(2) of title 23. This subsection does not apply to the extent a State has adopted or adopts by law a formal procedure for procuring those services.]

(a) COMPETITION.—Recipients of Federal assistance under this chapter shall conduct all procurement transactions involving such assistance in a manner providing full and open competition, as determined by the Secretary.

(b) ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS.—

(1) PROCEDURES FOR AWARDING CONTRACT.—A contract or requirement for program management, architectural engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which Federal assistance is provided under this chapter shall be awarded in the same way as a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or an equivalent qualifications-based requirement of a State.

(2) EFFECT OF STATE LAWS.—This subsection does not apply to the extent a State has adopted, before the date of enactment of the Federal Public Transportation Act of 2004, by law a formal procedure for procuring those services.

(3) ADMINISTRATION OF CONTRACTS.—When awarding such contracts, recipients of assistance under this chapter shall maximize efficiencies of administration by accepting nondisputed audits conducted by other governmental agencies as follows:

(A) PERFORMANCE OF AUDITS.—Any contract or subcontract awarded under this chapter shall be performed and audited in compliance with cost principles contained in the Federal Acquisition Regulation (part 31 of title 48, Code of Federal Regulations).

(B) INDIRECT COST RATES.—Instead of performing its own audits, 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 one-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

(C) APPLICATION OF RATES.—Once a firm's indirect cost rates are accepted under this paragraph, the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and shall not be limited by administrative or de facto ceilings.

(D) PRENOTIFICATION; CONFIDENTIALITY OF DATA.—A recipient of funds requesting or using the cost and rate data described in paragraph (3) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided, in whole or in part, to another firm or to any government agency that is not part of the group of agencies sharing cost data under this paragraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

* * * * * * *

(d) DESIGN-BUILD SYSTEM PROJECTS.—

(1) DEFINITION.—In this section, the term "design-build system project" means a project under which a recipient enters into a contract with a seller, firm, or consortium of firms to design and build a public transportation system or an operable segment thereof that meets specific performance criteria. Such project may also 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.—Government financial assistance under this chapter may be made available for the capital costs of a design-build system project after the recipient complies with Government requirements.

(e) MULTIYEAR ROLLING STOCK.—

(1) CONTRACTS.—A recipient procuring rolling stock with Government financial assistance under this chapter may make a multiyear contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for not more than 5 years after the date of the original contract.

(2) COOPERATION AMONG RECIPIENTS.—The Secretary shall allow at least 2 recipients to act on a cooperative basis to procure rolling stock in compliance with this subsection and other Government procurement requirements.

(f) ACQUIRING ROLLING STOCK.—A recipient of financial assistance under this chapter may enter into a contract to expend that assistance to acquire rolling stock—

(1) based on—

(A) initial capital costs; or

(B) performance, standardization, life cycle costs, and other factors; or

(2) with a party selected through a competitive procurement process.

(g) EXAMINATION OF THE RECORDS.—Upon request, the Secretary, the Comptroller General, or a representative of the Secretary or the Comptroller General shall have access to and the right to examine and inspect all records, documents, papers, including contracts, related to a project for which a grant is made under this chapter.

(h) GRANT PROHIBITIONS.—A grant may not be used to support a procurement that uses an exclusionary or discriminatory specification.

[§ 5326. Special procurements

[(a) TURNKEY SYSTEM PROJECTS.—

[(1) TURNKEY SYSTEM PROJECT DEFINED.—In this subsection, the term "turnkey system project" means a project under which a recipient enters into a contract with a seller, firm, or consortium of firms to design and build a mass transportation system or an operable segment thereof that meets specific performance criteria. Such project may also 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) SELECTION OF TURNKEY PROJECTS.—To advance new technologies and lower the cost of a capital project for a new mass transportation system or an operable segment of a mass transportation system, the Secretary of Transportation shall allow solicitation for a turnkey system project to be financed under this chapter to be awarded conditionally before United States Government requirements have been met on the project if the award is made without prejudice to carrying out those requirements. Government financial assistance under this chapter may be made available for the project after the recipient complies with Government requirements.

[(3) DEMONSTRATIONS.—To develop guidelines applying generally to turnkey system projects, the Secretary may approve at least 2 projects for an initial demonstration phase. The results of the demonstration projects (and other projects using this procurement method on December 18, 1991) shall be considered in developing guidelines to carry out this subsection.

[(b) MULTIYEAR ROLLING STOCK.—(1) A recipient procuring rolling stock with Government financial assistance under this chapter may make a multiyear contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for not more than 5 years after the date of the original contract.

[(2) The Secretary shall allow at least 2 recipients to act on a cooperative basis to procure rolling stock in compliance with this subsection and other Government procurement requirements.

[(c) ACQUIRING ROLLING STOCK.—A recipient of financial assistance under this chapter may enter into a contract to expend that assistance to acquire rolling stock—

[(1) based on—

[(A) initial capital costs; or

[(B) performance, standardization, life cycle costs, and other factors; or

[(2) with a party selected through a competitive procurement process.

[(d) PROCURING ASSOCIATED CAPITAL MAINTENANCE ITEMS.—A recipient of assistance under section 5307 procuring an associated capital maintenance item under section 5307(b) may enter into a contract directly with the original manufacturer or supplier of the item to be replaced, without receiving prior approval of the Secretary, if the recipient first certifies in writing to the Secretary that—

[(1) the manufacturer or supplier is the only source for the item; and

[(2) the price of the item is no more than the price that similar customers pay for the item.]

§ 5327. Project management oversight

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—To receive United States Government financial assistance for a major capital project under this chapter or the National Capital Transportation Act of 1969 (Public Law 91–143, 83 Stat. 320), a recipient must prepare and carry out a project management plan approved by the Secretary of Transportation. The plan shall provide for—

(1) * * *

* * * * * * *

(11) periodic updates of the plan, especially related to project budget and project schedule, financing, ridership estimates, and the status of local efforts to enhance ridership where ridership estimates partly depend on the success of those efforts; [and]

(12) the recipient's commitment to submit a project budget and project schedule to the Secretary each month[.]*; and*

(13) safety and security management.

* * * * * * *

[(c) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—(1) The Secretary may use not more than .5 percent of amounts made available for a fiscal year to carry out section 5307, 5309, or 5311 of this title, an interstate transfer mass transportation project under section 103(e)(4) of title 23 as in effect on September 30, 1991, or a project under the National Capital Transportation Act of 1969 (Public Law 91–143, 83 Stat. 320) to make a contract to oversee the construction of a major project under section 5307, 5309, 5311, or 103(e)(4) or that Act. The Secretary may use when necessary not more than an additional .25 percent of amounts made available in a fiscal year to carry out a major project under section 5309 to make a contract to oversee the construction of the project.

[(2) The Secretary may use amounts available under paragraph (1) of this subsection to enter into contracts for safety, procurement, management, and financial compliance reviews and audits of a recipient of amounts under paragraph (1) and to provide technical assistance to correct deficiencies identified in compliance reviews and audits carried out under this section. Subsections (a), (b), and (e) of this section do not apply to contracts under this paragraph.

[(3) The Government shall pay the entire cost of carrying out a contract under this subsection.]

(c) LIMITATIONS.—

(1) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—The Secretary may use not more than .5 percent of amounts made available for a fiscal year to carry out section 5311, not more than .75 percent of amounts made available for a fiscal year to carry out section 5307, and not more than 1 percent of amounts made available for a fiscal year to carry out section 5309 to make contracts for the following activities:

(A) To oversee the construction of a major project.

(B) To review and audit the safety and security, procurement, management, and financial compliance of a recipient

or subrecipient of funds under sections 5307, 5309, and 5311.

(C) To provide technical assistance to correct deficiencies identified in compliance reviews and audits carried out under this section.

(2) LIMITATIONS ON APPLICABILITY.—Subsections (a), (b), and (e) do not apply to contracts under this section for activities described in paragraphs (1)(B) and (1)(C).

(3) GOVERNMENT'S SHARE OF COSTS.—The Government shall pay the entire cost of carrying out a contract under this subsection.

* * * * * * *

§ 5328. Project review

(a) SCHEDULE.—(1) * * *

(2) After the draft is circulated and not later than 30 days after the applicant selects a locally preferred alternative, the Secretary shall allow the project to advance to the preliminary engineering stage if the Secretary finds the project is consistent with section [5309(e)] *5309(c)*.

* * * * * * *

(4) The Secretary shall make a full funding grant agreement under section 5309 of this title for a project not later than 120 days after the project enters the final design stage of construction. The agreement shall provide for a United States Government share of the construction cost at least equal to the Government share estimated in the Secretary's most recent report required [under section 5309(o)(1)] *under section 5309(i)(1)* of this title or an update of the report unless the applicant requests otherwise.

* * * * * * *

[§ 5329. Investigation of safety hazards

[(a) GENERAL.—The Secretary of Transportation may investigate a condition in equipment, a facility, or an operation financed under this chapter that the Secretary believes causes a serious hazard of death or injury to establish the nature and extent of the condition and how to eliminate or correct it. If the Secretary establishes that a condition causes a hazard, the Secretary shall require the local governmental authority receiving amounts under this chapter to submit a plan for correcting it. The Secretary may withhold further financial assistance under this chapter until a plan is approved and carried out.

[(b) REPORT.—Not later than June 15, 1992, the Secretary shall submit to Congress a report containing—

[(1) a description of actions taken to identify and investigate conditions in a facility, equipment, or way of operating as part of the findings and decisions required of the Secretary in providing a grant or loan under this chapter;

[(2) a description of actions of the Secretary to correct or eliminate, as a requirement for making an amount available through a grant or loan under this chapter, a condition found to create a serious hazard of death or injury;

[(3) a summary of all passenger-related deaths and injuries resulting from an unsafe condition in a facility, equipment, or way of operating a facility or equipment at least partly financed under this chapter;

[(4) a summary of all employee-related deaths and injuries resulting from an unsafe condition in a facility, equipment, or way of operating a facility or equipment at least partly financed under this chapter;

[(5) a summary of action of the Secretary to correct or eliminate the unsafe condition to which the deaths and injuries referred to in clauses (3) and (4) of this subsection were attributed;

[(6) a summary of actions of the Secretary to alert mass transportation operators of the nature of the unsafe condition found to create a serious hazard of death or injury; and

[(7) recommendations of the Secretary to Congress of any legislative or administrative actions necessary to ensure that all recipients of amounts under this chapter will undertake the best way available to correct or eliminate hazards of death or injury, including—

[(A) a timetable for undertaking actions;

[(B) an estimate of the capital and operating cost to take the actions; and

[(C) minimum standards for establishing and carrying out safety plans by recipients of amounts under this chapter.]

§ 5329. Investigation of safety and hazards

(a) IN GENERAL.—The Secretary may investigate safety and security risks associated with a condition in equipment, a facility, or an operation financed under this chapter that the Secretary believes causes a serious hazard of death or injury to establish the nature and extent of the condition and how to eliminate, mitigate, or correct it.

(b) PLANS FOR ELIMINATING, MITIGATING, OR CORRECTING HAZARDS.—If the Secretary establishes that a condition causes a hazard, the Secretary shall require the local governmental authority receiving amounts under this chapter to submit a plan for eliminating, mitigating, or correcting it.

(c) WITHHOLDING FINANCIAL ASSISTANCE.—Financial assistance under this chapter, in an amount to be determined by the Secretary, may be withheld until a plan is approved and carried out.

[§ 5330. Withholding amounts for noncompliance with safety requirements

[(a) APPLICATION.—This section applies only to States that have rail fixed guideway mass transportation systems not subject to regulation by the Federal Railroad Administration.]

§ 5330. State safety oversight

(a) APPLICATION.—This section applies only to—

(1) States that have rail fixed guideway public transportation systems not subject to regulation by the Federal Railroad Administration; and

(2) States that are designing rail fixed guideway public transportation systems that will not be subject to regulation by the Federal Railroad Administration.

* * * * * * *

(c) STATE REQUIREMENTS.—A State meets the requirements of this section if the State—

(1) establishes and is carrying out a safety program plan for each fixed guideway [mass] *public* transportation system in the State that establishes at least safety requirements, lines of authority, levels of responsibility and accountability, and methods of documentation for the system; and

* * * * * * *

(d) MULTISTATE INVOLVEMENT.—When more than one State is subject to this section in connection with a single [mass] *public* transportation authority, the affected States *shall ensure uniform safety standards and enforcement and* may designate an entity (except the [mass] *public* transportation authority) to ensure uniform safety standards and enforcement and to meet the requirements of subsection (c) of this section.

* * * * * * *

[(f) REGULATIONS.—Not later than December 18, 1992, the Secretary shall prescribe regulations stating the requirements for complying with subsection (c) of this section.]

§ 5331. Alcohol and controlled substances testing

(a) DEFINITIONS.—In this section—

(1) * * *

* * * * * * *

(3) "[mass] *public* transportation" means any form of [mass] *public* transportation, except a form the Secretary decides is covered adequately, for employee alcohol and controlled substances testing purposes, under section 20140 or 31306 of this title *or section 2303a, 7101(i), or 7302(e) of title 46. The Secretary may also decide that a form of public transportation is covered adequately, for employee alcohol and controlled substances testing purposes, under the alcohol and controlled substance statutes or regulations of an agency within the Department of Transportation or the Coast Guard.*

(b) TESTING PROGRAM FOR [MASS] *PUBLIC* TRANSPORTATION EMPLOYEES.—(1)(A) In the interest of [mass] *public* transportation safety, the Secretary shall prescribe regulations that establish a program requiring [mass] *public* transportation operations that receive financial assistance under section 5307, 5309, or 5311 of this title [or section 103(e)(4) of title 23] to conduct preemployment, reasonable suspicion, random, and post-accident testing of [mass] *public* transportation employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of a controlled substance in violation of law or a United States Government regulation, and to conduct reasonable suspicion, random, and post-accident testing of such employees for the use of alcohol in violation of law or a United States Government regulation. The regulations shall permit such operations to conduct preemployment testing of such employees for the use of alcohol.

(B) When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations for conducting periodic recurring testing of [mass] *public* transportation employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(2) In prescribing regulations under this subsection, the Secretary of Transportation—

(A) shall require that post-accident testing of such a [mass] *public* transportation employee be conducted when loss of human life occurs in an accident involving [mass] *public* transportation; and

(B) may require that post-accident testing of such a [mass] *public* transportation employee be conducted when bodily injury or significant property damage occurs in any other serious accident involving [mass] *public* transportation.

(c) DISQUALIFICATIONS FOR USE.—(1) * * *

(2) This section does not supersede any penalty applicable to a [mass] *public* transportation employee under another law.

* * * * * * *

(e) REHABILITATION.—The Secretary of Transportation shall prescribe regulations establishing requirements for rehabilitation programs that provide for the identification and opportunity for treatment of any [mass] *public* transportation employee referred to in subsection (b)(1) of this section who is found to have used alcohol or a controlled substance in violation of law or a Government regulation. The Secretary shall decide on the circumstances under which employees shall be required to participate in a program. This subsection does not prevent a [mass] *public* transportation operation from establishing a program under this section in cooperation with another [mass] *public* transportation operation.

(f) RELATIONSHIP TO OTHER LAWS, REGULATIONS, STANDARDS, AND ORDERS.—(1) * * *

* * * * * * *

[(3) This section does not prevent the Secretary of Transportation from continuing in effect, amending, or further supplementing a regulation prescribed before October 28, 1991, governing the use of alcohol or a controlled substance by mass transportation employees.]

(g) INELIGIBILITY FOR ASSISTANCE.—A person is not eligible for financial assistance under section 5307, 5309, or 5311 of this title [or section 103(e)(4) of title 23] if the person is required, under regulations the Secretary of Transportation prescribes under this section, to establish a program of alcohol and controlled substances testing and does not establish the program.

* * * * * * *

§ 5333. Labor standards

(a) * * *

(b) EMPLOYEE PROTECTIVE ARRANGEMENTS.—(1) As a condition of financial assistance under sections 5307–5312, [5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(b)] *5316, 5317, 5318, 5320, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, 5338(b), 5338(g), and*

5338(h) of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5307–5312, [5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(b)] *5316, 5317, 5318, 5320, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, 5338(b), 5338(g), and 5338(h)* shall specify the arrangements.

(2) Arrangements under this subsection shall include provisions that may be necessary for—

(A) * * *

* * * * * * *

(D) assurances of employment to employees of acquired [mass] *public* transportation systems;

* * * * * * *

§ 5334. Administrative provisions

(a) GENERAL AUTHORITY.—In carrying out this chapter, the Secretary of Transportation may—

(1) * * *

* * * * * * *

(9) include in an agreement or instrument under this chapter a covenant or term the Secretary of Transportation considers necessary to carry out this chapter; [and]

(10) collect fees to cover the costs of training or conferences, including costs of promotional materials, sponsored by the Federal Transit Administration to promote [mass] *public* transportation and credit amounts collected to the appropriation concerned[.]*; and*

(11) issue regulations as necessary to carry out the purposes of this chapter.

(b) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—

(1) IN GENERAL.—Except for purposes of national defense or in the event of a national or regional emergency, the Secretary may not regulate the operation, routes, or schedules of a public transportation system for which a grant is made under this chapter, nor may the Secretary regulate the rates, fares, tolls, rentals, or other charges prescribed by any provider of public transportation.

(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to prevent the Secretary from requiring a recipient of funds under this chapter to comply with the terms and conditions of its Federal assistance agreement.

[(b)] *(c)* PROCEDURES FOR PRESCRIBING REGULATIONS.—(1) The Secretary of Transportation shall prepare an agenda listing all areas in which the Secretary intends to propose regulations governing activities under this chapter within the following 12 months. The Secretary shall publish the proposed agenda in the Federal Register as part of the Secretary's semiannual regulatory agenda that lists regulatory activities of the Federal Transit Administration. The Secretary shall submit the agenda to the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Banking,

Housing, and Urban Affairs and Appropriations of the Senate on the day the agenda is published.

* * * * * * *

(4) The Secretary of Transportation shall comply with this section (except [subsections (h) and (i)] *subsection (i)*) and sections 5323(a)(2), [5323(c), 5323(e), 5324(c),] 5325(a), 5325(b), 5326(c), and 5326(d) when proposing or carrying out a regulation governing an activity under this chapter, except for a routine matter or a matter with no significant impact.

(5) NONREGULATORY SUBSTANTIVE POLICY STATEMENTS.—The Secretary shall provide notice and an opportunity for public comment at least 60 days before issuing any nonregulatory substantive policy statements (regardless of the form of issuance), including guidance, policy statements, and regulatory interpretations.

[(c)] *(d)* BUDGET PROGRAM AND SET OF ACCOUNTS.—The Secretary of Transportation shall—

(1) submit each year a budget program as provided in section 9103 of title 31; and

(2) maintain a set of accounts for audit under chapter 35 of title 31.

[(d)] *(e)* DEPOSITORY AND AVAILABILITY OF AMOUNTS.—The Secretary of Transportation shall deposit amounts made available to the Secretary under this chapter in a checking account in the Treasury. Receipts, assets, and amounts obtained or held by the Secretary to carry out this chapter are available for administrative expenses to carry out this chapter.

[(e)] *(f)* BINDING EFFECT OF FINANCIAL TRANSACTION.—A financial transaction of the Secretary of Transportation under this chapter and a related voucher are binding on all officers and employees of the United States Government.

[(f)] *(g)* DEALING WITH ACQUIRED PROPERTY.—Notwithstanding another law related to the Government acquiring, using, or disposing of real property, the Secretary of Transportation may deal with property acquired under subsection (a)(3) or (4) of this section in any way. However, this subsection does not—

(1) * * *

* * * * * * *

[(g)] *(h)* TRANSFER OF ASSETS NO LONGER NEEDED.—(1) If a recipient of assistance under this chapter decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. The Secretary may authorize a transfer for a public purpose other than [mass] *public* transportation only if the Secretary decides—

(A) * * *

* * * * * * *

(4) PROCEEDS FROM THE SALE OF TRANSIT ASSETS.—

(A) IN GENERAL.—When real property, equipment, or supplies acquired with assistance under this chapter are no longer needed for [mass] *public* transportation pur-

poses as determined under the applicable assistance agreement, the Secretary may authorize the sale, transfer, or lease of the assets under conditions determined by the Secretary and subject to the requirements of this subsection.

* * * * * * *

[(h)] *(i)* TRANSFER OF AMOUNTS AND NON-GOVERNMENT SHARE.—(1) Amounts made available for a [mass] *public* transportation project under title 23 shall be transferred to and administered by the Secretary of Transportation under this chapter. Amounts made available for a highway project under this chapter shall be transferred to and administered by the Secretary under title 23.

(2) The provisions of title 23 related to the non-Government share apply to amounts under title 23 used for [mass] *public* transportation projects. The provisions of this chapter related to the non-Government share apply to amounts under this chapter used for highway projects.

[(i) AUTHORITY OF SECRETARY OF HOUSING AND URBAN DEVELOPMENT.—The Secretary of Housing and Urban Development shall—

[(1) carry out section 5312(a) and (b)(1) of this title related to—

[(A) urban transportation systems and planned development of urban areas; and

[(B) the role of transportation planning in overall urban planning; and

[(2) advise and assist the Secretary of Transportation in making findings under section 5323(a)(1)(A) of this title.]

* * * * * * *

[§ 5335. Reports and audits]

§ 5335. National transit database

(a) NATIONAL TRANSIT DATABASE.—[(1) To help] *To help* meet the needs of individual [mass] *public* transportation systems, the United States Government, State and local governments, and the public for information on which to base [mass] *public* transportation service planning, the Secretary of Transportation shall maintain a reporting system, using uniform categories to accumulate [mass] *public* transportation financial and operating information and using a uniform system of accounts. The reporting and uniform systems shall contain appropriate information to help any level of government make a public sector investment decision. The Secretary may request and receive appropriate information from any source.

[(2) The Secretary] *(b) REPORTING AND UNIFORM SYSTEMS.—The Secretary* may make a grant under section 5307 of this title only if the applicant, and any person that will receive benefits directly from the grant, are subject to the reporting and uniform systems.

[(b) BIENNIAL TRANSFERABILITY REPORT.—In January 1993, the Comptroller General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on carrying out section 5307(b)(5) of this title. The report shall—

[(1) identify, by State, the amount of mass transportation money transferred for non-mass transportation purposes under section 5307(b)(5) of this title during the prior fiscal year;

[(2) include an assessment of the impact of the transfers on the mass transportation needs of individuals and communities in the State, including the impact on—

[(A) the State's ability to meet the mass transportation needs of elderly individuals and individuals with disabilities;

[(B) efforts to meet the objectives of the Clean Air Act (42 U.S.C. 7401 et seq.) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); and

[(C) the State's efforts to extend public mass transportation services to unserved rural areas; and

[(3) examine the relative levels of Government mass transportation assistance and services in urban and rural areas in the fiscal year that ended September 30, 1991, and the extent to which the assistance and service has changed in later fiscal years because of mass transportation resources made available under this chapter and the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 1914).]

§ 5336. Apportionment of appropriations for formula grants

(a) BASED ON URBANIZED AREA POPULATION.—Of the amount made available or appropriated under section 5338(a) [of this title] *to carry out section 5307*—

(1) * * *

(2) 90.68 percent shall be apportioned each fiscal year only in urbanized areas with populations of at least 200,000 as provided in subsections (b) and (c) of this section*, except that the amount apportioned to the Anchorage urbanized area under subsection (b) shall be available to the Alaska Railroad for any costs related to its passenger operations*.

(b) BASED ON FIXED GUIDEWAY REVENUE VEHICLE-MILES, ROUTE-MILES, AND PASSENGER-MILES.—(1) In this subsection, "fixed guideway revenue vehicle-miles" and "fixed guideway route-miles" include ferry boat operations directly or under contract by the designated recipient *and the Alaska Railroad passenger operations*.

* * * * * * *

(g) TRANSFERS OF APPORTIONMENTS.—(1) The chief executive officer of a State may transfer any part of the State's apportionment under subsection (a)(1) of this section to supplement amounts apportioned to the State under section 5311(c) of this title or amounts apportioned to urbanized areas under this subsection. The chief executive officer may make a transfer only after consulting with responsible local officials and publicly owned operators of [mass] *public* transportation in each area for which the amount originally was apportioned under this section.

* * * * * * *

(j) APPLICATION OF OTHER SECTIONS.—Sections 5302, 5318, 5323(a)(1), (d), and (f), 5332, and 5333 of this title apply to this section and to [a grant made under] *a grant made with funds apportioned under* this section. Except as provided in this section, no other provision of this chapter applies to this section or to [a grant

made under] *a grant made with funds apportioned under* this section.

(k) CERTAIN URBANIZED AREAS GRANDFATHERED.—An area designated an urbanized area under the 1980 census and not designated an urbanized area under the 1990 census for the fiscal year ending September 30, 1993, is eligible to receive—

(1) 50 percent of the amount the area would have received if the area had been an urbanized area as defined by [section 5302(a)(13) of this title] *section 5302(a)*; and

* * * * * * *

[§ 5337. Apportionment of appropriations for fixed guideway modernization

[(a) DISTRIBUTION.—The Secretary shall apportion amounts made available for fixed guideway modernization under section 5309 for each of fiscal years 1998 through 2003 as follows:]

§ 5337. Apportionment based on fixed guideway factors

(a) DISTRIBUTION.—The Secretary shall apportion amounts made available for fixed guideway modernization under sections 5338(b) and 5338(g) as follows:

(1) * * *

(2) The next $70,000,000 shall be apportioned as follows:

(A) * * *

(B) 50 percent in other urbanized areas eligible for assistance under section 5336(b)(2)(A) to which amounts were apportioned under this section for fiscal year 1997, as provided in section 5336(b)(2)(A) and subsection [(e)(1)] *(e)* of this section.

(3) The next $5,700,000 shall be apportioned in the following urbanized areas as follows:

(A) * * *

* * * * * * *

(D) 21.72 percent in urbanized areas to which paragraph (2)(B) applies, as provided in section 5336(b)(2)(A) and subsection [(e)(1)] *(e)* of this section.

(4) The next $186,600,000 shall be apportioned in each urbanized area to which paragraph (1) applies and in each urbanized area to which paragraph (2)(B) applies, as provided in section 5336(b)(2)(A) and subsection [(e)(1)] *(e)* of this section.

(5) The next $70,000,000 shall be apportioned as follows:

(A) 65 percent in the urbanized areas listed in paragraph (1), as provided in section 5336(b)(2)(A) and subsection [(e)(2)] *(e)* of this section.

(B) 35 percent to other urbanized areas eligible for assistance under section 5336(b)(2)(A) if the areas contain fixed guideway systems placed in revenue service at least 7 years before the fiscal year in which amounts are made available and in any urbanized area if, before the first day of the fiscal year, the area satisfies the Secretary that the area has modernization needs that cannot adequately be met with amounts received under section 5336(b)(2)(A), as provided in section 5336(b)(2)(A) and subsection [(e)(2)] *(e)* of this section.

(6) The next $50,000,000 shall be apportioned as follows:

(A) 60 percent in the urbanized areas listed in paragraph (1), as provided in section 5336(b)(2)(A) and subsection [(e)(2)] *(e)* of this section.

(B) 40 percent to urbanized areas to which paragraph (5)(B) applies, as provided in section 5336(b)(2)(A) and subsection [(e)(2)] *(e)* of this section.

(7) Remaining amounts shall be apportioned as follows:

(A) 50 percent in the urbanized areas listed in paragraph (1), as provided in section 5336(b)(2)(A) and subsection [(e)(2)] *(e)* of this section.

(B) 50 percent to urbanized areas to which paragraph (5)(B) applies, as provided in section 5336(b)(2)(A) and subsection [(e)(2)] *(e)* of this section.

* * * * * * *

(e) ROUTE SEGMENTS TO BE INCLUDED IN APPORTIONMENT FORMULAS.—

[(1) 1997 STANDARD.—Amounts apportioned under paragraphs (2)(B), (3), and (4) of subsection (a) shall have attributable to each urbanized area only the number of fixed guideway revenue miles of service and number of fixed guideway route miles for segments of fixed guideway systems used to determine apportionments for fiscal year 1997.

[(2) OTHER STANDARDS.—] Amounts apportioned under paragraphs (5) through (7) of subsection (a) shall have attributable to each urbanized area only the number of fixed guideway revenue miles of service and number of fixed guideway route-miles for segments of fixed guideway systems placed in revenue service at least 7 years before the fiscal year in which amounts are made available.

[§ 5338. Authorizations

[(a) FORMULA GRANTS.—

[(1) FISCAL YEAR 1998.—

[(A) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5310, and 5311, $2,260,000,000 for fiscal year 1998.

[(B) FROM THE GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out sections 5307, 5310, and 5311, $240,000,000 for fiscal year 1998.

[(C) ALLOCATION OF FUNDS.—Of the aggregate of amounts made available by and appropriated under this paragraph for a fiscal year—

[(i) $4,849,950 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307;

[(ii) $62,219,389 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310;

[(iii) $134,077,934 shall be available to provide financial assistance for other than urbanized areas under section 5311; and

[(iv) $2,298,852,727 shall be available to provide financial assistance for urbanized areas under section 5307.

[(2) FISCAL YEARS 1999 THROUGH 2003 AND FOR THE PERIOD OF OCTOBER 1, 2003, THROUGH APRIL 30, 2004.—

[(A) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5308, 5310, and 5311—

[(i) $2,280,000,000 for fiscal year 1999;

[(ii) $2,478,400,000 for fiscal year 2000;

[(iii) $2,676,000,000 for fiscal year 2001;

[(iv) $2,873,600,000 for fiscal year 2002;

[(v) $3,071,200,000 for fiscal year 2003; and

[(vi) $1,780,963,287 for the period of October 1, 2003, through April 30, 2004.

[(B) FROM THE GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out sections 5307, 5308, 5310, and 5311—

[(i) $570,000,000 for fiscal year 1999;

[(ii) $619,600,000 for fiscal year 2000;

[(iii) $669,000,000 for fiscal year 2001;

[(iv) $718,400,000 for fiscal year 2002;

[(v) $767,800,000 for fiscal year 2003; and

[(vi) $445,240,822 for the period of October 1, 2003, through April 30, 2004.

[(C) ALLOCATION OF FUNDS.—Of the aggregate of amounts made available by and appropriated under this paragraph for a fiscal year (other than for the period of October 1, 2003, through April 30, 2004)—

[(i) $4,849,950 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307;

[(ii) $50,000,000 shall be available to carry out section 5308; and

[(iii) of the remaining amount—

[(I) 2.4 percent shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310;

[(II) 6.37 percent shall be available to provide financial assistance for other than urbanized areas under section 5311; and

[(III) 91.23 percent shall be available to provide financial assistance for urbanized areas under section 5307.

[(b) CAPITAL PROGRAM GRANTS AND LOANS.—

[(1) FISCAL YEAR 1998.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309, $2,000,000,000 for fiscal year 1998.

[(2) FISCAL YEARS 1999 THROUGH 2003 AND FOR THE PERIOD OF OCTOBER 1, 2003, THROUGH FEBRUARY 29, 2004.—

[(A) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309—

[(i) $1,805,600,000 for fiscal year 1999;

[(ii) $1,960,800,000 for fiscal year 2000;
[(iii) $2,116,800,000 for fiscal year 2001;
[(iv) $2,272,800,000 for fiscal year 2002;
[(v) $2,428,800,000 for fiscal year 2003; and
[(vi) $1,022,503,342 for the period of October 1, 2003, through February 29, 2004.

[(B) FROM THE GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out section 5309—
[(i) $451,400,000 for fiscal year 1999;
[(ii) $490,200,000 for fiscal year 2000;
[(iii) $529,200,000 for fiscal year 2001;
[(iv) $568,200,000 for fiscal year 2002;
[(v) $607,200,000 for fiscal year 2003; and
[(vi) $255,801,669 for the period of October 1, 2003, through February 29, 2004.

[(c) PLANNING.—

[(1) FISCAL YEAR 1998.—There are authorized to be appropriated to carry out sections 5303, 5304, 5305, and 5313(b), $47,750,000 for fiscal year 1998.

[(2) FISCAL YEARS 1999 THROUGH 2003 AND FOR THE PERIOD OF OCTOBER 1, 2003, THROUGH FEBRUARY 29, 2004.—

[(A) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5303, 5304, 5305, and 5313(b)—
[(i) $42,200,000 for fiscal year 1999;
[(ii) $48,400,000 for fiscal year 2000;
[(iii) $50,200,000 for fiscal year 2001;
[(iv) $53,800,000 for fiscal year 2002;
[(v) $58,600,000 for fiscal year 2003; and
[(vi) $24,636,667 for the period of October 1, 2003, through February 29, 2004.

[(B) FROM THE GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out sections 5303, 5304, 5305, and 5313(b)—
[(i) $10,800,000 for fiscal year 1999;
[(ii) $11,600,000 for fiscal year 2000;
[(iii) $12,800,000 for fiscal year 2001;
[(iv) $13,200,000 for fiscal year 2002;
[(v) $14,400,000 for fiscal year 2003; and
[(vi) $6,100,000 for the period of October 1, 2003, through February 29, 2004.

[(C) ALLOCATION OF FUNDS.—Of the funds made available by or appropriated under this paragraph for a fiscal year or any portion of a fiscal year—
[(i) 82.72 percent shall be available for metropolitan planning under sections 5303, 5304, and 5305; and
[(ii) 17.28 percent shall be available for State planning under section 5313(b).

[(d) RESEARCH.—

[(1) FISCAL YEAR 1998.—There are authorized to be appropriated to carry out sections 5311(b)(2), 5312, 5313(a), 5314, 5315, and 5322, $44,250,000 for fiscal year 1998.

[(2) FISCAL YEARS 1999 THROUGH 2003 AND FOR THE PERIOD OF OCTOBER 1, 2003, THROUGH FEBRUARY 29, 2004.—

[(A) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5311(b)(2), 5312, 5313(a), 5314, 5315, and 5322—

[(i) $36,000,000 for fiscal year 1999;

[(ii) $37,600,000 for fiscal year 2000;

[(iii) $37,600,000 for fiscal year 2001;

[(iv) $39,200,000 for fiscal year 2002;

[(v) $39,200,000 for fiscal year 2003; and

[(vi) $16,536,667 for the period of October 1, 2003, through February 29, 2004.

[(B) FROM THE GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out sections 5311(b)(2), 5312, 5313(a), 5314, 5315, and 5322—

[(i) $9,000,000 for fiscal year 1999;

[(ii) $9,400,000 for fiscal year 2000;

[(iii) $9,400,000 for fiscal year 2001;

[(iv) $9,800,000 for fiscal year 2002;

[(v) $9,800,000 for fiscal year 2003; and

[(vi) $4,095,000 for the period of October 1, 2003, through February 29, 2004.

[(C) ALLOCATION OF FUNDS.—Of the funds made available by or appropriated under this paragraph for a fiscal year (other than for the period of October 1, 2003, through February 29, 2004)—

[(i) not less than $5,250,000 shall be available for providing rural transportation assistance under section 5311(b)(2);

[(ii) not less than $8,250,000 shall be available for carrying out transit cooperative research programs under section 5313(a);

[(iii) not less than $4,000,000 shall be available to carry out programs under the National Transit Institute under section 5315, including not more than $1,000,000 shall be available to carry out section 5315(a)(16); and

[(iv) the remainder shall be available for carrying out national planning and research programs under sections 5311(b)(2), 5312, 5313(a), 5314, and 5322.

[(e) UNIVERSITY TRANSPORTATION RESEARCH.—

[(1) FISCAL YEAR 1998.—Subject to paragraph (2)(C), there are authorized to be appropriated to carry out section 5505 $6,000,000 for fiscal year 1998.

[(2) FISCAL YEARS 1999 THROUGH 2003 AND FOR THE PERIOD OF OCTOBER 1, 2003, THROUGH FEBRUARY 29, 2004.—

[(A) FROM THE TRUST FUND.—Subject to subparagraph (C), there shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5505, $4,800,000 for each of fiscal years 1999 through 2003 and $2,020,833 for the period of October 1, 2003, through February 29, 2004.

[(B) FROM THE GENERAL FUND.—Subject to subparagraph (C), in addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out section 5505, $1,200,000 for each of fiscal years 1999 through 2003 and $505,833 for the period of October 1, 2003, through February 29, 2004.

[(C) FUNDING OF CENTERS.—

[(i) Of the amounts made available under subparagraph (A) and paragraph (1) for each fiscal year (other than for the period of October 1, 2003, through February 29, 2004)—

[(I) $2,000,000 shall be available for the center identified in section 5505(j)(4)(A); and

[(II) $2,000,000 shall be available for the center identified in section 5505(j)(4)(F).

[(ii) For each of fiscal years 1998 through 2001, of the amounts made available under this paragraph and paragraph (1)—

[(I) $400,000 shall be available from amounts made available under subparagraph (A) of this paragraph and under paragraph (1) for each of the centers identified in subparagraphs (E) and (F) of section 5505(j)(3); and

[(II) $350,000 shall be available from amounts made available under subparagraph (B) of this paragraph and under paragraph (1) for each of the centers identified in subparagraphs (E) and (F) of section 5505(j)(3).

[(iii) Any amounts made available under this paragraph or paragraph (1) for any fiscal year (other than for the period of October 1, 2003, through February 29, 2004) that remain after distribution under clauses (i) and (ii), shall be available for the purposes identified in section 3015(d) of the Federal Transit Act of 1998.

[(3) SPECIAL RULE.—Nothing in this subsection shall be construed to limit the transportation research conducted by the centers funded by this section.

[(f) ADMINISTRATION.—

[(1) FISCAL YEAR 1998.—There are authorized to be appropriated to carry out section 5334, $45,738,000 for fiscal year 1998.

[(2) FISCAL YEARS 1999 THROUGH 2003 AND FOR THE PERIOD OF OCTOBER 1, 2003, THROUGH FEBRUARY 29, 2004.—

[(A) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334—

[(i) $43,200,000 for fiscal year 1999;

[(ii) $48,000,000 for fiscal year 2000;

[(iii) $51,200,000 for fiscal year 2001;

[(iv) $53,600,000 for fiscal year 2002;

[(v) $58,400,000 for fiscal year 2003; and

[(vi) $24,585,834 for the period of October 1, 2003, through February 29, 2004.

[(B) FROM THE GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out section 5334—

[(i) $10,800,000 for fiscal year 1999;

[(ii) $12,000,000 for fiscal year 2000;

[(iii) $12,800,000 for fiscal year 2001;

[(iv) $13,400,000 for fiscal year 2002;

[(v) $14,600,000 for fiscal year 2003; and

[(vi) $6,150,833 for the period of October 1, 2003, through February 29, 2004.

[(g) GRANTS AS CONTRACTUAL OBLIGATIONS.—

[(1) GRANTS FINANCED FROM THE HIGHWAY TRUST FUND.—A grant or contract approved by the Secretary, that is financed with amounts made available under subsection (a)(1)(A), (a)(2)(A), (b)(1), (b)(2)(A), (c)(2)(A), (d)(2)(A), (e)(2)(A), or (f)(2)(A) is a contractual obligation of the United States Government to pay the Government's share of the cost of the project.

[(2) GRANTS FINANCED FROM GENERAL FUNDS.—A grant or contract, approved by the Secretary, that is financed with amounts made available under subsection (a)(1)(B), (a)(2)(B), (b)(2)(B), (c)(1), (c)(2)(B), (d)(1), (d)(2)(B), (e)(1), (e)(2)(B), (f)(1), (f)(2)(B), or (h) is a contractual obligation of the Government to pay the Government's share of the cost of the project only to the extent that amounts are provided in advance in an appropriations Act.

[(h) ADDITIONAL AMOUNTS.—In addition to amounts made available by or appropriated under subsections (a) through (f) under the Transportation Discretionary Spending Guarantee for the Mass Transit Category, there are authorized to be appropriated—

[(1) to carry out sections 5303, 5304, 5305, and 5313(b)—

[(A) for fiscal year 1999, $32,000,000;

[(B) for fiscal year 2000, $33,000,000;

[(C) for fiscal year 2001, $34,000,000;

[(D) for fiscal year 2002, $35,000,000; and

[(E) for fiscal year 2003, $36,000,000;

[(2) to carry out section 5307, $150,000,000 for each of fiscal years 1999 through 2003;

[(3) to carry out section 5308, $100,000,000 for each of fiscal years 1999 through 2003;

[(4) to carry out section 5309(m)(1)(A), $100,000,000 for each of fiscal years 1999 through 2003;

[(5) to carry out section 5309(m)(1)(B)—

[(A) for fiscal year 1999 $400,000,000;

[(B) for fiscal year 2000 $410,000,000;

[(C) for fiscal year 2001 $420,000,000;

[(D) for fiscal year 2002 $430,000,000; and

[(E) for fiscal year 2003 $430,000,000;

[(6) to carry out section 5309(m)(1)(C), $100,000,000 for each of fiscal years 1999 through 2003;

[(7) to carry out sections 5311(b)(2), 5312, 5313(a), 5314, 5315, and 5322—

[(A) for fiscal year 1999, $31,000,000;

[(B) for fiscal year 2000, $31,000,000;

[(C) for fiscal year 2001, $33,000,000;

[(D) for fiscal year 2002, $33,000,000; and
[(E) for fiscal year 2003, $34,000,000; and
[(8) to carry out section 5334—
[(A) for fiscal year 1999, $13,000,000;
[(B) for fiscal year 2000, $14,000,000;
[(C) for fiscal year 2001, $16,000,000;
[(D) for fiscal year 2002, $17,000,000; and
[(E) for fiscal year 2003, $18,000,000.

[(i) AVAILABILITY OF AMOUNTS.—Amounts made available by or appropriated under subsections (a) through (e), and paragraphs (1) through (7) of subsection (h), shall remain available until expended.]

§ 5338. Authorizations

(a) FORMULA GRANTS.—

(1) FISCAL YEAR 2004.—

(A) FROM TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5308, 5310, 5311, 5316, 5317, 5318, and 5320 of this chapter, 1118(b) of the Transportation Equity Act: A Legacy for Users (relating to the nonmotorized transportation pilot program), and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note; 112 Stat. 392–393) $3,132,304,000 for fiscal year 2004.

(B) FROM GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out sections 5307, 5308, 5310, 5311, 5316, 5317, and 5318 of this chapter, 1118(b) of the Transportation Equity Act: A Legacy for Users (relating to the nonmotorized transportation pilot program), and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note; 112 Stat. 392–393) $783,076,000 for fiscal year 2004.

(C) ALLOCATION OF FUNDS.—Of the aggregate of amounts made available by and appropriated under this paragraph for a fiscal year—

(i) $4,849,950 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307;

(ii) $125,000,000 shall be available to provide job access and reverse commute formula grants under section 5316;

(iii) $50,000,000 shall be available to carry out the New Freedom program under section 5317;

(iv) $50,000,000 shall be available to provide clean fuels formula grants under section 5308;

(v) $8,000,000 shall be available to carry out the transit in the parks pilot program under section 5320;

(vi) $4,000,000 shall be available to carry out the nonmotorized transportation pilot program under section 1118(b) of the Transportation Equity Act: A Legacy for Users;

(vii) $8,000,000 shall be available to provide over-the-road bus accessibility grants under section 3038 of

the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note);

(viii) $3,100,000 shall be available to carry out bus testing under section 5318;

(ix) $91,560,751 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310;

(x) $292,994,404 shall be available to provide financial assistance for other than urbanized areas under section 5311; and

(xi) $3,277,874,895 shall be available to provide financial assistance for urbanized areas under section 5307, subject to section 3041(h) of the Federal Public Transportation Act of 2004.

(2) FISCAL YEARS 2005 THROUGH 2009.—

(A) FROM TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5308, 5310, 5311, 5316, 5317, 5318, and 5320 of this chapter, section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note; 112 Stat. 392–393), and section 1118(b) of the Transportation Equity Act: A Legacy for Users (relating to the nonmotorized transportation pilot program)—

(i) $4,181,125,000 for fiscal year 2005;

(ii) $4,464,295,000 for fiscal year 2006;

(iii) $4,766,420,000 for fiscal year 2007;

(iv) $5,089,172,500 for fiscal year 2008; and

(v) $5,433,667,500 for fiscal year 2009.

(B) ALLOCATION OF FUNDS FOR BUS TESTING AND OVER-THE-ROAD BUS ACCESSIBILITY.—Of the aggregate of amounts made available by this paragraph for a fiscal year—

(i) $3,100,000 shall be available to carry out section 5318; and

(ii) $8,000,000 shall be available to carry out section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

(C) ALLOCATION OF FUNDS FOR CLEAN FUELS FORMULA GRANT PROGRAM.—Of the aggregate of amounts made available by this paragraph, $75,000,000 for fiscal year 2005 and $100,000,000 for each of fiscal years 2006, 2007, 2008, and 2009 shall be available to carry out section 5308.

(D) ALLOCATION OF FUNDS FOR JOB ACCESS AND REVERSE COMMUTE FORMULA GRANT PROGRAM.—Of the aggregate of amounts made available by this paragraph, $150,000,000 for fiscal year 2005, $175,000,000 for fiscal year 2006, $200,000,000 for fiscal year 2007, $200,000,000 for fiscal year 2008, and $200,000,000 for fiscal year 2009 shall be available to carry out section 5316.

(E) ALLOCATION OF FUNDS FOR NEW FREEDOM PROGRAM.—Of the aggregate of amounts made available by this paragraph, $95,000,000 for fiscal year 2005, $100,000,000 for fiscal year 2006, $105,000,000 for fiscal year 2007, $115,000,000 for fiscal year 2008, and $125,000,000 for fiscal year 2009 shall be available to carry out section 5317.

(F) ALLOCATION OF FUNDS FOR TRANSIT IN THE PARKS PILOT PROGRAM.—Of the aggregate of amounts made available by this paragraph, $8,000,000 for fiscal year 2005, $16,000,000 for fiscal year 2006, $16,000,000 for fiscal year 2007, $16,000,000 for fiscal year 2008, and $16,000,000 for fiscal year 2009 shall be available to carry out section 5320.

(G) ALLOCATION OF FUNDS FOR NONMOTORIZED TRANSPORTATION PILOT PROGRAM.—Of the aggregate of amounts made available by this paragraph, $4,000,000 for fiscal year 2005, $4,000,000 for fiscal year 2006, $4,000,000 for fiscal year 2007, $8,000,000 for fiscal year 2008, and $8,000,000 for fiscal year 2009 shall be available to carry out section 1118(b) of the Transportation Equity Act: A Legacy for Users (relating to the nonmotorized transportation pilot program).

(H) ALLOCATION OF FUNDS FOR THE ALASKA RAILROAD.—Of the aggregate of amounts made available by this paragraph, $10,000,000 for fiscal year 2005, $11,000,000 for fiscal year 2006, $12,000,000 for fiscal year 2007, $13,000,000 for fiscal year 2008, and $14,000,000 for fiscal year 2009 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307.

(I) REMAINDER.—Of the remainder of the aggregate amounts made available by this paragraph for a fiscal year after the allocations under subparagraphs (B) through (H) for such fiscal year—

(i) 2.5 percent shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310;

(ii) 8.0 percent shall be available to provide financial assistance for other than urbanized areas under section 5311; and

(iii) 89.5 percent shall be available to provide financial assistance for urbanized areas under section 5307, subject to section 3041(h) of the Federal Public Transportation Act of 2004.

(b) CAPITAL PROGRAM GRANTS IN FISCAL YEAR 2004.—

(1) FROM TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309, $2,499,504,000 for fiscal year 2004.

(2) FROM GENERAL FUND.—In addition to amounts made available by paragraph (1), there is authorized to be appropriated to carry out section 5309, $624,876,200 for fiscal year 2004.

(c) PLANNING.—

(1) FISCAL YEAR 2004.—

(A) FROM TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5303, 5304, and 5305, $72,660,000 for fiscal year 2004.

(B) FROM GENERAL FUND.—In addition to amounts made available by subparagraph (A), there is authorized to be appropriated to carry out sections 5303, 5304, and 5305, $18,165,000 for fiscal year 2004.

(2) FISCAL YEARS 2005 THROUGH 2009.—

(A) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5303, 5304, and 5305—

(i) $96,875,000 for fiscal year 2005;

(ii) $103,325,000 for fiscal year 2006;

(iii) $110,200,000 for fiscal year 2007;

(iv) $117,537,500 for fiscal year 2008; and

(v) $125,362,500 for fiscal year 2009.

(B) ALLOCATION OF FUNDS.—Of the funds made available by this paragraph for a fiscal year—

(i) 82.72 percent shall be available for metropolitan planning under sections 5303, 5304, and 5305 (other than 5305(e)); and

(ii) 17.28 percent shall be available for State planning under section 5305(e).

(d) RESEARCH.—

(1) FISCAL YEAR 2004.—

(A) FROM TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5311(b), 5312, 5313, 5314, 5315, 5322, and 5335, $41,888,000 for fiscal year 2004.

(B) FROM GENERAL FUND.—In addition to amounts made available by subparagraph (A), there is authorized to be appropriated to carry out sections 5311(b), 5312, 5313, 5314, 5315, 5322, and 5335, $10,472,000 for fiscal year 2004.

(C) ALLOCATION OF FUNDS.—Of the funds made available by or appropriated pursuant to this paragraph for fiscal year 2004—

(i) not less than $4,500,000 shall be available to carry out programs under the National Transit Institute under section 5315;

(ii) not less than $3,500,000 shall be available to carry out section 5335;

(iii) not less than $3,500,000 shall be available to carry out section 5314(a)(2); and

(iv) not less than $8,860,000 shall be available to carry out section 5313(a).

(2) FISCAL YEARS 2005 THROUGH 2009.—

(A) FROM THE GENERAL FUND.—There is authorized to be appropriated to carry out sections 5312, 5313, 5314, 5315, 5322, and 5335—

(i) $54,500,000 for fiscal year 2005;

(ii) $57,000,000 for fiscal year 2006;

(iii) $59,500,000 for fiscal year 2007;

(iv) $62,000,000 for fiscal year 2008; and

(v) $64,500,000 for fiscal year 2009.

(B) ALLOCATION OF FUNDS.—Of the funds appropriated pursuant to this paragraph for a fiscal year—

(i) not less than $4,500,000 shall be available to carry out programs under the National Transit Institute under section 5315;

(ii) not less than $3,500,000 shall be available to carry out section 5335; and

(iii) not less than $3,500,000 shall be available to carry out section 5314(a)(2).

(C) TRANSIT COOPERATIVE RESEARCH PROGRAM.—Of the funds appropriated pursuant to this paragraph, $9,000,000 for fiscal year 2005, $9,500,000 for fiscal year 2006, $10,000,000 for fiscal year 2007, $10,500,000 for fiscal year 2008, and $11,000,000 for fiscal year 2009 shall be available to carry out section 5313(a).

(D) REMAINDER.—The remainder of the funds appropriated pursuant to this paragraph for a fiscal year after the allocations under subparagraphs (A) and (B) for such fiscal year shall be available to carry out national research and technology programs under sections 5312, 5314, and 5322.

(e) UNIVERSITY TRANSPORTATION RESEARCH.—

(1) FISCAL YEAR 2004.—

(A) FROM TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5505 and 5506, $6,400,000 for fiscal year 2004.

(B) FROM GENERAL FUND.—In addition to amounts made available by subparagraph (A), there is authorized to be appropriated to carry out sections 5505 and 5506, $1,600,000 for fiscal year 2004.

(2) FISCAL YEARS 2005 THROUGH 2009.—Subject to paragraph (3), there is authorized to be appropriated to carry out sections 5505 and 5506, $8,000,000 for each of fiscal years 2005 through 2009.

(3) FUNDING OF UNIVERSITY TRANSPORTATION CENTERS.—

(A) IN GENERAL.—Of the amounts made available by and appropriated under paragraphs (1) and (2) $2,000,000 for each of fiscal years 2004, 2005, and 2006 shall be available for the institution identified in section 5505(j)(3)(E), as so in effect.

(B) USE OF FUNDS.—Funds made available for the institution identified in subparagraph (A)(iii) shall be used to make grants under 5506(f)(5) for that institution

(C) SPECIAL RULE.—Nothing in this subsection shall be construed to limit the transportation research conducted by the centers funded by this section.

(f) ADMINISTRATION.—

(1) FISCAL YEAR 2004.—

(A) FROM TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334, $60,044,000 for fiscal year 2004.

(B) FROM GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out section 5334, $15,011,000 for fiscal year 2004.

(2) FISCAL YEARS 2005 THROUGH 2009.—There are authorized to be appropriated to carry out section 5334—

(A) $77,000,000 for fiscal year 2005;

(B) $79,000,000 for fiscal year 2006;

(C) $81,000,000 for fiscal year 2007;

(D) $83,000,000 for fiscal year 2008; and

(E) $85,000,000 for fiscal year 2009.

(g) TRUST FUND CAPITAL PROGRAM GRANTS.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5309(m)(2)(B)(i) and 5309(m)(2)(B)(iii)—

(1) $1,918,500,000 for fiscal year 2005;
(2) $2,027,628,000 for fiscal year 2006;
(3) $2,154,528,000 for fiscal year 2007;
(4) $2,305,974,000 for fiscal year 2008; and
(5) $2,452,482,000 for fiscal year 2009.

(h) GENERAL FUND CAPITAL PROGRAM GRANTS.—There are authorized to be appropriated to carry out sections 5309(m)(2)(A) and 5309(m)(2)(B)(ii)—

(1) $1,414,000,000 for fiscal year 2005;
(2) $1,526,752,000 for fiscal year 2006;
(3) 1,636,352,000 for fiscal year 2007;
(4) $1,737,316,000 for fiscal year 2008; and
(5) $1,859,998,000 for fiscal year 2009.

(i) GRANTS AS CONTRACTUAL OBLIGATIONS.—

(1) GRANTS FINANCED FROM HIGHWAY TRUST FUND.—A grant or contract approved by the Secretary, that is financed with amounts made available under subsection (a)(l)(A), (a)(2), (b)(1), (c)(2), (d)(1)(A), (e)(1)(A), (f)(1)(A), or (g) is a contractual obligation of the Government to pay the Government's share of the cost of the project.

(2) GRANTS FINANCED FROM GENERAL FUND.—A grant or contract, approved by the Secretary, that is financed with amounts made available under subsection (a)(l)(B), (b)(2), (c)(1)(B), (d)(1)(B), (d)(2), (e)(1)(B), (e)(2), (f)(1)(B), (f)(2), or (h) is a contractual obligation of the Government to pay the Government's share of the cost of the project only to the extent that amounts are provided in advance in an appropriations Act.

(j) AVAILABILITY OF AMOUNTS.—Amounts made available by or appropriated under subsections (a) through (h) shall remain available until expended.

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CHAPTER 55—INTERMODAL TRANSPORTATION

SUBCHAPTER I—GENERAL

Sec.
5501. National Intermodal Transportation System policy.

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[5505. University transportation research.
[5506. Advanced vehicle technologies program.]
5505. National university transportation centers.
5506. University transportation research.
5507. Advanced heavy-duty vehicle technologies research program.

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SUBCHAPTER I—GENERAL

* * * * * * *

§ 5502. Intermodal Transportation Advisory Board

(a) * * *

(b) MEMBERSHIP.—The Board consists of the Secretary, who serves as chairman, and the Administrator, or the Administrator's designee, of—

(1) * * *

* * * * * * *

(4) the Federal Railroad Administration; [and]

(5) the Federal Transit Administration[.]*; and*

(6) the Federal Motor Carrier Safety Administration.

* * * * * * *

[§ 5505. University transportation research

[(a) REGIONAL CENTERS.—The Secretary of Transportation shall make grants to nonprofit institutions of higher learning to establish and operate 1 university transportation center in each of the 10 United States Government regions that comprise the Standard Federal Regional Boundary System.

[(b) OTHER CENTERS.—The Secretary shall make grants to nonprofit institutions of higher learning to establish and operate university transportation centers, in addition to the centers receiving grants under subsection (a), to address transportation management and research and development matters, with special attention to increasing the number of highly skilled individuals entering the field of transportation.

[(c) SELECTION OF GRANT RECIPIENTS.—

[(1) APPLICATIONS.—In order to be eligible to receive a grant under this section, a nonprofit institution of higher learning shall submit to the Secretary an application that is in such form and contains such information as the Secretary may require.

[(2) SELECTION CRITERIA.—Except as otherwise provided by this section, the Secretary shall select each recipient of a grant under this section through a competitive process on the basis of the following:

[(A) For regional centers, the location of the center within the Federal region to be served.

[(B) The demonstrated research and extension resources available to the recipient to carry out this section.

[(C) The capability of the recipient to provide leadership in making national and regional contributions to the solution of immediate and long-range transportation problems.

[(D) The recipient's establishment of a surface transportation program encompassing several modes of transportation.

[(E) The recipient's demonstrated commitment of at least $200,000 in regularly budgeted institutional amounts each year to support ongoing transportation research and education programs.

[(F) The recipient's demonstrated ability to disseminate results of transportation research and education programs through a statewide or regionwide continuing education program.

[(G) The strategic plan the recipient proposes to carry out under the grant.

[(d) OBJECTIVES.—Each university transportation center receiving a grant under this section shall conduct the following programs and activities:

[(1) Basic and applied research, the products of which are judged by peers or other experts in the field to advance the body of knowledge in transportation.

[(2) An education program that includes multidisciplinary course work and participation in research.

[(3) An ongoing program of technology transfer that makes research results available to potential users in a form that can be implemented, utilized, or otherwise applied.

[(e) MAINTENANCE OF EFFORT.—In order to be eligible to receive a grant under this section, a recipient shall enter into an agreement with the Secretary to ensure that the recipient will maintain total expenditures from all other sources to establish and operate a university transportation center and related research activities at a level at least equal to the average level of such expenditures in its 2 fiscal years prior to award of a grant under this section.

[(f) FEDERAL SHARE.—The Federal share of the costs of activities carried out using a grant made under this section is 50 percent of costs. The non-Federal share may include funds provided to a recipient under section 503, 504(b), or 505 of title 23, United States Code.

[(g) PROGRAM COORDINATION.—

[(1) COORDINATION.—The Secretary shall coordinate the research, education, training, and technology transfer activities that grant recipients carry out under this section, disseminate the results of the research, and establish and operate a clearinghouse.

[(2) ANNUAL REVIEW AND EVALUATION.—At least annually and consistent with the plan developed under section 508 of title 23, United States Code, the Secretary shall review and evaluate programs the grant recipients carry out.

[(3) FUNDING LIMITATION.—The Secretary may use not more than 1 percent of amounts made available from Government sources to carry out this subsection.

[(h) LIMITATION ON AVAILABILITY OF FUNDS.—Funds made available to carry out this program shall remain available for obligation for a period of 2 years after the last day of the fiscal year for which such funds are authorized.

[(i) NUMBER AND AMOUNT OF GRANTS.—Subject to section 5338(e):

[(1) FISCAL YEARS 1998 AND 1999.—For each of fiscal years 1998 and 1999, the Secretary shall make the following grants under this section:

[(A) GROUP A.—The Secretary shall make a grant in the amount of $1,000,000 to each of the institutions or groups of institutions in group A.

[(B) GROUP B.—The Secretary shall make a grant in the amount of $300,000 to each of the institutions or groups of institutions in group B.

[(C) GROUP C.—The Secretary shall make a grant in the amount of $750,000 to each of the institutions or groups of institutions in group C.

[(D) GROUP D.—The Secretary shall make a grant in the amount of $2,000,000 to each of the institutions or groups of institutions in group D.

[(2) FISCAL YEARS 2000 AND 2001.—For each of fiscal years 2000 and 2001, the Secretary shall make the following grants under this section:

[(A) GROUP A.—The Secretary shall make a grant in the amount of $1,000,000 to each of the institutions or groups of institutions in group A.

[(B) GROUP B.—The Secretary shall make a grant in the amount of $500,000 to 8 of the institutions or groups of institutions in group B.

[(C) GROUP C.—The Secretary shall make a grant in the amount of $750,000 to each of the institutions or groups of institutions in group C.

[(D) GROUP D.—The Secretary shall make a grant in the amount of $2,000,000 to each of the institutions or groups of institutions in group D.

[(3) FISCAL YEARS 2002 AND 2003.—For each of fiscal years 2002 and 2003, the Secretary shall make the following grants under this section:

[(A) GROUP A.—The Secretary shall make a grant in the amount of $1,000,000 to each of the institutions or groups of institutions in group A.

[(B) GROUPS B AND C.—The Secretary shall make a grant in the amount of $1,000,000 to 10 of the institutions or groups of institutions in groups B and C that received grants under this section in fiscal years 2000 and 2001.

[(C) GROUP D.—The Secretary shall make a grant in the amount of $2,000,000 to each of the institutions or groups of institutions in group D.

[(j) IDENTIFICATION OF GROUPS.—For the purpose of making grants under this section, the following groups are identified:

[(1) GROUP A.—Group A shall consist of the 10 regional centers selected under subsection (a).

[(2) GROUP B.—Group B shall consist of the following:

[(A) The University of Denver and Mississippi State University.

[(B) The University of Central Florida.

[(C) University of Southern California and California State University at Long Beach.

[(D) Rutgers University.

[(E) University of Missouri at Rolla.

[(F) South Carolina State University.

[(G) Joseph P. Kennedy Science and Technology Center, Assumption College, Massachusetts.

[(H) Purdue University.

[(3) GROUP C.—Group C shall consist of the following:

[(A) University of Arkansas.

[(B) New Jersey Institute of Technology.

[(C) University of Idaho.

[(D) The University of Alabama.

[(E) Morgan State University.

[(F) North Carolina State University.

[(G) San Jose State University.

[(H) University of South Florida.

[(I) North Carolina A. and T. State University.

[(4) GROUP D.—Group D shall consist of the following:

[(A) University of Minnesota.

[(B) Marshall University, West Virginia, on behalf of a consortium which may also include West Virginia University Institute of Technology, the College of West Virginia, and Bluefield State College.

[(C) George Mason University, along with the University of Virginia and Virginia Tech University.

[(D) Western Transportation Institute.

[(E) Rhode Island Transportation Research Center.

[(F) Northwestern University.

[§ 5506. Advanced vehicle technologies program

[(a) PURPOSES.—The Secretary of Transportation, in coordination with other government agencies and private consortia, shall encourage and promote the research, development, and deployment of transportation technologies that will use technological advances in multimodal vehicles, vehicle components, environmental technologies, and related infrastructure to remove impediments to an efficient, safe, and cost-effective national transportation system.

[(b) DEFINITION OF ELIGIBLE CONSORTIUM.—In this section, the term "eligible consortium" means a consortium that receives funding under the Department of Defense Appropriations Act, 1993 (Public Law 102–396; 106 Stat. 1876), and that comprises 2 or more of the following entities:

[(1) Businesses incorporated in the United States.

[(2) Public or private educational or research organizations located in the United States.

[(3) Entities of State or local governments in the United States.

[(4) Federal laboratories.

[(c) PROGRAM.—The Secretary shall enter into contracts, cooperative agreements, and other transactions as authorized by section 2371 of title 10 with, and make grants to, eligible consortia to promote the development and deployment of innovation in transportation technology services, management, and operational practices.

[(d) ELIGIBILITY CRITERIA.—To be eligible to receive assistance under this section, an eligible consortium shall—

[(1) for a period of not less than the 3 years preceding the date of a contract, cooperative agreement, or other transaction, be organized on a statewide or multistate basis for the purpose of designing, developing, and deploying transportation technologies that address identified technological impediments in the transportation field;

[(2) facilitate the participation in the consortium of small- and medium-sized businesses, utilities, public laboratories and universities, and other relevant entities;

[(3) be actively engaged in transportation technology projects that address compliance in nonattainment areas under the Clean Air Act (42 U.S.C. 7401 et seq.);

[(4) be designed to use Federal and State funding to attract private capital in the form of grants or investments to carry out this section; and

[(5) ensure that at least 50 percent of the funding for the consortium project will be provided by non-Federal sources.

[(e) PROPOSALS.—The Secretary shall prescribe such terms and conditions as the Secretary determines to be appropriate for the content and structure of proposals submitted for assistance under this section.

[(f) REPORTING REQUIREMENTS.—At least once each year, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the projects undertaken by the eligible consortia and the progress made in advancing the purposes of this section.

[(g) AUTHORIZATION OF APPROPRIATIONS.—

[(1) IN GENERAL.—There is authorized to be appropriated to carry out this section $50,000,000 for each of fiscal years 1999 through 2003, to remain available until expended.

[(2) AVAILABILITY.—Notwithstanding section 118(a), funds made available under paragraph (1) shall not be available in advance of an annual appropriation.]

§ 5505. National university transportation centers

(a) IN GENERAL.—

(1) ESTABLISHMENT AND OPERATION.—The Secretary of Transportation shall make grants under this section to eligible nonprofit institutions of higher learning to establish and operate national university transportation centers.

(2) ROLE OF CENTERS.—The role of each center shall be to advance significantly transportation research on critical national transportation issues and to expand the workforce of transportation professionals.

(b) APPLICABILITY OF REQUIREMENTS.—A grant received by an eligible nonprofit institution of higher learning under this section shall be available for the same purposes, and shall be subject to the same terms and conditions, as a grant made to a nonprofit institution of higher learning under section 5506.

(c) ELIGIBLE NONPROFIT INSTITUTION OF HIGHER LEARNING DEFINED.—In this section, the term "eligible nonprofit institution of higher learning" means each of the lead institutions identified in subsections (j)(4)(A), (j)(4)(B), and (j)(4)(F) of section 5505 as in effect on the day before the date of enactment of the Transportation Equity Act: A Legacy for Users, the university referred to in section 704 of Public Law 103–206 (107 Stat. 2447), and the university that, as of the day before such date of enactment, is the lead institution for the regional university transportation center for region 5 of the Standard Federal Regional Boundary System.

(d) GRANTS.—In each of fiscal years 2004 through 2009, the Secretary shall make a grant under this section to each eligible nonprofit institution of higher learning in an amount not to exceed $3,500,000.

§ 5506. University transportation research

(a) IN GENERAL.—The Secretary of Transportation shall make grants under this section to nonprofit institutions of higher learning to establish and operate university transportation centers.

(b) OBJECTIVES.—Grants received under this section shall be used by nonprofit institutions of higher learning to advance significantly the state-of-the-art in transportation research and expand the workforce of transportation professionals through the following programs and activities:

(1) RESEARCH.—Basic and applied research, the products of which are judged by peers or other experts in the field of transportation to advance the body of knowledge in transportation.

(2) EDUCATION.—An education program relating to transportation that includes multidisciplinary course work and participation in research.

(3) TECHNOLOGY TRANSFER.—An ongoing program of technology transfer that makes transportation research results available to potential users in a form that can be implemented, utilized, or otherwise applied.

(c) REGIONAL, TIER I, AND TIER II CENTERS.—

(1) IN GENERAL.—For each of fiscal years 2004 through 2009, the Secretary shall make grants under subsection (a) to nonprofit institutions of higher learning to establish and operate—

(A) 10 regional university transportation centers; and

(B) 10 Tier I university transportation centers.

(2) TIER II CENTERS.—For each of fiscal years 2005 through 2009, the Secretary shall make grants under subsection (a) to nonprofit institutions of higher learning to establish and operate 10 Tier II university transportation centers.

(3) LOCATION OF REGIONAL CENTERS.—One regional university transportation center shall be located in each of the 10 United States Government regions that comprise the Standard Federal Regional Boundary System.

(4) LIMITATION.—A nonprofit institution of higher learning may not directly receive a grant under this section for a fiscal year for more than one university transportation center.

(d) COMPETITIVE SELECTION PROCESS.—

(1) APPLICATIONS.—In order to be eligible to receive a grant under this section, a nonprofit institution of higher learning shall submit to the Secretary an application that is in such form and contains such information as the Secretary may require.

(2) GENERAL SELECTION CRITERIA.—Except as otherwise provided by this section, the Secretary shall select each recipient of a grant under this section through a competitive process on the basis of the following:

(A) The demonstrated research and extension resources available to the recipient to carry out this section.

(B) The capability of the recipient to provide leadership in making national and regional contributions to the solution of immediate and long-range transportation problems.

(C) The recipient's demonstrated commitment of at least $400,000 each year in regularly budgeted institutional amounts to support ongoing transportation research and education programs.

(D) The recipient's demonstrated ability to disseminate results of transportation research and education programs through a statewide or regionwide continuing education program.

(E) The strategic plan the recipient proposes to carry out under the grant.

(e) REGIONAL UNIVERSITY TRANSPORTATION CENTERS.—

(1) COMPETITION.—Not later than March 31, 2005, and not later than March 31st of every 4th year thereafter, the Secretary shall complete a competition among nonprofit institutions of higher learning for grants to establish and operate the 10 regional university transportation centers referred to in subsection (c)(1)(A).

(2) SELECTION CRITERIA.—In conducting a competition under paragraph (1), the Secretary shall select a nonprofit institution of higher learning on the basis of—

(A) the criteria described in subsection (d)(2);

(B) the location of the center within the Federal region to be served; and

(C) whether or not the institution (or, in the case of a consortium of institutions, the lead institution) can demonstrate that it has a well-established, nationally recognized program in transportation research and education, as evidenced by—

(i) not less than $2,000,000 in highway or public transportation research expenditures each year for each of the preceding 5 years;

(ii) not less than 10 graduate degrees awarded in professional fields closely related to highways and public transportation for year for each of the preceding 5 years;

(iii) not less than 5 tenured or tenure-track faculty members who specialize on a full-time basis in professional fields closely related to highways and public transportation; and

(iv) a faculty that has published a total of at least 50 refereed journal publications on highway or public transportation research during the preceding 5 years.

(3) GRANT RECIPIENTS.—After selecting a nonprofit institution of higher learning as a grant recipient on the basis of a competition conducted under this subsection, the Secretary shall make a grant to the recipient to establish and operate a regional university transportation center in each of the first 4 fiscal years beginning after the date of the competition.

(4) SPECIAL RULE FOR FISCAL YEARS 2004 AND 2005.—For each of fiscal years 2004 and 2005, the Secretary shall make a grant under this section to each of the 10 nonprofit institutions of higher learning that were competitively selected for grants by the Secretary under this section in July 1999 to operate regional university transportation centers.

(5) AMOUNT OF GRANTS.—For each of fiscal years 2004 through 2009, a grant made by the Secretary to a nonprofit institution of higher learning for a fiscal year to establish and operate a regional university transportation center shall not exceed $3,500,000.

(f) TIER I UNIVERSITY TRANSPORTATION CENTERS.—

(1) COMPETITION.—Not later than March 31, 2006, and not later than March 31st of every 4th year thereafter, the Secretary shall complete a competition among nonprofit institutions of

higher learning for grants to establish and operate the 10 Tier I university transportation centers referred to in subsection (c)(1)(B).

(2) SELECTION CRITERIA.—In conducting a competition under paragraph (1), the Secretary shall select a nonprofit institution of higher learning on the basis of—

(A) the criteria described in subsection (d)(2); and

(B) whether or not the institution (or, in the case of a consortium of institutions, the lead institution) can demonstrate that it has an established, recognized program in transportation research and education, as evidenced by—

(i) not less than $1,000,000 in highway or public transportation research expenditures each year for each of the preceding 5 years or not less than $6,000,000 in such expenditures during the 5 preceding years;

(ii) not less than 5 graduate degrees awarded in professional fields closely related to highways and public transportation each year for each of the preceding 5 years;

(iii) not less than 3 tenured or tenure-track faculty members who specialize on a full-time basis in professional fields closely related to highways and public transportation; and

(iv) a faculty that has published a total of at least 20 refereed journal publications on highway or public transportation research during the preceding 5 years.

(3) GRANT RECIPIENTS.—After selecting a nonprofit institution of higher learning as a grant recipient on the basis of a competition conducted under this subsection, the Secretary shall make a grant to the recipient to establish and operate a Tier I university transportation center in each of the first 4 fiscal years beginning after the date of the competition.

(4) SPECIAL RULE FOR FISCAL YEARS 2004, 2005, AND 2006.—For each of fiscal years 2004, 2005, and 2006, the Secretary shall make a grant under this section to each of the 10 nonprofit institutions of higher learning that were competitively selected for grant awards by the Secretary under this section in May 2002 to operate university transportation centers (other than regional centers).

(5) AMOUNT OF GRANTS.—A grant made by the Secretary to a nonprofit institution of higher learning for a fiscal year to establish and operate a Tier I university transportation center shall not exceed $1,000,000 for fiscal year 2004 and $1,500,000 for each of fiscal years 2005 through 2009.

(g) TIER II UNIVERSITY TRANSPORTATION CENTERS.—

(1) COMPETITION.—Not later than August 31, 2004, not later than March 31, 2008, and not later than March 31st of every 4th year thereafter, the Secretary shall complete a competition among nonprofit institutions of higher learning for grants to establish and operate the 10 Tier II university transportation centers referred to in subsection (c)(2).

(2) SELECTION CRITERIA.—In conducting a competition under paragraph (1), the Secretary shall select a nonprofit institution of higher learning on the basis of the criteria described in subsection (f)(2).

(3) GRANT RECIPIENTS.—After selecting a nonprofit institution of higher learning as a grant recipient on the basis of a competition conducted under this subsection, the Secretary shall—

(A) in the case of the competition to be completed not later than August 31, 2004, make a grant to the recipient to establish and operate a Tier II university transportation center in each of fiscal years 2005 through 2008; and

(B) in the case of each subsequent competition, make a grant to the recipient to establish and operate a Tier II university transportation center in each of the first 4 fiscal years beginning after the date of the competition.

(4) AMOUNT OF GRANTS.—For each of fiscal years 2005 through 2009, a grant made by the Secretary to a nonprofit institution of higher learning for a fiscal year to establish and operate a Tier II university transportation center shall not exceed $1,000,000.

(h) SUPPORT OF NATIONAL STRATEGY FOR SURFACE TRANSPORTATION RESEARCH.—In order to be eligible to receive a grant under this section, a nonprofit institution of higher learning shall provide assurances satisfactory to the Secretary that the research and education activities of its university transportation center will support the national strategy for surface transportation research, as identified by—

(1) the report of the National Highway Research and Technology Partnership entitled 'Highway Research and Technology: The Need for Greater Investment', dated April 2002; and

(2) the programs of the National Research and Technology Program of the Federal Transit Administration.

(i) MAINTENANCE OF EFFORT.—In order to be eligible to receive a grant under this section, a nonprofit institution of higher learning shall enter into an agreement with the Secretary to ensure that the institution will maintain total expenditures from all other sources to establish and operate a university transportation center and related research activities at a level at least equal to the average level of such expenditures in its 2 fiscal years prior to award of a grant under this section.

(j) FEDERAL SHARE.—The Federal share of the costs of activities carried out using a grant made under this section shall be 50 percent of such costs. The non-Federal share may include funds provided to a recipient under section 503, 504(b), or 505 of title 23.

(k) PROGRAM COORDINATION.—

(1) COORDINATION.—The Secretary shall coordinate the research, education, and technology transfer activities that grant recipients carry out under this section, disseminate the results of the research, and establish and operate a clearinghouse to disseminate the results of the research.

(2) ANNUAL REVIEW AND EVALUATION.—At least annually, and consistent with the plan developed under section 508 of title 23, the Secretary shall review and evaluate programs of grant recipients.

(3) MANAGEMENT AND OVERSIGHT.—The Secretary shall expend $1,500,000 for each of fiscal years 2005 through 2009 from amounts made available to carry out this section to carry out management and oversight of the centers receiving assistance under this section.

(l) PROGRAM ADMINISTRATION.—The Secretary shall carry out this section acting through the Administrator of the Research and Special Programs Administration.

(m) LIMITATION ON AVAILABILITY OF FUNDS.—Funds made available to carry out this section shall remain available for obligation by the Secretary for a period of 2 years after the last day of the fiscal year for which such funds are authorized.

§ 5507. Advanced heavy-duty vehicle technologies research program

(a) IN GENERAL.—The Secretary of Transportation shall conduct research, development, demonstration, and testing to integrate emerging advanced heavy-duty vehicle technologies in order to provide seamless, safe, secure, and efficient transportation and to benefit the environment.

(b) CONSULTATION.—To ensure the activities performed pursuant to this section achieve the maximum benefit, the Secretary of Transportation shall consult with the Secretary of Energy, the Administrator of the Environmental Protection Agency, and other relevant Federal agencies on research, development, and demonstration activities authorized under this section related to advanced heavy-duty vehicle technologies.

(c) GRANTS, COOPERATIVE AGREEMENTS, AND OTHER TRANSACTIONS.—The Secretary may make grants to, and enter into cooperative agreements and other transactions with, Federal and other public agencies (including State and local governments) and persons to carry out subsection (a).

(d) COST SHARING.—At least 50 percent of the funding for projects carried out under this section must be provided by non-Federal sources.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out subsection (a) $1,000,000 for fiscal year 2004 and $3,000,000 for each of fiscal years 2005 through 2009.

(f) CONTRACT AUTHORITY.—The funds authorized to be appropriated by subsection (e) shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23 and shall be subject to any limitation on obligations imposed on funds made available to carry out title V of the Transportation Equity Act: A Legacy for Users.

* * * * * * *

CHAPTER 131—GENERAL PROVISIONS

* * * * * * *

§ 13102. Definitions

In this part, the following definitions shall apply:

(1) * * *

* * * * * * *

(6) FOREIGN MOTOR CARRIER.—The term "foreign motor carrier" means a person (including a motor carrier of property but excluding a motor private carrier)—

(A) * * *

(B) in the case of a person that is not a motor carrier of property, that provides interstate transportation of property by [motor vehicle] *commercial motor vehicle (as defined in section 31132)* under an agreement or contract entered into with a motor carrier of property (other than a motor private carrier or a motor carrier of property described in subparagraph (A)).

(7) FOREIGN MOTOR PRIVATE CARRIER.—The term "foreign motor private carrier" means a person (including a motor private carrier but excluding a motor carrier of property)—

(A) * * *

(B) in the case of a person that is not a motor private carrier, that provides interstate transportation of property by [motor vehicle] *commercial motor vehicle (as defined in section 31132)* under an agreement or contract entered into with a person (other than a motor carrier of property or a motor private carrier described in subparagraph (A)).

* * * * * * *

(12) MOTOR CARRIER.—The term "motor carrier" means a person providing [motor vehicle] *commercial motor vehicle (as defined in section 31132)* transportation for compensation.

(13) MOTOR PRIVATE CARRIER.—The term "motor private carrier" means a person, other than a motor carrier, transporting property by [motor vehicle] *commercial motor vehicle (as defined in section 31132)* when—

(A) * * *

* * * * * * *

CHAPTER 139—REGISTRATION

* * * * * * *

§ 13902. Registration of motor carriers

(a) MOTOR CARRIER GENERALLY.—

(1) IN GENERAL.—Except as provided in this section, the Secretary shall register a person to provide transportation subject to jurisdiction under subchapter I of chapter 135 of this title as a motor carrier if the Secretary finds that the person is willing and able to comply with—

(A) * * *

[(B) any safety regulations imposed by the Secretary and the safety fitness requirements established by the Secretary under section 31144; and]

(B)(i) any safety regulations imposed by the Secretary;

(ii) the duties of employers and employees established by the Secretary under section 31135; and

(iii) the safety fitness requirements established by the Secretary under section 31144; and

* * * * * * *

§ 13903. Registration of freight forwarders

(a) IN GENERAL.—[The Secretary]

(1) HOUSEHOLD GOODS.—The Secretary shall register a person to provide service subject to jurisdiction under subchapter

III of chapter 135 as a freight forwarder *of household goods* if the Secretary finds that the person is fit, willing, and able to provide the service and to comply with this part and applicable regulations of the Secretary and the Board.

(2) OTHERS.—The Secretary may register a person to provide service subject to jurisdiction under subchapter III of chapter 135 as a freight forwarder (other than a freight forwarder of household goods) if the Secretary finds that such registration is needed for the protection of shippers and that the person is fit, willing, and able to provide the service and to comply with this part and applicable regulations of the Secretary and Board.

* * * * * * *

§ 13908. Registration and other reforms

(a) REGULATIONS REPLACING CERTAIN PROGRAMS.—The Secretary, in cooperation with the States, and after notice and opportunity for public comment, shall issue regulations to replace the current Department of Transportation identification number system, **[**the single State registration system under section 14504,**]** the registration system contained in this chapter, and the financial responsibility information system under section 13906 with a single, on-line, Federal system. The new system shall serve as a clearinghouse and depository of information on and identification of all foreign and domestic motor carriers, brokers, and freight forwarders, and others required to register with the Department as well as information on safety fitness and compliance with required levels of financial responsibility. In issuing the regulations, the Secretary shall consider whether or not to integrate the requirements of section 13304 into the new system and may integrate such requirements into the new system.

(b) FACTORS TO BE CONSIDERED.—In conducting the rulemaking under subsection (a), the Secretary shall, at a minimum, consider the following factors:

(1) * * *

[(2) Whether the existing single State registration system is duplicative and burdensome.

[(3) The justification and need for collecting the statutory fee for such system under section 14504(c)(2)(B)(iv).**]**

[(4)**]** *(2)* The public safety.

[(5)**]** *(3)* The efficient delivery of transportation services.

[(6)**]** *(4)* How, and under what conditions, to extend the registration system to motor private carriers and to carriers exempt under sections 13502, 13503, and 13506.

* * * * * * *

[(d) STATE REGISTRATION PROGRAMS.—If the Secretary determines that no State should require insurance filings or collect fees for such filings (including filings and fees authorized under section 14504), the Secretary may prevent any State or political subdivision thereof, or any political authority of 2 or more States, from imposing any insurance filing requirements or fees that are for the same purposes as filings or fees the Secretary requires under the new system under subsection (a). The Secretary may not take any action pursuant to this subsection unless—

[(1) fees that will be collected by the Secretary under subsection (c) and distributed in each fiscal year to the States will provide each State with at least as much revenue as that State received in fiscal year 1995 under section 11506, as in effect on December 31, 1995; and

[(2) all States will receive from the distribution of such fees a minimum apportionment.]

[(e) DEADLINE FOR CONCLUSION; MODIFICATIONS.—Not later than 24 months after January 1, 1996,] *(d) DEADLINE FOR COMPLETION.—Not later than 1 year after the date of enactment of the Transportation Equity Act: A Legacy for Users,* the Secretary—

(1) * * *

* * * * * * *

CHAPTER 141—OPERATIONS OF CARRIERS

* * * * * * *

§ 14104. Household goods carrier operations

(a) * * *

(b) ESTIMATES.—

[(1) AUTHORITY TO PROVIDE WITHOUT COMPENSATION.—Every motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135, upon request of a prospective shipper, may provide the shipper with an estimate of charges for transportation of household goods and for the proposed services. The Secretary shall not prohibit any such carrier from charging a prospective shipper for providing a written, binding estimate for the transportation and proposed services.]

(1) REQUIRED TO BE IN WRITING.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, every motor carrier providing transportation of household goods described in section 13102(10)(A) subject to jurisdiction under subchapter I of chapter 135 shall conduct a physical survey of the household goods to be transported on behalf of a prospective individual shipper and shall provide the shipper with a written estimate of charges for the transportation and all related services.

(B) WAIVER.—A shipper may elect to waive a physical survey under this paragraph by written agreement signed by the shipper before the shipment is loaded. A copy of the waiver agreement must be retained as an addendum to the bill of lading and shall be subject to the same record inspection and preservation requirements of the Secretary as are applicable to bills of lading.

(C) ESTIMATE.—

(i) IN GENERAL.—Notwithstanding a waiver under subparagraph (B), a carrier's statement of charges for transportation must be submitted to the shipper in writing and must indicate whether it is binding or nonbinding.

(ii) BINDING.—A binding estimate under this paragraph must indicate that the carrier and shipper are

bound by such charges. The carrier may impose a charge for providing a written binding estimate.

(iii) NONBINDING.—A nonbinding estimate under this paragraph must indicate that the actual charges will be based upon the actual weight of the individual shipper's shipment and the carrier's lawful tariff charges. The carrier may not impose a charge for providing a nonbinding estimate.

* * * * * * *

CHAPTER 145—FEDERAL-STATE RELATIONS

Sec.
14501. Federal authority over intrastate transportation.

* * * * * * *

[14504. Registration of motor carriers by a State.]

* * * * * * *

14506. Enforcement of Federal regulations by State attorneys general.

§ 14501. Federal authority over intrastate transportation

(a) * * *

* * * * * * *

(c) MOTOR CARRIERS OF PROPERTY.—

(1) * * *

(2) MATTERS NOT COVERED.—Paragraph (1)—

(A) * * *

(B) does not apply to the *intrastate* transportation of household goods; and

* * * * * * *

[§ 14504. Registration of motor carriers by a State

[(a) DEFINITIONS.—In this section, the terms "standards" and "amendments to standards" mean the specification of forms and procedures required by regulations of the Secretary to prove the lawfulness of transportation by motor carrier referred to in section 13501.

[(b) GENERAL RULE.—The requirement of a State that a motor carrier, providing transportation subject to jurisdiction under subchapter I of chapter 135 and providing transportation in that State, must register with the State is not an unreasonable burden on transportation referred to in section 13501 when the State registration is completed under standards of the Secretary under subsection (c). When a State registration requirement imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden.

[(c) SINGLE STATE REGISTRATION SYSTEM.—

[(1) IN GENERAL.—The Secretary shall maintain standards for implementing a system under which—

[(A) a motor carrier is required to register annually with only one State by providing evidence of its Federal registration under chapter 139;

[(B) the State of registration shall fully comply with standards prescribed under this section; and

[(C) such single State registration shall be deemed to satisfy the registration requirements of all other States.

[(2) SPECIFIC REQUIREMENTS.—

[(A) EVIDENCE OF FEDERAL REGISTRATION; PROOF OF INSURANCE; PAYMENT OF FEES.—Under the standards of the Secretary implementing the single State registration system described in paragraph (1) of this subsection, only a State acting in its capacity as registration State under such single State system may require a motor carrier registered by the Secretary under this part—

[(i) to file and maintain evidence of such Federal registration;

[(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

[(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

[(iv) to file the name of a local agent for service of process.

[(B) RECEIPTS; FEE SYSTEM.—The standards of the Secretary—

[(i) shall require that the registration State issue a receipt, in a form prescribed under the standards, reflecting that the carrier has filed proof of insurance as provided under subparagraph (A)(ii) of this paragraph and has paid fee amounts in accordance with the fee system established under clause (iv) of this subparagraph;

[(ii) shall require that copies of the receipt issued under clause (i) of this subparagraph be kept in each of the carrier's commercial motor vehicles;

[(iii) shall not require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by the carrier;

[(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that—

[(I) is based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates;

[(II) minimizes the costs of complying with the registration system; and

[(III) results in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991; and

[(v) shall not authorize the charging or collection of any fee for filing and maintaining evidence of Federal registration under subparagraph (A)(i) of this paragraph.

[(C) PROHIBITED FEES.—The charging or collection of any fee under this section that is not in accordance with

the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce.

[(D) LIMITATION ON PARTICIPATION BY STATES.—Only a State which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under part 1023 of title 49, Code of Federal Regulations, shall be eligible to participate as a registration State under this subsection or to receive any fee revenue under this subsection.]

* * * * * * *

§ 14506. Enforcement of Federal regulations by State attorneys general

(a) IN GENERAL.—A State, as parens patriae, may bring a civil action on behalf of a resident of the State in an appropriate district court of the United States to enforce a regulation or order of the Secretary or Board—

(1) to protect an individual shipper of household goods if such regulation or order governs the delivery of the shipper's household goods; or

(2) to impose a civil penalty under section 14915 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) a carrier or broker providing transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 who is committing repeat violations of section 14915; or

(B) a foreign motor carrier providing transportation of household goods who is registered under section 13902 and who is committing repeat violations of section 14915.

(b) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed—

(1) as preventing an attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence;

(2) as prohibiting a State official from proceeding in State court to enforce a criminal statute of the State;

(3) as authorizing a State or political subdivision of a State to bring an enforcement action under a consumer protection law, regulation, or other provision of the State relating to interstate transportation of household goods (as defined in section 13102(10)(A)) with respect to an activity that is inconsistent with Federal laws and regulations relating to interstate transportation of household goods; or

(4) as authorizing a State, as parens patriae, to bring a class civil action on behalf of its residents to enforce a regulation or order of the Secretary or Board.

(c) ACTIONS BY THE SECRETARY OR BOARD.—Whenever a civil action has been instituted by or on behalf of the Secretary or Board for violation of section 14915, no State may, during the pendency

of such action, institute a civil action under subsection (a) against any defendant named in the complaint relating to such violation.

(d) VENUE; SERVICE OF PROCESS.—Any civil action to be brought under subsection (a) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

* * * * * * *

CHAPTER 147—ENFORCEMENT; INVESTIGATIONS; RIGHTS; REMEDIES

* * * * * * *

§ 14708. Dispute settlement program for household goods carriers

(a) OFFERING SHIPPERS ARBITRATION.—As a condition of registration under section 13902 or 13903, a carrier providing transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 must agree to offer in accordance with this section to shippers of household goods arbitration as a means of settling disputes between such carriers and shippers of household goods concerning damage or loss to the household goods transported *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) ARBITRATION REQUIREMENTS.—

(1) * * *

* * * * * * *

(6) REQUESTS.—The carrier must not require the shipper to agree to utilize arbitration prior to the time that a dispute arises. If the dispute involves a claim for **[**$5,000**]** *$10,000* or less and the shipper requests arbitration, such arbitration shall be binding on the parties. If the dispute involves a claim for more than **[**$5,000**]** *$10,000* and the shipper requests arbitration, such arbitration shall be binding on the parties only if the carrier agrees to arbitration.

* * * * * * *

(8) DEADLINE FOR DECISION.—The arbitrator must, as expeditiously as possible but at least within 60 days of receipt of written notification of the dispute, render a decision based on the information gathered; except that, in any case in which a party to the dispute fails to provide in a timely manner any information concerning such dispute which the person settling the dispute may reasonably require to resolve the dispute, the arbitrator may extend such 60-day period for a reasonable period of time. A decision resolving a dispute may include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, **[**and**]** compensation for damages*, and an order requiring the payment of additional carrier charges*.

* * * * * * *

(d) ATTORNEY'S FEES TO SHIPPERS.—In any court action to resolve a dispute between a shipper of household goods and a carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 concerning the transportation of household goods by such carrier, the shipper shall be awarded reasonable attorney's fees if—

(1) * * *

* * * * * * *

(3)*(A) the shipper was not advised by the carrier during the claim settlement process that a dispute settlement program was available to resolve the dispute;*

[(A)**]** *(B)* a decision resolving the dispute was not rendered through arbitration under this section within the period provided under subsection (b)(8) of this section or an extension of such period under such subsection; or

[(B)**]** *(C)* the court proceeding is to enforce a decision rendered through arbitration under this section and is instituted after the period for performance under such decision has elapsed.

* * * * * * *

CHAPTER 149—CIVIL AND CRIMINAL PENALTIES

Sec.
14901. General civil penalties.

* * * * * * *

14915. Holding household goods hostage.

§ 14901. General civil penalties

(a) * * *

* * * * * * *

(d) PROTECTION OF HOUSEHOLD GOODS SHIPPERS.—**[**If a carrier**]**

(1) IN GENERAL.—If a carrier providing transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 or a receiver or trustee of such carrier fails or refuses to comply with any regulation issued by the Secretary or the Board relating to protection of individual shippers, such carrier, receiver, or trustee is liable to the United States for a civil penalty of not less than $1,000 for each violation and for each additional day during which the violation continues.

(2) ESTIMATE OF BROKER WITHOUT CARRIER AGREEMENT.—If a broker for transportation of household goods subject to jurisdiction under subchapter I of chapter 135 makes an estimate of the cost of transporting any such goods before entering into an agreement with a carrier to provide transportation of household goods subject to such jurisdiction, the broker is liable to the United States for a civil penalty of not less than $10,000 for each violation.

(3) UNAUTHORIZED TRANSPORTATION.—If a person provides transportation of household goods subject to jurisdiction under subchapter I of chapter 135 or provides broker services for such transportation without being registered under chapter 139 to provide such transportation or services as a motor carrier or

broker, as the case may be, such person is liable to the United States for a civil penalty of not less than $25,000 for each violation.

* * * * * * *

§ 14915. Holding household goods hostage

(a) HOLDING HOUSEHOLD GOODS HOSTAGE DEFINED.—For purposes of this section, the term "holding household goods hostage" means the knowing and willful refusal to relinquish possession of a shipment of household goods described in section 13102(10)(A) upon payment of not more than 100 percent of a binding estimate (or, in the case of a nonbinding estimate, not more than 110 percent of the estimated charges for such shipment).

(b) CIVIL PENALTY.—Whoever is found holding a household goods shipment hostage is liable to the United States for a civil penalty of not less than $10,000 for each violation. If such person is a carrier or broker, the Secretary may suspend for a period of not less than 6 months the registration of such carrier or broker under chapter 139.

(c) CRIMINAL PENALTY.—A motor carrier that has been convicted of knowingly and willfully holding household goods hostage by falsifying documents or demanding the payment of charges for services that were not performed or were not necessary in the safe and adequate movement of a shipment of household goods shall be fined under title 18, or imprisoned not more than 2 years, or both.

* * * * * * *

SUBTITLE VI—MOTOR VEHICLE AND DRIVER PROGRAMS

* * * * * * *

PART B—COMMERCIAL

CHAPTER 311—COMMERCIAL MOTOR VEHICLE SAFETY

[SUBCHAPTER I—STATE GRANTS AND OTHER COMMERCIAL MOTOR VEHICLE PROGRAMS]

SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS

Sec.
31100. Purpose.

* * * * * * *

[31107. Contract authority funding for information systems.
[31108. Authorization of appropriations.]
31107. Border enforcement grants.
31108. Motor carrier research and technology program.
31109. Performance and registration information system management.

* * * * * * *

SUBCHAPTER IV—MISCELLANEOUS

31161. International cooperation.

[SUBCHAPTER I—STATE GRANTS AND OTHER COMMERCIAL MOTOR VEHICLE PROGRAMS]

SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS

* * * * * * *

§ 31102. Grants to States

(a) * * *

(b) STATE PLAN PROCEDURES AND CONTENTS.—(1) The Secretary shall prescribe procedures for a State to submit a plan under which the State agrees to assume responsibility for improving motor carrier safety and to adopt and enforce regulations, standards, and orders of the Government on commercial motor vehicle safety, hazardous materials transportation safety, or compatible State regulations, standards, and orders. The Secretary shall approve the plan if the Secretary decides the plan is adequate to promote the objectives of this section and the plan—

[(A) implements performance-based activities by fiscal year 2000;]

(A) implements performance-based activities, including deployment of technology to enhance the efficiency and effectiveness of commercial motor vehicle safety programs;

* * * * * * *

[(Q) provides that the State will establish a program to ensure the proper and timely correction of commercial motor vehicle safety violations noted during an inspection carried out with funds authorized under section 31104;]

(Q) provides that the State has established a program to ensure accurate, complete, and timely motor carrier safety data is collected and reported to the Secretary and that the State will participate in a national motor carrier safety data correction system prescribed by the Secretary;

(R) ensures that the State will cooperate in the enforcement of registration requirements under section 13902 and financial responsibility requirements under sections 13906, 31138, and 31139 and regulations issued thereunder;

(S) ensures consistent, effective, and reasonable sanctions; [and]

(T) ensures that roadside inspections will be conducted at a location that is adequate to protect the safety of drivers and enforcement personnel[.]*;*

(U) provides that the State will include in the training manual for the licensing examination to drive a noncommercial motor vehicle and a commercial motor vehicle, information on best practices for driving safely in the vicinity of commercial motor vehicles and in the vicinity of noncommercial motor vehicles, respectively;

(V) provides that the State will enforce the registration requirements of section 13902 by placing out of service any vehicle discovered to be operated by a motor carrier without a registration issued under such section or to be operating beyond the scope of such registration; and

(W) provides that the State will conduct comprehensive and highly visible traffic enforcement and commercial motor vehicle safety inspection programs in high-risk locations and corridors.

(3) In estimating the average level of State expenditure under paragraph [(1)(D)] *(1)(E)* of this subsection, the Secretary—

(A) * * *

* * * * * * *

[(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 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:

[(1) 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.

[(2) 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.

[(3) enforcement of State traffic laws and regulations designed to promote the safe operation of commercial motor vehicles.]

(c) USE OF GRANTS TO ENFORCE OTHER LAWS.—A State may use amounts received under a grant under subsection (a)—

(1) for the following activities if the activities are carried out in conjunction with an appropriate inspection of the commercial motor vehicle to enforce Government or State commercial motor vehicle safety regulations:

(A) enforcement of commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at specific locations such as steep grades or mountainous terrains where the weight of a commercial motor vehicle can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States; and

(B) detection of the unlawful presence of a controlled substance (as defined under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)) in a commercial motor vehicle or on the person of any occupant (including the operator) of the vehicle; and

(2) for documented enforcement of State traffic laws and regulations designed to promote the safe operation of commercial motor vehicles, including documented enforcement of such laws and regulations relating to noncommercial motor vehicles when necessary to promote the safe operation of commercial motor vehicles if the number of roadside safety inspections conducted in the State is maintained at a level at least equal to the average number conducted in the State in fiscal years 2001, 2002, and 2003; except that the State may not use more than 5 percent of

the aggregate amount the State receives under the grant under subsection (a) for enforcement activities relating to noncommercial motor vehicles described in this paragraph.

* * * * * * *

(e) ANNUAL REPORT.—The Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate an annual report that describes the effect of activities carried out with funds from grants made under this section on commercial motor vehicle safety.

§ 31103. United States Government's share of costs

(a) COMMERCIAL MOTOR VEHICLE SAFETY PROGRAMS AND ENFORCEMENT.—The Secretary of Transportation shall reimburse a State, from a grant made under this subchapter, an amount that is not more than 80 percent of the costs incurred by the State in a fiscal year in developing and implementing programs to improve commercial motor vehicle safety and enforce commercial motor vehicle regulations, standards, or orders adopted under this subchapter or subchapter II of this chapter. In determining those costs, the Secretary shall include in-kind contributions by the State. Amounts of the State and its political subdivisions required to be expended under section 31102(b)[(1)(D)] *(1)(E)* of this title may not be included as part of the share not provided by the United States Government. The Secretary may allocate among the States whose applications for grants have been approved those amounts appropriated for grants to support those programs, under criteria that may be established.

* * * * * * *

§ 31104. Availability of amounts

[(a) IN GENERAL.—The following amounts are made available from the Highway Trust Fund (other than the Mass Transit Account) for the Secretary of Transportation to incur obligations to carry out section 31102:

[(1) Not more than $79,000,000 for fiscal year 1998.
[(2) Not more than $90,000,000 for fiscal year 1999.
[(3) Not more than $95,000,000 for fiscal year 2000.
[(4) Not more than $100,000,000 for fiscal year 2001.
[(5) Not more than $105,000,000 for fiscal year 2002.
[(6) Not more than $110,000,000 for fiscal year 2003.
[(7) Not more than $98,352,000 for the period of October 1, 2003, through April 30, 2004.]

(a) IN GENERAL.—Subject to subsection (f), there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out section 31102—

(1) $168,000,000 for fiscal year 2004;
(2) $183,000,000 for fiscal year 2005;
(3) $185,000,000 for fiscal year 2006;
(4) $190,000,000 for fiscal year 2007;
(5) $195,000,000 for fiscal year 2008; and
(6) $200,000,000 for fiscal year 2009.

* * * * * * *

(f) ALLOCATION CRITERIA AND ELIGIBILITY.—

(1) IN GENERAL.—On October 1 of each fiscal year or as soon after that date as practicable and after making the [deduction under subsection (e)] *deductions under subsection (e) and paragraphs (2) and (3)*, the Secretary shall allocate amounts made available to carry out section 31102 for such fiscal year among the States with plans approved under section 31102. Such allocation shall be made under such criteria as the Secretary prescribes by regulation.

(2) HIGH-PRIORITY [AND BORDER ACTIVITIES.—

[(A) HIGH-PRIORITY ACTIVITIES AND PROJECTS.—The Secretary may designate up to 5 percent] *ACTIVITIES.—The Secretary may designate up to 10 percent* of amounts available for allocation under paragraph (1) for States, local governments, and other persons 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*, or improve the quality and accuracy of data provided by the State*. The amounts designated under this subparagraph shall be allocated by the Secretary to State agencies, local governments, and other persons that use and train qualified officers and employees in coordination with State motor vehicle safety agencies.

[(B) BORDER COMMERCIAL MOTOR VEHICLE SAFETY AND ENFORCEMENT PROGRAMS.—The Secretary may designate up to 5 percent of amounts available for allocation under paragraph (1) for States, local governments, and other persons for carrying out border commercial motor vehicle safety programs and enforcement activities and projects. The amounts designated under this subparagraph shall be allocated by the Secretary to State agencies, local governments, and other persons that use and train qualified officers and employees in coordination with State motor vehicle safety agencies.]

(3) NEW ENTRANT AUDITS.—The Secretary may deduct up to $15,000,000 of the amounts available under subsection (a) for a fiscal year for audits of new entrant motor carriers under section 31144(g).

* * * * * * *

(i) ADMINISTRATIVE EXPENSES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for the Secretary of Transportation to pay administrative expenses of the Federal Motor Carrier Safety Administration—

(A) $196,000,000 for fiscal year 2004;
(B) $208,000,000 for fiscal year 2005;
(C) $215,000,000 for fiscal year 2006;
(D) $221,000,000 for fiscal year 2007;
(E) $226,000,000 for fiscal year 2008; and
(F) $232,000,000 for fiscal year 2009.

(2) USE OF FUNDS.—The funds authorized by this subsection shall be used for personnel costs; administrative infrastructure; rent; information technology; programs for research and technology, information management, regulatory development (including a medical review board), the administration of the performance and registration information system management, and outreach and education; other operating expenses; and such other expenses as may from time to time become necessary to implement statutory mandates of the Administration not funded from other sources.

(3) PERIOD OF AVAILABILITY.—The amounts made available under this section shall remain available until expended.

(4) INITIAL DATE OF AVAILABILITY.—Authorizations from the Highway Trust Fund (other than the Mass Transit Account) to carry out subtitle IV, part B, and subtitle VI, part B, of this title, or the provisions of title IV of the Transportation Equity Act: A Legacy for Users, 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.

(5) CONTRACT AUTHORITY.—Approval by the Secretary of a grant with funds made available under paragraph (4) imposes upon the United States a contractual obligation for payment of the Government's share of costs incurred in carrying out the objectives of the grant.

* * * * * * *

§ 31106. Information systems

(a) INFORMATION SYSTEMS AND DATA ANALYSIS.—

(1) * * *

* * * * * * *

(3) DATA ANALYSIS CAPACITY AND PROGRAMS.—The Secretary shall develop and maintain under this section data analysis capacity and programs that provide the means to—

(A) * * *

* * * * * * *

(D) determine the cost-effectiveness of Federal and State safety compliance and enforcement programs and other countermeasures; [and]

(E) adapt, improve, and incorporate other information and information systems as the Secretary determines appropriate[.]*;*

(F) ensure, to the maximum extent practical, all the data is complete, timely, and accurate across all information systems and initiatives; and

(G) establish and implement a national motor carrier safety data correction system.

* * * * * * *

(b) PERFORMANCE AND REGISTRATION INFORMATION PROGRAM.—

(1) * * *

[(2) DESIGN.—The program shall link Federal motor carrier safety information systems with State driver and 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) decide, in cooperation with the Secretary, whether and what types of sanctions or operating limitations to impose on the motor carrier or registrant to ensure safety.

[(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); and

[(B) possess or seek authority to impose commercial motor vehicle registration sanctions on the basis of a Federal safety fitness determination.

[(4) FUNDING.—The Secretary may make available up to 50 percent of the amounts available to carry out this section by section 31107 in each of fiscal years 1998, 1999, 2000, 2001, 2002, and 2003 to carry out this subsection. The Secretary is encouraged to direct no less than 80 percent of amounts made available to carry out this subsection to States that have not previously received financial assistance to develop or implement the information systems authorized by this section.]

(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); and

(B) possess or seek the authority to deny, suspend, or revoke commercial motor vehicle registrations based on the issuance of an operations out-of-service order by the Secretary.

* * * * * * *

[§ 31107. Contract authority funding for information systems

[(a) FUNDING.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out sections 31106 and 31309 of this title—

[(1) $6,000,000 for fiscal year 1998;

[(2) $10,000,000 for each of fiscal years 1999 and 2000;

[(3) $12,000,000 for each of fiscal years 2001 through 2002;

[(4) $15,000,000 for fiscal year 2003; and

[(5) $11,639,000 for the period of October 1, 2003, through April 30, 2004.

The amounts made available under this subsection shall remain available until expended.

[(b) CONTRACT AUTHORITY.—Approval by the Secretary of a grant with funds made available under 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.

[(c) EMERGENCY CDL GRANTS.—From amounts made available by subsection (a) for a fiscal year, the Secretary of Transportation may make a grant of up to $1,000,000 to a State whose commercial driver's license program may fail to meet the compliance requirements of section 31311(a).

[§ 31108. Authorization of appropriations

[Not more than $———— may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 19—, to carry out the safety duties and powers of the Federal Highway Administration.]

§ 31107. Border enforcement grants

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make a grant in a fiscal year to a State that shares a land border with another country for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

(b) MAINTENANCE OF EXPENDITURES.—The Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of amounts from the United States, for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years of the State ending before the date of enactment of the Transportation Equity Act: A Legacy for Users.

(c) GOVERNMENTS SHARE OF COSTS.—The Secretary shall reimburse a State under a grant made under this section an amount that is not more than 100 percent of the costs incurred by the State in a fiscal year for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

(d) AVAILABILITY AND REALLOCATION OF AMOUNTS.—Allocations to a State remain available for expenditure in the State for the fiscal year in which they are allocated and for the next fiscal year. Amounts not expended by a State during those 2 fiscal years are available to the Secretary for reallocation under this section.

§ 31108. Motor carrier research and technology program

(a) RESEARCH, TECHNOLOGY, AND TECHNOLOGY TRANSFER ACTIVITIES.—

(1) ESTABLISHMENT.—The Secretary of Transportation shall establish and carry out a motor carrier research and technology program.

(2) MULTI-YEAR PLAN.—The program must include a multi-year research plan that focuses on nonredundant innovative research.

(3) RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.—The Secretary may carry out under the program research, development, technology, and technology transfer activities with respect to—

(A) the causes of accidents, injuries, and fatalities involving commercial motor vehicles;

(B) means of reducing the number and severity of accidents, injuries, and fatalities involving commercial motor vehicles;

(C) improving commercial motor vehicle and motor carrier safety, and industry efficiency, through technological improvement;

(D) improving technology used by enforcement officers when conducting roadside inspections and compliance reviews to increase efficiency and information transfers; and

(E) increasing the safety and security of hazardous materials transportation.

(4) TESTS AND DEVELOPMENT.—The Secretary may test, develop, or assist in testing and developing any material, invention, patented article, or process related to the research and technology program.

(5) TRAINING.—The Secretary may use the funds made available to carry out this section for training or education of commercial motor vehicle safety personnel, including training in accident reconstruction and detection of controlled substances or other contraband and stolen cargo or vehicles.

(6) PROCEDURES.—The Secretary may carry out this section—

(A) independently;

(B) in cooperation with other Federal departments, agencies, and instrumentalities and Federal laboratories; or

(C) by making grants to, or entering into contracts, cooperative agreements, and other transactions with, any Federal laboratory, State agency, authority, association, institution, for-profit or nonprofit corporation, organization, foreign country, or person.

(7) DEVELOPMENT AND PROMOTION OF USE OF PRODUCTS.—The Secretary shall use funds made available to carry out this section to develop, administer, communicate, and promote the use of products of research, technology, and technology transfer programs under this section.

(b) COLLABORATIVE RESEARCH AND DEVELOPMENT.—

(1) IN GENERAL.—To advance innovative solutions to problems involving commercial motor vehicle and motor carrier safety, security, and efficiency, and to stimulate the deployment of emerging technology, the Secretary may carry out, on a cost-shared basis, collaborative research and development with—

(A) non-Federal entities, including State and local governments, foreign governments, colleges and universities, corporations, institutions, partnerships, and sole proprietor-

ships that are incorporated or established under the laws of any State; and

(B) Federal laboratories.

(2) COOPERATIVE AGREEMENTS.—In carrying out this subsection, the Secretary may enter into cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)).

(3) COST SHARING.—

(A) FEDERAL SHARE.—The Federal share of the cost of activities carried out under a cooperative research and development agreement entered into under this subsection shall not exceed 50 percent; except that, if there is substantial public interest or benefit associated with any such activity, the Secretary may approve a greater Federal share.

(B) TREATMENT OF DIRECTLY INCURRED NON-FEDERAL COSTS.—All costs directly incurred by the non-Federal partners, including personnel, travel, and hardware or software development costs, shall be credited toward the non-Federal share of the cost of the activities described in subparagraph (A).

(4) USE OF TECHNOLOGY.—The research, development, or use of a technology under a cooperative research and development agreement entered into under this subsection, including the terms under which the technology may be licensed and the resulting royalties may be distributed, shall be subject to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

§ 31109. Performance and registration information system management

(a) IN GENERAL.—The Secretary of Transportation may make a grant to a State to implement the performance and registration information system management requirements of section 31106(b).

(b) AVAILABILITY OF AMOUNTS.—Amounts made available to a State under this section shall remain available until expended.

* * * * * * *

SUBCHAPTER II—LENGTH AND WIDTH LIMITATIONS

§ 31111. Length limitations

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

(1) * * *

* * * * * * *

(4) DRIVE-AWAY SADDLEMOUNT WITH FULLMOUNT VEHICLE TRANSPORTER COMBINATION.—The term "drive-away saddlemount with fullmount vehicle transporter combination" means a vehicle combination designed and specifically used to tow up to 3 trucks or truck tractors, each connected by a saddle to the frame or fifth-wheel of the forward vehicle of the truck or truck tractor in front of it.

(b) GENERAL LIMITATIONS.—(1) Except as provided in this section, a State may not prescribe or enforce a regulation of commerce that—

(A) * * *

* * * * * * *

(D) imposes a vehicle length limitation of not less than or more than 97 feet on a driveaway saddlemount with fullmount vehicle transporter combinations;

[(D)] *(E)* has the effect of prohibiting the use of an existing semitrailer or trailer, of not more than 28.5 feet in length, in a truck tractor-semitrailer-trailer combination if the semitrailer or trailer was operating lawfully on December 1, 1982, within a 65-foot overall length limit in any State; or

[(E)] *(F)* imposes a limitation of less than 46 feet on the distance from the kingpin to the center of the rear axle on trailers used exclusively or primarily in connection with motorsports competition events.

* * * * * * *

§ 31135. Duties of employers and employees

(a) IN GENERAL.—Each employer and employee shall comply with regulations on commercial motor vehicle safety prescribed by the Secretary of Transportation under this subchapter that apply to the employer's or employee's conduct.

(b) PATTERN OF NONCOMPLIANCE.—If an officer of a motor carrier or broker engages in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations prescribed under this chapter, the Secretary may suspend, amend, or revoke any part of the registration of the motor carrier or broker under section 13905.

(c) LIST OF PROPOSED OFFICERS.—Each person seeking registration as a motor carrier under section 13902 or as a broker under section 13904 shall submit a list of the proposed officers of the motor carrier or broker. If the Secretary determines that any of the proposed officers has previously engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations prescribed under this chapter, the Secretary may deny the person's application for registration as a motor carrier under section 13902(a)(3) or as a broker under section 13904(a).

(d) REGULATIONS.—The Secretary shall by regulation establish standards to implement subsections (b) and (c) and a procedure to allow a person who is denied registration under subsection (c) or whose registration is suspended, amended, or revoked under subsection (b) to remedy the pattern or practice that results in the denial, suspension, amendment, or revocation.

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

(1) MOTOR CARRIER AND BROKER.—The terms "motor carrier" and "broker" have the meanings such terms have under section 13102.

(2) OFFICER.—The term "officer" means an owner, 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.

* * * * * * *

§ 31138. Minimum financial responsibility for transporting passengers

(a) * * *

* * * * * * *

(d) CIVIL PENALTY.—(1) * * *

* * * * * * *

(5) The amount of the penalty may be deducted from amounts the Government owes the person. An amount collected under this section shall be deposited in the [Treasury as miscellaneous receipts] *Highway Trust Fund (other than the Mass Transit Account).*

* * * * * * *

§ 31139. Minimum financial responsibility for transporting property

(a) * * *

* * * * * * *

(f) CIVIL PENALTY.—(1) * * *

* * * * * * *

(5) The amount of the penalty may be deducted from amounts the Government owes the person. An amount collected under this section shall be deposited in the [Treasury as miscellaneous receipts] *Highway Trust Fund (other than the Mass Transit Account).*

* * * * * * *

§ 31144. Safety fitness of owners and operators

[(a) IN GENERAL.—The Secretary shall—

[(1) determine whether an owner or operator is fit to operate safely commercial motor vehicles;

[(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.]

(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;

(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.

* * * * * * *

(c) PROHIBITED TRANSPORTATION.—

(1) * * *

* * * * * * *

(5) TRANSPORTATION AFFECTING INTERSTATE COMMERCE.—Owners or operators of commercial motor vehicles prohibited from operating in interstate commerce pursuant to paragraphs (1) through (3) may not operate any commercial motor vehicle that affects interstate commerce until the Secretary determines that such owner or operator is fit.

(d) DETERMINATION OF UNFITNESS BY A STATE.—If a State that receives a grant under section 31102 determines, by applying the standards prescribed by the Secretary under subsection (b), 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.

[(d)] *(e)* REVIEW OF FITNESS DETERMINATIONS.—

(1) * * *

* * * * * * *

[(e)] *(f)* PROHIBITED GOVERNMENT USE.—A department, agency, or instrumentality of the United States Government may not use to provide any transportation service an owner or operator who the Secretary has determined is not fit until the Secretary determines such owner or operator is fit.

* * * * * * *

[(c)] *(g)* SAFETY REVIEWS OF NEW OPERATORS.—

(1) * * *

* * * * * * *

(5) GRANTS FOR AUDITS.—From amounts deducted under section 31104(f)(3), the Secretary may make grants to States and local governments for new entrant motor carrier audits under this subsection without requiring a matching contribution from such States or local governments.

(6) DOT AUDITS.—If the Secretary determines that a State or local government is unable to use government employees to conduct new entrant motor carrier audits, the Secretary may utilize the funds deducted under section 31104(f)(3) to conduct such audits in areas under the jurisdiction of such State or local government.

* * * * * * *

SUBCHAPTER IV—MISCELLANEOUS

§ 31161. International cooperation

The Secretary of Transportation is authorized to use funds made available by section 31104(i) to participate and cooperate in international activities to enhance motor carrier, driver, and highway safety by such means as exchanging information, conducting research, and examining needs, best practices, and new technology.

CHAPTER 313—COMMERCIAL MOTOR VEHICLE OPERATORS

Sec.
31301. Definitions.
* * * * * * *
[31313. [Repealed.]]
31313. Grants for commercial driver's license program improvements.

* * * * * * *

§ 31310. Disqualifications

(a) * * *

* * * * * * *

(i) OUT-OF-SERVICE ORDERS.—(1) * * *

* * * * * * *

(2) [Not later than December 18, 1992, the] *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 [90 days] *180 days* and liable for a civil penalty of at least [$1,000] *$2,500*;

(B) an operator of a commercial motor vehicle found to have committed a 2d violation of an out-of-service order shall be disqualified from operating such a vehicle for at least [one year] *2 years* and not more than 5 years and liable for a civil penalty of at least [$1,000] *$5,000*; and

(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 [$10,000.] *$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 one year or a fine under title 18, or both.

* * * * * * *

§ 31313. Grants for commercial driver's license program improvements

(a) GRANTS FOR COMMERCIAL DRIVER'S LICENSE PROGRAM IMPROVEMENTS.—

(1) GENERAL AUTHORITY.—The Secretary of Transportation may make a grant to a State in a fiscal year—

(A) to comply with the requirements of section 31311; and

(B) in the case of a State that is in substantial compliance with the requirements of section 31311 and this section, to improve its implementation of its commercial driver's license program.

(2) PURPOSES FOR WHICH GRANTS MAY BE USED.—A State may use grants under paragraphs (1)(A) and (1)(B) only for ex-

penses directly related to its compliance with section 31311; except that a grant under paragraph (1)(B) may be used for improving implementation of the State's commercial driver's license program, including expenses for computer hardware and software, publications, testing, personnel, training, and quality control. The grant may not be used to rent, lease, or buy land or buildings.

(3) APPLICATION.—In order to receive a grant under this section, a State must submit an application for such grant that is in such form, and contains such information, as the Secretary may require. The application shall include the State's assessment of its commercial drivers license program.

(4) MAINTENANCE OF EXPENDITURES.—The Secretary may make a grant to a State under this subsection only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of amounts from the United States, for the State's commercial driver's license program will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years of the State ending before the date of enactment of the Transportation Equity Act: A Legacy for Users.

(5) GOVERNMENT SHARE.—The Secretary shall reimburse a State under a grant made under this subsection an amount that is not more than 80 percent of the costs incurred by the State in a fiscal year in complying with section 31311 and improving its implementation of its commercial driver's license program. In determining such costs, the Secretary shall include in-kind contributions by the State. Amounts required to be expended by the State under paragraph (4) may not be included as part of the non-Federal share of such costs.

(b) HIGH-PRIORITY ACTIVITIES.—

(1) GRANTS FOR NATIONAL CONCERNS.—The Secretary may make a grant to a State agency, local government, or other person for 100 percent of the costs of research, development, demonstration projects, public education, and other special activities and projects relating to commercial driver licensing and motor vehicle safety that are of benefit to all jurisdictions of the United States or are designed to address national safety concerns and circumstances.

(2) FUNDING.—The Secretary may deduct up to 10 percent of the amounts made available to carry out this section for a fiscal year to make grants under this subsection.

§ 31314. Withholding amounts for State noncompliance

(a) FIRST FISCAL YEAR.—The Secretary of Transportation shall withhold *up to* 5 percent of the amount required to be apportioned to a State under section 104(b)(1), (3), and (4) of title 23 on the first day of the fiscal year after the first fiscal year beginning after September 30, 1992, throughout which the State does not comply substantially with a requirement of section 31311(a) of this title.

(b) SECOND FISCAL YEAR.—The Secretary shall withhold *up to* 10 percent of the amount required to be apportioned to a State under section 104(b)(1), (3), and (4) of title 23 on the first day of each fiscal year after the 2d fiscal year beginning after September 30,

1992, throughout which the State does not comply substantially with a requirement of section 31311(a) of this title.

* * * * * * *

CHAPTER 315—MOTOR CARRIER SAFETY

* * * * * * *

§ 31502. Requirements for qualifications, hours of service, safety, and equipment standards

(a) * * *

* * * * * * *

(e) EXCEPTION.—

(1) * * *

(2) DECLARATION OF EMERGENCY.—An elected State or local government official or elected officials of more than one State or local government jointly may issue an emergency declaration for purposes of paragraph (1) after notice to the [Regional Director of the Federal Highway Administration] *Field Administrator of the Federal Motor Carrier Safety Administration* with jurisdiction over the area covered by the declaration.

(3) INCIDENT REPORT.—Within 30 days after the end of the declared emergency period the official who issued the emergency declaration shall file with the [Regional Director] *Field Administrator* a report of each safety-related incident or accident that occurred during the emergency period involving—

(A) * * *

* * * * * * *

TRANSPORTATION EQUITY ACT FOR THE 21st CENTURY

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

* * * * * * *

TITLE III—FEDERAL TRANSIT ADMINISTRATION PROGRAMS

Sec. 3001. Short title.

* * * * * * *

[Sec. 3038. Rural transportation accessibility incentive program.]
Sec. 3038. Over-the-road bus accessibility program.

* * * * * * *

TITLE I—FEDERAL-AID HIGHWAYS

* * * * * * *

Subtitle B—General Provisions

* * * * * * *

SEC. 1212. MISCELLANEOUS.

* * * * * * *

(i) BICYCLE AND PEDESTRIAN SAFETY GRANTS.—

(1) IN GENERAL.—The Secretary shall make grants to a national, not-for-profit organization engaged in promoting bicycle and pedestrian safety—

(A) * * *

* * * * * * *

[(D)] *(2)* AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection $500,000 for each of fiscal years 1998 through 2003 and $208,333 for the period of October 1, 2003, through February 29, 2004.

[(E)] *(3)* APPLICABILITY OF TITLE 23.—Funds authorized by this subsection shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code, except that the funds shall remain available until expended.

* * * * * * *

SEC. 1214. FEDERAL ACTIVITIES.

(a) * * *

* * * * * * *

(r) PUERTO RICO HIGHWAY PROGRAM.—

(1) IN GENERAL.—The Secretary shall allocate funds authorized by section 1101(a)[(15) for each of fiscal years 1998 through 2004]*(24) for each of fiscal years 2004 through 2009 of the Transportation Equity Act: A Legacy for Users* to the Commonwealth of Puerto Rico to carry out a highway program in such Commonwealth.

(2) APPLICABILITY OF TITLE 23.—Amounts made available by section 1101(a)[(15) of this Act]*(24) of the Transportation Equity Act: A Legacy for Users* shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code. Such amounts shall be subject to any limitation on obligations for Federal-aid highway and highway safety construction programs.

* * * * * * *

SEC. 1216. INNOVATIVE SURFACE TRANSPORTATION FINANCING METHODS.

(a) * * *

[(b) INTERSTATE SYSTEM RECONSTRUCTION AND REHABILITATION PILOT PROGRAM.—

[(1) ESTABLISHMENT.—The Secretary shall establish and implement an Interstate System reconstruction and rehabilitation pilot program under which the Secretary, notwithstanding sections 129 and 301 of title 23, United States Code, may permit a State to collect tolls on a highway, bridge, or tunnel on the Interstate System for the purpose of reconstructing and rehabilitating Interstate highway corridors that could not otherwise be adequately maintained or functionally improved without the collection of tolls.

[(2) LIMITATION ON NUMBER OF FACILITIES.—The Secretary may permit the collection of tolls under this subsection on 3 facilities on the Interstate System. Each of such facilities shall be located in a different State.

[(3) ELIGIBILITY.—To be eligible to participate in the pilot program, a State shall submit to the Secretary an application that contains, at a minimum, the following:

[(A) An identification of the facility on the Interstate System proposed to be a toll facility, including the age, condition, and intensity of use of the facility.

[(B) In the case of a facility that affects a metropolitan area, an assurance that the metropolitan planning organization established under section 134 of title 23, United States Code, for the area has been consulted concerning the placement and amount of tolls on the facility.

[(C) An analysis demonstrating that the facility could not be maintained or improved to meet current or future needs from the State's apportionments and allocations made available by this Act (including amendments made by this Act) and from revenues for highways from any other source without toll revenues.

[(D) A facility management plan that includes—

[(i) a plan for implementing the imposition of tolls on the facility;

[(ii) a schedule and finance plan for the reconstruction or rehabilitation of the facility using toll revenues;

[(iii) a description of the public transportation agency that will be responsible for implementation and administration of the pilot program;

[(iv) a description of whether consideration will be given to privatizing the maintenance and operational aspects of the facility, while retaining legal and administrative control of the portion of the Interstate route; and

[(v) such other information as the Secretary may require.

[(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under paragraph (3) only if the Secretary determines that—

[(A) the State is unable to reconstruct or rehabilitate the proposed toll facility using existing apportionments;

[(B) the facility has a sufficient intensity of use, age, or condition to warrant the collection of tolls;

[(C) the State plan for implementing tolls on the facility takes into account the interests of local, regional, and interstate travelers;

[(D) the State plan for reconstruction or rehabilitation of the facility using toll revenues is reasonable; and

[(E) the State has given preference to the use of a public toll agency with demonstrated capability to build, operate, and maintain a toll expressway system meeting criteria for the Interstate System.

[(5) LIMITATIONS ON USE OF REVENUES; AUDITS.—Before the Secretary may permit a State to participate in the pilot pro-

gram, the State must enter into an agreement with the Secretary that provides that—

[(A) all toll revenues received from operation of the toll facility will be used only for—

[(i) debt service;

[(ii) reasonable return on investment of any private person financing the project; and

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

[(B) regular audits will be conducted to ensure compliance with subparagraph (A) and the results of such audits will be transmitted to the Secretary.

[(6) LIMITATION ON USE OF INTERSTATE MAINTENANCE FUNDS.—During the term of the pilot program, funds apportioned for Interstate maintenance under section 104(b)(4) of title 23, United States Code, may not be used on a facility for which tolls are being collected under the program.

[(7) PROGRAM TERM.—The Secretary shall conduct the pilot program under this subsection for a term to be determined by the Secretary, but not less than 10 years.

[(8) INTERSTATE SYSTEM DEFINED.—In this subsection, the term "Interstate System" has the meaning such term has under section 101 of title 23, United States Code.]

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SEC. 1221. TRANSPORTATION AND COMMUNITY AND SYSTEM PRESERVATION PILOT PROGRAM.

(a) * * *

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(e) FUNDING.—

(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $20,000,000 for fiscal year [1999 and] *1999,* $25,000,000 for each of fiscal years 2000 through 2003 and $10,416,667 for the period of October 1, 2003, through February 29, 2004*, and $25,000,000 for fiscal year 2004, $30,000,000 for fiscal year 2005, $35,000,000 for fiscal year 2006, $35,000,000,000 for fiscal year 2007, and $35,000,000 for each of fiscal years 2008 and 2009*.

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

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Subtitle C—Program Streamlining and Flexibility

* * * * * * *

[SEC. 1309. ENVIRONMENTAL STREAMLINING.

[(a) COORDINATED ENVIRONMENTAL REVIEW PROCESS.—

[(1) DEVELOPMENT AND IMPLEMENTATION.—The Secretary shall develop and implement a coordinated environmental review process for highway construction and mass transit projects that require—

[(A) the preparation of an environmental impact statement or environmental assessment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), except that the Secretary may decide not to apply this section to the preparation of an environmental assessment under such Act; or

[(B) the conduct of any other environmental review, analysis, opinion, or issuance of an environmental permit, license, or approval by operation of Federal law.

[(2) MEMORANDUM OF UNDERSTANDING.—

[(A) IN GENERAL.—The coordinated environmental review process for each project shall ensure that, whenever practicable (as specified in this section), all environmental reviews, analyses, opinions, and any permits, licenses, or approvals that must be issued or made by any Federal agency for the project concerned shall be conducted concurrently and completed within a cooperatively determined time period. Such process for a project or class of project may be incorporated into a memorandum of understanding between the Department of Transportation and Federal agencies (and, where appropriate, State agencies).

[(B) ESTABLISHMENT OF TIME PERIODS.—In establishing the time period referred to in subparagraph (A), and any time periods for review within such period, the Department and all such agencies shall take into account their respective resources and statutory commitments.

[(b) ELEMENTS OF COORDINATED ENVIRONMENTAL REVIEW PROCESS.—For each project, the coordinated environmental review process established under this section shall provide, at a minimum, for the following elements:

[(1) FEDERAL AGENCY IDENTIFICATION.—The Secretary shall, at the earliest possible time, identify all potential Federal agencies that—

[(A) have jurisdiction by law over environmental-related issues that may be affected by the project and the analysis of which would be part of any environmental document required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

[(B) may be required by Federal law to independently—

[(i) conduct an environmental-related review or analysis; or

[(ii) determine whether to issue a permit, license, or approval or render an opinion on the environmental impact of the project.

[(2) TIME LIMITATIONS AND CONCURRENT REVIEW.—The Secretary and the head of each Federal agency identified under paragraph (1)—

[(A)(i) shall jointly develop and establish time periods for review for—

[(I) all Federal agency comments with respect to any environmental review documents required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for the project; and

[(II) all other independent Federal agency environmental analyses, reviews, opinions, and decisions on any permits, licenses, and approvals that must be issued or made for the project;

whereby each such Federal agency's review shall be undertaken and completed within such established time periods for review; or

[(ii) may enter into an agreement to establish such time periods for review with respect to a class of project; and

[(B) shall ensure, in establishing such time periods for review, that the conduct of any such analysis, review, opinion, and decision is undertaken concurrently with all other environmental reviews for the project, including the reviews required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); except that such review may not be concurrent if the affected Federal agency can demonstrate that such concurrent review would result in a significant adverse impact to the environment or substantively alter the operation of Federal law or would not be possible without information developed as part of the environmental review process.

[(3) FACTORS TO BE CONSIDERED.—Time periods for review established under this section shall be consistent with the time periods established by the Council on Environmental Quality under sections 1501.8 and 1506.10 of title 40, Code of Federal Regulations.

[(4) EXTENSIONS.—The Secretary shall extend any time periods for review under this section if, upon good cause shown, the Secretary and any Federal agency concerned determine that additional time for analysis and review is needed as a result of new information that has been discovered that could not reasonably have been anticipated when the Federal agency's time periods for review were established. Any memorandum of understanding shall be modified to incorporate any mutually agreed-upon extensions.

[(c) DISPUTE RESOLUTION.—When the Secretary determines that a Federal agency which is subject to a time period for its environmental review or analysis under this section has failed to complete such review, analysis, opinion, or decision on issuing any permit, license, or approval within the established time period or within any agreed-upon extension to such time period, the Secretary may, after notice and consultation with such agency, close the record on the matter before the Secretary. If the Secretary finds, after timely compliance with this section, that an environmental issue related to the project that an affected Federal agency has jurisdiction over by operation of Federal law has not been resolved, the Secretary

and the head of the Federal agency shall resolve the matter not later than 30 days after the date of the finding by the Secretary.

[(d) PARTICIPATION OF STATE AGENCIES.—For any project eligible for assistance under chapter 1 of title 23, United States Code, or chapter 53 of title 49, United States Code, a State, by operation of State law, may require that all State agencies that have jurisdiction by State or Federal law over environmental-related issues that may be affected by the project, or that are required to issue any environmental-related reviews, analyses, opinions, or determinations on issuing any permits, licenses, or approvals for the project, be subject to the coordinated environmental review process established under this section unless the Secretary determines that a State's participation would not be in the public interest. For a State to require State agencies to participate in the review process, all affected agencies of the State shall be subject to the review process.

[(e) ASSISTANCE TO AFFECTED FEDERAL AGENCIES.—

[(1) IN GENERAL.—The Secretary may approve a request by a State or recipient to provide funds for a highway project made available under chapter 1 of title 23, United States Code, or for a mass transit project made available under chapter 53 of title 49, United States Code, to the State for the project subject to the coordinated environmental review process established under this section to affected Federal agencies to provide the resources necessary to meet any time limits established under this section.

[(2) AMOUNTS.—Such requests under paragraph (1) shall be approved only—

[(A) for the additional amounts that the Secretary determines are necessary for the affected Federal agencies to meet the time limits for environmental review; and

[(B) if such time limits are less than the customary time necessary for such review.

[(f) JUDICIAL REVIEW AND SAVINGS CLAUSE.—

[(1) JUDICIAL REVIEW.—Nothing in this section shall affect the reviewability of any final Federal agency action in a district court of the United States or in the court of any State.

[(2) SAVINGS CLAUSE.—Nothing in this section shall affect the applicability of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or any other Federal environmental statute or affect the responsibility of any Federal officer to comply with or enforce any such statute.

[(g) FEDERAL AGENCY DEFINED.—In this section, the term "Federal agency" means any Federal agency or any State agency carrying out affected responsibilities required by operation of Federal law.]

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TITLE III—FEDERAL TRANSIT ADMINISTRATION PROGRAMS

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[SEC. 3037. JOB ACCESS AND REVERSE COMMUTE GRANTS.

[(a) FINDINGS.—Congress finds that—

[(1) two-thirds of all new jobs are in the suburbs, whereas three-quarters of welfare recipients live in rural areas or central cities;

[(2) even in metropolitan areas with excellent public transit systems, less than half of the jobs are accessible by transit;

[(3) in 1991, the median price of a new car was equivalent to 25 weeks of salary for the average worker, and considerably more for the low-income worker;

[(4) not less than 9,000,000 households and 10,000,000 Americans of driving age, most of whom are low-income workers, do not own cars;

[(5) 94 percent of welfare recipients do not own cars;

[(6) nearly 40 percent of workers with annual incomes below $10,000 do not commute by car;

[(7) many of the 2,000,000 Americans who will have their Temporary Assistance to Needy Families grants (under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)) terminated by the year 2002 will be unable to get to jobs they could otherwise hold;

[(8) increasing the transit options for low-income workers, especially those who are receiving or who have recently received welfare benefits, will increase the likelihood of those workers getting and keeping jobs; and

[(9) many residents of cities and rural areas would like to take advantage of mass transit to gain access to suburban employment opportunities.

[(b) DEFINITIONS.—In this section, the following definitions shall apply:

[(1) ELIGIBLE LOW-INCOME INDIVIDUAL.—The term "eligible low-income individual" means an individual whose family income is at or below 150 percent of the poverty line (as that term is defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section) for a family of the size involved.

[(2) ELIGIBLE PROJECT AND RELATED TERMS.—

[(A) IN GENERAL.—The term "eligible project" means an access to jobs project or a reverse commute project.

[(B) ACCESS TO JOBS PROJECT.—The term "access to jobs project" means a project relating to the development of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment. The Secretary may make access to jobs grants for—

[(i) capital projects and to finance operating costs of equipment, facilities, and associated capital maintenance items related to providing access to jobs under this section;

[(ii) promoting the use of transit by workers with nontraditional work schedules;

[(iii) promoting the use by appropriate agencies of transit vouchers for welfare recipients and eligible low-income individuals under specific terms and conditions developed by the Secretary; and

[(iv) promoting the use of employer-provided transportation, including the transit pass benefit program under section 132 of the Internal Revenue Code of 1986.

[(C) REVERSE COMMUTE PROJECT.—The term "reverse commute project" means a project related to the development of transportation services designed to transport residents of urban areas, urbanized areas, and areas other than urbanized areas to suburban employment opportunities, including any project to—

[(i) subsidize the costs associated with adding reverse commute bus, train, carpool, van routes, or service from urban areas, urbanized areas, and areas other than urbanized areas, to suburban workplaces;

[(ii) subsidize the purchase or lease by a nonprofit organization or public agency of a van or bus dedicated to shuttling employees from their residences to a suburban workplace; or

[(iii) otherwise facilitate the provision of mass transportation services to suburban employment opportunities.

[(3) EXISTING TRANSPORTATION SERVICE PROVIDERS.—The term "existing transportation service providers" means mass transportation operators and governmental agencies and nonprofit organizations that receive assistance from Federal, State, or local sources for nonemergency transportation services.

[(4) QUALIFIED ENTITY.—The term "qualified entity" means—

[(A) with respect to any proposed eligible project in an urbanized area with a population of at least 200,000, the applicant or applicants selected by the appropriate metropolitan planning organization that meets the requirements of this section, including the planning and coordination requirements in subsection (i), from among designated recipients under section 5307(a)(2) of title 49, United States Code, local governmental authorities and agencies, and nonprofit organizations; and

[(B) with respect to any proposed eligible project in an urbanized area with a population of less than 200,000, or an area other than an urbanized area, the applicant or applicants selected by the chief executive officer of the State in which the area is located that meets the requirements of this section, including the planning and coordination requirements in subsection (i), from among designated recipients under section 5307(a)(2) of title 49, United States Code, local governmental authorities and agencies, and nonprofit organizations.

[(5) WELFARE RECIPIENT.—The term "welfare recipient" means an individual who receives or received aid or assistance under a State program funded under part A of title IV of the Social Security Act (whether in effect before or after the effective date of the amendments made by title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2110)) at any time during

the 3-year period before the date on which the applicant applies for a grant under this section.

[(c) GENERAL AUTHORITY.—

[(1) IN GENERAL.—The Secretary may make access to jobs grants and reverse commute grants under this section to assist qualified entities in financing eligible projects.

[(2) COORDINATION.—The Secretary shall coordinate activities under this section with related activities under programs of other Federal departments and agencies.

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

[(e) PROHIBITION.—Grants awarded under this section may not be used for planning or coordination activities.

[(f) FACTORS FOR CONSIDERATION.—In awarding grants under this section to applicants under subsection (d), the Secretary shall consider—

[(1) the percentage of the population in the area to be served by the applicant that are welfare recipients;

[(2) in the case of an applicant seeking assistance to finance an access to jobs project, the need for additional services (including bicycling) in the area to be served by the applicant to transport welfare recipients and eligible low-income individuals to and from specified jobs, training, and other employment support services, and the extent to which the proposed services will address those needs;

[(3) the extent to which the applicant demonstrates—

[(A) coordination with, and the financial commitment of, existing transportation service providers; and

[(B) coordination with the State agency that administers the State program funded under part A of title IV of the Social Security Act;

[(4) the extent to which the applicant demonstrates maximum utilization of existing transportation service providers and expands transit networks or hours of service, or both;

[(5) the extent to which the applicant demonstrates an innovative approach that is responsive to identified service needs;

[(6) the extent to which the applicant—

[(A) in the case of an applicant seeking assistance to finance an access to jobs project, presents a regional transportation plan for addressing the transportation needs of welfare recipients and eligible low-income individuals; and

[(B) identifies long-term financing strategies to support the services under this section;

[(7) the extent to which the applicant demonstrates that the community to be served has been consulted in the planning process; and

[(8) in the case of an applicant seeking assistance to finance a reverse commute project, the need for additional services identified in a regional transportation plan to transport individuals to suburban employment opportunities, and the extent to which the proposed services will address those needs.

[(g) COMPETITIVE GRANT SELECTION.—The Secretary shall conduct a national solicitation for applications for grants under this section. Grantees shall be selected on a competitive basis.

[(h) COST SHARING.—

[(1) MAXIMUM AMOUNT.—The amount of a grant under this section may not exceed 50 percent of the total project cost.

[(2) NONGOVERNMENTAL SHARE.—

[(A) IN GENERAL.—The portion of the total cost of an eligible project that is not funded under this section—

[(i) shall be provided in cash from sources other than revenues from providing mass transportation, but may include amounts received under a service agreement; and

[(ii) may be derived from amounts appropriated to or made available to a department or agency of the Federal Government (other than the Department of Transportation) that are eligible to be expended for transportation.

[(B) INAPPLICABILITY.—For purposes of subparagraph (A)(ii), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vi) of the Social Security Act shall not apply to Federal or State funds to be used for transportation services.

[(i) PLANNING REQUIREMENTS.—

[(1) IN GENERAL.—The requirements of sections 5303 through 5306 of title 49, United States Code, apply to any grant made under this section.

[(2) COORDINATION.—Each application for a grant under this section shall reflect coordination with and the approval of affected transit grant recipients. The eligible access to jobs projects financed under this section shall be part of a coordinated public transit-human services transportation planning process.

[(j) GRANT REQUIREMENTS.—A grant under this section shall be subject to—

[(1) all of the terms and conditions to which a grant made under section 5307 of title 49, United States Code, is subject; and

[(2) such other terms and conditions as are determined by the Secretary.

[(k) PROGRAM EVALUATION.—

[(1) COMPTROLLER GENERAL.—Beginning 6 months after the date of enactment of this Act, and every 6 months thereafter, the Comptroller General of the United States shall—

[(A) conduct a study to evaluate the grant program authorized under this section; and

[(B) submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the results of each study under subparagraph (A).

[(2) DEPARTMENT OF TRANSPORTATION.—Not later than 2 years after the date of enactment of this Act, the Secretary shall—

[(A) conduct a study to evaluate the access to jobs grant program authorized under this section; and

[(B) submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the results of the study under subparagraph (A).

[(l) AUTHORIZATION AND ALLOCATION.—

[(1) IN GENERAL.—

[(A) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out this section—

[(i) $40,000,000 for fiscal year 1999;

[(ii) $60,000,000 for fiscal year 2000;

[(iii) $80,000,000 for fiscal year 2001;

[(iv) $100,000,000 for fiscal year 2002;

[(v) $120,000,000 for fiscal year 2003; and

[(vi) $50,519,167 for the period of October 1, 2003, through February 29, 2004.

[(B) FROM THE GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out this section—

[(i) $10,000,000 for fiscal year 1999;

[(ii) $15,000,000 for fiscal year 2000;

[(iii) $20,000,000 for fiscal year 2001;

[(iv) $25,000,000 for fiscal year 2002;

[(v) $30,000,000 for fiscal year 2003; and

[(vi) $12,638,333 for the period of October 1, 2003, through February 29, 2004.

[(C) ADDITIONAL AMOUNTS.—In addition to amounts made available under subparagraphs (A) and (B)under the Transportation Discretionary Spending Guarantee for the Mass Transit Category, there are authorized to be appropriated to carry out this section—

[(i) $100,000,000 for fiscal year 1999;

[(ii) $75,000,000 for fiscal year 2000;

[(iii) $50,000,000 for fiscal year 2001; and

[(iv) $25,000,000 for fiscal year 2002.

[(2) SET-ASIDE FOR REVERSE COMMUTE PROJECTS.—Of amounts made available by or appropriated under subparagraphs (A) and (B) of paragraph (1) to carry out this section in each fiscal year, not more than $10,000,000 shall be used for grants for reverse commute projects; except that in the period of October 1, 2003, through February 29, 2004, $4,166,667 shall be used for such projects.

[(3) ALLOCATION.—The amounts made available by or appropriated under paragraph (1) to carry out this section in each fiscal year shall be allocated as follows:

[(A) 60 percent shall be allocated for eligible projects in urbanized areas with populations of at least 200,000.

[(B) 20 percent shall be allocated for eligible projects in urbanized areas with populations of less than 200,000.

[(C) 20 percent shall be allocated for eligible projects in areas other than urbanized areas.]

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[SEC. 3038. RURAL TRANSPORTATION ACCESSIBILITY INCENTIVE PROGRAM.]

SEC. 3038. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.

(a) * * *

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[(e) FEDERAL SHARE OF COSTS.—The Federal share of costs under this section shall be provided from funds made available to carry out this section. The Federal share of the costs for a project shall not exceed 90 percent of the project cost.]

(e) FEDERAL SHARE OF COSTS.—The Federal share of costs under this section shall be provided from funds made available to carry out this section. The Federal share of the costs for a project shall not exceed 80 percent of the project cost.

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[(g) FUNDING.—

[(1) INTERCITY, FIXED-ROUTE OVER-THE-ROAD BUS SERVICE.—Of amounts made available by or appropriated under section 5338(a)(2) of title 49, United States Code (before allocation under section 5338(a)(2)(C) of that title), the following amounts shall be available for operators of over-the-road buses used substantially or exclusively in intercity, fixed-route over-the-road bus service to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses:

[(A) $2,000,000 for fiscal year 1999.

[(B) $2,000,000 for fiscal year 2000.

[(C) $3,000,000 for fiscal year 2001.

[(D) $5,250,000 for fiscal year 2002.

[(E) $5,250,000 for fiscal year 2003.

[(F) $2,187,500 for the period of October 1, 2003, through February 29, 2004.

Such sums shall remain available until expended.

[(2) OTHER OVER-THE-ROAD BUS SERVICE.—Of amounts made available by or appropriated under section 5338(a)(2) of title 49, United States Code (before allocation under section 5338(a)(2)(C) of that title), $6,800,000 shall be available for fiscal years 2000 through 2003 (and $708,333 shall be available for the period of October 1, 2003, through February 29, 2004) for operators of other over-the-road bus service to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses. Such sums shall remain available until expended.]

(g) FUNDING.—

(1) Of the amounts made available to carry out this section in each fiscal year, 75 percent shall be available for operators of over-the-road buses used substantially or exclusively in intercity, fixed-route over-the-road bus service to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses. Such amounts shall remain available until expended.

(2) Of the amounts made available to carry out this section in each fiscal year, 25 percent shall be available for operators of other over-the-road bus service to finance the incremental capital and training costs of the Department of Transportation's

final rule regarding accessibility of over-the-road buses. Such amounts shall remain available until expended.

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TITLE V—TRANSPORTATION RESEARCH

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Subtitle B—Research and Technology

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SEC. 5117. TRANSPORTATION TECHNOLOGY INNOVATION AND DEMONSTRATION PROGRAM.

(a) * * *

(b) CONTENTS OF PROGRAM.—

(1) * * *

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(3) INTELLIGENT TRANSPORTATION INFRASTRUCTURE.—

(A) * * *

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(E) USE OF RIGHTS-OF-WAY.—

(i) IN GENERAL.—An intelligent transportation system project described in paragraph (3), and an intelligent transportation system project described in paragraph (6), that involves privately owned intelligent transportation system components and is carried out using funds made available from the Highway Trust Fund (other than the Mass Transit Account) shall not be subject to any law or 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 funds from the Highway Trust Fund (other than the Mass Transit Account) have been used for planning, design, construction, or maintenance if the Secretary determines that such use is in the public interest.

(ii) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subparagraph shall be construed to affect the authority of a State, or political subdivision of a State, to regulate highway safety.

[(E)] *(F)* DEFINITIONS.—In this paragraph:

(i) * * *

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[(F)] *(G)* FUNDING.—Of the amounts made available for each of fiscal years 1998 through 2003 by section 5001(a)(2) of this Act, $1,700,000 per fiscal year shall be available to carry out this paragraph.

[(G)] *(H)* FEDERAL SHARE.—The Federal share of the cost of a program carried out under this paragraph shall be 80 percent of the cost of such program.

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[Subtitle C—Intelligent Transportation Systems

[SEC. 5201. SHORT TITLE.

[This subtitle may be cited as the "Intelligent Transportation Systems Act of 1998".

[SEC. 5202. FINDINGS.

[Congress finds that—

[(1) investments authorized by the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1914 et seq.) have demonstrated that intelligent transportation systems can mitigate surface transportation problems in a cost-effective manner; and

[(2) continued investment in architecture and standards development, research, and systems integration is needed to accelerate the rate at which intelligent transportation systems are incorporated into the national surface transportation network, thereby improving transportation safety and efficiency and reducing costs and negative impacts on communities and the environment.

[SEC. 5203. GOALS AND PURPOSES.

[(a) GOALS.—The goals of the intelligent transportation system program include—

[(1) enhancement of surface transportation efficiency and facilitation of intermodalism and international trade to enable existing facilities to meet a significant portion of future transportation needs, including public access to employment, goods, and services, and to reduce regulatory, financial, and other transaction costs to public agencies and system users;

[(2) achievement of national transportation safety goals, including the enhancement of safe operation of motor vehicles and nonmotorized vehicles, with particular emphasis on decreasing the number and severity of collisions;

[(3) protection and enhancement of the natural environment and communities affected by surface transportation, with particular emphasis on assisting State and local governments to achieve national environmental goals;

[(4) accommodation of the needs of all users of surface transportation systems, including operators of commercial vehicles, passenger vehicles, and motorcycles, and including individuals with disabilities; and

[(5) improvement of the Nation's ability to respond to emergencies and natural disasters and enhancement of national defense mobility.

[(b) PURPOSES.—The Secretary shall implement activities under the intelligent system transportation program to, at a minimum—

[(1) expedite, in both metropolitan and rural areas, deployment and integration of intelligent transportation systems for consumers of passenger and freight transportation;

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

[(3) improve regional cooperation and operations planning for effective intelligent transportation system deployment;

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

[(5) develop a workforce capable of developing, operating, and maintaining intelligent transportation systems; and

[(6) complete deployment of Commercial Vehicle Information Systems and Networks in a majority of States by September 30, 2003.

[SEC. 5204. GENERAL AUTHORITIES AND REQUIREMENTS.

[(a) SCOPE.—Subject to the provisions of this subtitle, the Secretary shall conduct an ongoing intelligent transportation system program to research, develop, and operationally test intelligent transportation systems and advance nationwide deployment of such systems as a component of the surface transportation systems of the United States.

[(b) POLICY.—Intelligent transportation system operational tests and deployment projects funded pursuant to this subtitle shall encourage and not displace public-private partnerships or private sector investment in such tests and projects.

[(c) COOPERATION WITH GOVERNMENTAL, PRIVATE, AND EDUCATIONAL ENTITIES.—The Secretary shall carry out the intelligent transportation system program in cooperation with State and local governments and other public entities, the United States private sector, the Federal laboratories, and colleges and universities, including historically black colleges and universities and other minority institutions of higher education.

[(d) CONSULTATION WITH FEDERAL OFFICIALS.—In carrying out the intelligent transportation system program, the Secretary, as appropriate, shall consult with the Secretary of Commerce, the Secretary of the Treasury, the Administrator of the Environmental Protection Agency, the Director of the National Science Foundation, and the heads of other Federal departments and agencies.

[(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.—

[(1) IN GENERAL.—The Secretary shall—

[(A) maintain a repository for technical and safety data collected as a result of federally sponsored projects carried out under this subtitle; and

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

[(2) DELEGATION OF AUTHORITY.—

[(A) IN GENERAL.—The Secretary may delegate the responsibility of the Secretary under this subsection, with continuing oversight by the Secretary, to an appropriate entity not within the Department of Transportation.

[(B) FEDERAL ASSISTANCE.—If the Secretary delegates the responsibility, the entity to which the responsibility is delegated shall be eligible for Federal assistance under this section.

[(h) ADVISORY COMMITTEES.—

[(1) IN GENERAL.—In carrying out this subtitle, the Secretary may use 1 or more advisory committees.

[(2) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—Any advisory committee so used shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

[(i) PROCUREMENT METHODS.—

[(1) TECHNICAL ASSISTANCE.—The Secretary shall develop appropriate technical assistance and guidance to assist State and local agencies in evaluating and selecting appropriate methods of procurement for intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including innovative and nontraditional methods such as the Information Technology Omnibus Procurement.

[(2) INTELLIGENT TRANSPORTATION SYSTEM SOFTWARE.—To the maximum extent practicable, contracting officials shall use as a critical evaluation criterion the Software Engineering Institute's Capability Maturity Model, or another similar recognized standard risk assessment methodology, to reduce the cost, schedule, and performance risks associated with the development, management, and integration of intelligent transportation system software.

[(j) EVALUATIONS.—

[(1) GUIDELINES AND REQUIREMENTS.—

[(A) IN GENERAL.—The Secretary shall issue guidelines and requirements for the evaluation of operational tests and deployment projects carried out under this subtitle.

[(B) OBJECTIVITY AND INDEPENDENCE.—The guidelines and requirements issued under subparagraph (A) shall include provisions to ensure the objectivity and independence of the evaluator so as to avoid any real or apparent conflict of interest or potential influence on the outcome by parties to any such test or deployment project or by any other formal evaluation carried out under this subtitle.

[(C) FUNDING.—The guidelines and requirements issued under subparagraph (A) shall establish evaluation funding levels based on the size and scope of each test or project 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, deployment project, or program assessment activity under this subtitle shall not be subject to chapter 35 of title 44.

[(k) USE OF RIGHTS-OF-WAY.—Intelligent transportation system projects specified in section 5117(b)(3) and 5117(b)(6) and involving privately owned intelligent transportation system components that is carried out using funds made available from the Highway Trust Fund shall not be subject to any law or 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 utilized for planning, design, construction, or maintenance, if the Secretary of Transportation determines that such use is in the public interest. Nothing in this subsection shall affect the authority of a State or political subdivision of a State to regulate highway safety.

[SEC. 5205. NATIONAL ITS PROGRAM PLAN.

[(a) IN GENERAL.—

[(1) UPDATES.—The Secretary shall maintain and update, as necessary, the National ITS Program Plan developed by the Department of Transportation and the Intelligent Transportation Society of America.

[(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 context of major metropolitan areas, smaller metropolitan and rural areas, and commercial vehicle operations;

[(B) specify how specific programs and projects will achieve the goals, objectives, and milestones referred to in subparagraph (A), including consideration of the 5- and 10-year timeframes for the goals and objectives;

[(C) identify activities that provide for the dynamic development of standards and protocols to promote and ensure interoperability in the implementation of intelligent transportation system technologies, including actions taken to establish critical standards; and

[(D) establish a cooperative process with State and local governments for determining desired surface transportation system performance levels and developing plans for incorporation of specific intelligent transportation system capabilities into surface transportation systems.

[(b) REPORTING.—The plan described in subsection (a) shall be transmitted and updated as part of the Surface Transportation Research and Development Strategic Plan developed under section 508 of title 23, United States Code.

[SEC. 5206. NATIONAL ARCHITECTURE AND STANDARDS.

[(a) IN GENERAL.—

[(1) DEVELOPMENT, IMPLEMENTATION, AND MAINTENANCE.—Consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note; 110 Stat. 783), the Secretary shall develop, implement, and maintain a national architecture and supporting standards and protocols to promote the widespread use and evaluation of intelligent transportation system technology as a component of the surface transportation systems of the United States.

[(2) INTEROPERABILITY AND EFFICIENCY.—To the maximum extent practicable, the national architecture shall promote interoperability among, and efficiency of, intelligent transportation system technologies implemented throughout the United States.

[(3) USE OF STANDARDS DEVELOPMENT ORGANIZATIONS.—In carrying out this section, the Secretary may use the services of

such standards development organizations as the Secretary determines to be appropriate.

[(b) REPORT ON CRITICAL STANDARDS.—Not later than June 1, 1999, the Secretary shall submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure and the Committee on Science of the House of Representatives identifying which standards are critical to ensuring national interoperability or critical to the development of other standards and specifying the status of the development of each standard identified.

[(c) PROVISIONAL STANDARDS.—

[(1) IN GENERAL.—If the Secretary finds that the development or balloting of an intelligent transportation system standard jeopardizes the timely achievement of the objectives identified in subsection (a), the Secretary may establish a provisional standard after consultation with affected parties, and using, to the extent practicable, the work product of appropriate standards development organizations.

[(2) CRITICAL STANDARDS.—If a standard identified as critical in the report under subsection (b) is not adopted and published by the appropriate standards development organization by January 1, 2001, the Secretary shall establish a provisional standard after consultation with affected parties, and using, to the extent practicable, the work product of appropriate standards development organizations.

[(3) PERIOD OF EFFECTIVENESS.—A provisional standard established under paragraph (1) or (2) shall be published in the Federal Register and remain in effect until the appropriate standards development organization adopts and publishes a standard.

[(d) WAIVER OF REQUIREMENT TO ESTABLISH PROVISIONAL STANDARD.—

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

[(2) NOTICE.—The Secretary shall publish in the Federal Register a notice describing each standard for which a waiver of the provisional standard requirement has been granted, the reasons for and effects of granting the waiver, and an estimate as to when 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.—At any time the Secretary may withdraw a waiver granted under paragraph (1). Upon such withdrawal, the Secretary shall publish in the Federal Register a notice describing each standard for which a waiver has been withdrawn and the reasons for withdrawing the waiver.

[(e) CONFORMITY WITH NATIONAL ARCHITECTURE.—

[(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall ensure that intelligent transportation

system projects carried out using funds made available from the Highway Trust Fund, including funds made available under this subtitle to deploy intelligent transportation system technologies, conform to the national architecture, applicable standards or provisional standards, and protocols developed under subsection (a).

[(2) SECRETARY'S DISCRETION.—The Secretary may authorize exceptions to paragraph (1) for—

[(A) projects designed to achieve specific research objectives outlined in the National ITS Program Plan under section 5205 or the Surface Transportation Research and Development Strategic Plan developed under section 508 of title 23, United States Code; or

[(B) the upgrade or expansion of an intelligent transportation system in existence on the date of enactment of this subtitle, if the Secretary determines that the upgrade or expansion—

[(i) would not adversely affect the goals or purposes of this subtitle;

[(ii) is carried out before the end of the useful life of such system; and

[(iii) is cost-effective as compared to alternatives that would meet the conformity requirement of paragraph (1).

[(3) EXCEPTIONS.—Paragraph (1) shall not apply to funds used for operation or maintenance of an intelligent transportation system in existence on the date of enactment of this subtitle.

[(f) SPECTRUM.—The Federal Communications Commission shall consider, in consultation with the Secretary, spectrum needs for the operation of intelligent transportation systems, including spectrum for the dedicated short-range vehicle-to-wayside wireless standard. Not later than January 1, 2000, the Federal Communications Commission shall have completed a rulemaking considering the allocation of spectrum for intelligent transportation systems.

[SEC. 5207. RESEARCH AND DEVELOPMENT.

[(a) IN GENERAL.—The Secretary shall carry out a comprehensive program of intelligent transportation system research, development and operational tests of intelligent vehicles and intelligent infrastructure systems, and other similar activities that are necessary to carry out this subtitle.

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

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

[(2) focus on crash-avoidance and integration of in-vehicle crash protection technologies with other on-board safety systems, including the interaction of air bags and safety belts;

[(3) incorporate human factors research, including the science of the driving process;

[(4) facilitate the integration of intelligent infrastructure, vehicle, and control technologies, including magnetic guidance control systems or other materials or magnetics research; or

[(5) incorporate research on the impact of environmental, weather, and natural conditions on intelligent transportation systems, including the effects of cold climates.

[(c) OPERATIONAL TESTS.—Operational tests conducted under this section shall be designed for the collection of data to permit objective evaluation of the results of the tests, derivation of cost-benefit information that is useful to others contemplating deployment of similar systems, and development and implementation of standards.

[(d) FEDERAL SHARE.—The Federal share of the cost of operational tests and demonstrations under subsection (a) shall not exceed 80 percent.

[SEC. 5208. INTELLIGENT TRANSPORTATION SYSTEM INTEGRATION PROGRAM.

[(a) IN GENERAL.—The Secretary shall conduct a comprehensive program to accelerate the integration and interoperability of intelligent transportation systems in metropolitan and rural areas. Under the program, the Secretary shall select for funding, through competitive solicitation, projects that will serve as models to improve transportation efficiency, promote safety (including safe freight movement), increase traffic flow (including the flow of intermodal travel at ports of entry), reduce emissions of air pollutants, improve traveler information, enhance alternative transportation modes, build on existing intelligent transportation system projects, or promote tourism.

[(b) SELECTION OF PROJECTS.—Under the program, the Secretary shall give priority to funding projects that—

[(1) contribute to national deployment goals and objectives outlined in the National ITS Program Plan under section 5205;

[(2) demonstrate a strong commitment to cooperation among agencies, jurisdictions, and the private sector, as evidenced by signed memoranda of understanding that clearly define the responsibilities and relations of all parties to a partnership arrangement, including institutional relationships and financial agreements needed to support deployment;

[(3) encourage private sector involvement and financial commitment, to the maximum extent practicable, through innovative financial arrangements, especially public-private partnerships, including arrangements that generate revenue to offset public investment costs;

[(4) demonstrate commitment to a comprehensive plan of fully integrated intelligent transportation system deployment in accordance with the national architecture and standards and protocols established under section 5206;

[(5) are part of approved plans and programs developed under applicable statewide and metropolitan transportation planning processes and applicable State air quality implementation plans, as appropriate, at the time at which Federal funds are sought;

[(6) minimize the relative percentage and amount of Federal contributions under this section to total project costs;

[(7) ensure continued, long-term operations and maintenance without continued reliance on Federal funding under this subtitle, as evidenced by documented evidence of fiscal ca-

pacity and commitment from anticipated public and private sources;

[(8) demonstrate technical capacity for effective operations and maintenance or commitment to acquiring necessary skills;

[(9) mitigate any adverse impacts on bicycle and pedestrian transportation and safety; or

[(10) in the case of a rural area, meet other safety, mobility, geographic and regional diversity, or economic development criteria as determined by the Secretary.

[(c) FISCAL YEAR LIMITATIONS.—Of the amounts made available to carry out this section for a fiscal year—

[(1) not more that $15,000,000 may be used for projects in a single metropolitan area;

[(2) not more than $2,000,000 may be used for projects in a single rural area; and

[(3) not more than $35,000,000 may be used for projects in a State.

[(d) FUNDING LIMITATIONS.—

[(1) PROJECTS IN METROPOLITAN AREAS.—Funding under this section for intelligent transportation infrastructure projects in metropolitan areas shall be used primarily for activities necessary to integrate intelligent transportation infrastructure elements that are either deployed or to be deployed with other sources of funds.

[(2) OTHER PROJECTS.—For projects outside metropolitan areas, funding provided under this subtitle may also be used for installation of intelligent transportation infrastructure elements.

[(e) FUNDING FOR RURAL AREAS.—The Secretary shall allocate not less than 10 percent of funds authorized by section 5001(c)(4)(A) in rural areas for intelligent transportation infrastructure deployment activities funded under this section to carry out intelligent transportation infrastructure deployment activities in rural areas.

[(f) FEDERAL SHARE.—

[(1) FUNDS MADE AVAILABLE UNDER THIS SECTION.—The Federal share of the cost of a project payable from funds made available under this section shall not exceed 50 percent.

[(2) FUNDS MADE AVAILABLE FROM ALL FEDERAL SOURCES.—The total Federal share of the cost of a project payable from all eligible sources (including this section) shall not exceed 80 percent.

[(g) CORRIDOR DEVELOPMENT AND COORDINATION.—

[(1) IN GENERAL.—The Secretary shall encourage multistate cooperative agreements, coalitions, or other arrangements intended to promote regional cooperation, planning, and shared project implementation for intelligent transportation system projects.

[(2) GREAT LAKES ITS IMPLEMENTATION.—

[(A) IN GENERAL.—The Secretary shall make grants under this subsection to the State of Wisconsin to continue ITS activities in the corridor serving the Greater Milwaukee, Wisconsin, Chicago, Illinois, and Gary, Indiana, areas initiated under the Intermodal Surface Transportation Efficiency Act of 1991 and other areas of the State.

[(B) FUNDING.—Of the amounts made available for each of fiscal years 1998 through 2003 under section 5001(c)(4)(A) of this Act, $2,000,000 per fiscal year shall be available to carry out this paragraph.

[(3) NORTHEAST ITS IMPLEMENTATION.—

[(A) IN GENERAL.—The Secretary shall make grants under this subsection to the States to continue ITS activities in the Interstate Route I–95 corridor in the northeastern United States initiated under the Intermodal Surface Transportation Efficiency Act of 1991.

[(B) FUNDING.—Of the amounts made available for each of fiscal years 1998 through 2003 under section 5001(c)(4)(A) of this Act, $5,000,000 per fiscal year shall be available to carry out this paragraph.

[SEC. 5209. COMMERCIAL VEHICLE INTELLIGENT TRANSPORTATION SYSTEM INFRASTRUCTURE DEPLOYMENT.

[(a) IN GENERAL.—The Secretary shall carry out a comprehensive program to deploy intelligent transportation systems that—

[(1) improve the safety and productivity of commercial vehicles and drivers; and

[(2) reduce costs associated with commercial vehicle operations and Federal and State commercial vehicle regulatory requirements.

[(b) PURPOSE.—The program shall advance the technological capability and promote the deployment of intelligent transportation system applications to commercial vehicle operations, including commercial vehicle, commercial driver, and carrier-specific information systems and networks.

[(c) PRIORITY AREAS.—In carrying out the program, the Secretary shall give priority to projects that—

[(1) encourage multistate cooperation and corridor development;

[(2)(A) improve the safety of commercial vehicle operations; and

[(B) increase the efficiency of regulatory inspection processes to reduce administrative burdens by advancing technology to facilitate inspections and generally increase the effectiveness of enforcement efforts;

[(3)(A) advance electronic processing of registration information, driver licensing information, fuel tax information, inspection and crash data, and other safety information; and

[(B) promote communication of the information among the States; or

[(4) enhance the safe passage of commercial vehicles across the United States and across international borders.

[(d) LEVERAGING OF FEDERAL FUNDS.—Federal funds used to carry out the program shall, to the maximum extent practicable—

[(1) be leveraged with non-Federal funds; and

[(2) be used for activities not carried out through the use of private funds.

[(e) FEDERAL SHARE.—The Federal share of the cost of the project payable from funds made available to carry out this section shall not exceed 50 percent. The total Federal share of the cost of the project payable from all eligible sources shall not exceed 80 percent.

[SEC. 5210. USE OF FUNDS.

[(a) OUTREACH AND PUBLIC RELATIONS LIMITATION.—

[(1) IN GENERAL.—For each fiscal year, not more than $5,000,000 of the funds made available to carry out this subtitle shall be used for intelligent transportation system outreach, public relations, displays, scholarships, tours, and brochures.

[(2) APPLICABILITY.—Paragraph (1) shall not apply to intelligent transportation system training or the publication or distribution of research findings, technical guidance, or similar documents.

[(b) INFRASTRUCTURE DEVELOPMENT.—Funds made available to carry out this subtitle for operational tests and deployment projects—

[(1) shall be used primarily for the development of intelligent transportation system infrastructure; and

[(2) to the maximum extent practicable, shall not be used for the construction of physical highway and transit infrastructure unless the construction is incidental and critically necessary to the implementation of an intelligent transportation system project.

[(c) LIFE CYCLE COST ANALYSIS AND FINANCING AND OPERATIONS PLAN.—The Secretary shall require an applicant for funds made available under sections 5208 and 5209 to submit to the Secretary—

[(1) an analysis of the life-cycle costs of operation and maintenance of intelligent transportation system elements, if the total initial capital costs of the elements exceed $3,000,000; and

[(2) a multiyear financing and operations plan that describes how the project will be cost-effectively operated and maintained.

[(d) USE OF INNOVATIVE FINANCING.—

[(1) IN GENERAL.—The Secretary may use up to 25 percent of the funds made available to carry out this subtitle to make available loans, lines of credit, and loan guarantees for projects that are eligible for assistance under this subtitle and that have significant intelligent transportation system elements.

[(2) CONSISTENCY WITH OTHER LAW.—Credit assistance described in paragraph (1) shall be made available in a manner consistent with the Transportation Infrastructure Finance and Innovation Act of 1998.

[SEC. 5211. DEFINITIONS.

[In this subtitle, the following definitions apply:

[(1) COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS.—The term "Commercial Vehicle Information Systems and Networks" means the information systems and communications networks that support commercial vehicle operations.

[(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) CORRIDOR.—The term "corridor" means any major transportation route that includes parallel limited access highways, major arterials, or transit lines.

[(4) INTELLIGENT TRANSPORTATION INFRASTRUCTURE.—The term "intelligent transportation infrastructure" means fully integrated public sector intelligent transportation system components, as defined by the Secretary.

[(5) INTELLIGENT TRANSPORTATION SYSTEM.—The term "intelligent transportation system" means electronics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

[(6) NATIONAL ARCHITECTURE.—The term "national 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.

[(7) STANDARD.—The term "standard" means a document that—

[(A) contains technical specifications or other precise criteria for intelligent transportation systems that are to be used consistently as rules, guidelines, or definitions of characteristics so as to ensure that materials, products, processes, and services are fit for their purposes; and

[(B) may support the national architecture and promote—

[(i) the widespread use and adoption of intelligent transportation system technology as a component of the surface transportation systems of the United States; and

[(ii) interoperability among intelligent transportation system technologies implemented throughout the States.

[(8) STATE.—The term "State" has the meaning given the term under section 101 of title 23, United States Code.

[SEC. 5212. PROJECT FUNDING.

[(a) USE OF HAZARDOUS MATERIALS MONITORING SYSTEMS.—

[(1) IN GENERAL.—The Secretary shall conduct research on improved methods of deploying and integrating existing ITS projects to include hazardous materials monitoring systems across various modes of transportation.

[(2) FUNDING.—Of the amounts made available for each of fiscal years 1998 through 2003 by section 5001(a)(6) of this Act,

$1,500,000 per fiscal year shall be available to carry out this paragraph.

[(b) OUTREACH AND TECHNOLOGY TRANSFER ACTIVITIES.—

[(1) IN GENERAL.—The Secretary shall continue to support the Urban Consortium's ITS outreach and technology transfer activities.

[(2) FUNDING.—Of the amounts made available for each of fiscal years 1998 through 2003 by section 5001(a)(5) of this Act, $500,000 per fiscal year shall be available to carry out this paragraph.

[(c) TRANSLINK.—

[(1) IN GENERAL.—The Secretary shall make grants to the Texas Transportation Institute to continue the Translink Research program.

[(2) FUNDING.—Of the amounts allocated for each of fiscal years 1999 through 2001 by section 5001(a)(6) of this Act, $1,300,000 per fiscal year shall be available to carry out this paragraph.]

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INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

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TITLE I—SURFACE TRANSPORTATION

Part A—Title 23 Programs

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SEC. 1012. TOLL ROADS, BRIDGES, AND TUNNELS.

(a) * * *

(b) [VALUE PRICING] *CONGESTION PRICING* PILOT PROGRAM.—[(1) The Secretary shall solicit the participation of State and local governments and public authorities for one or more value pricing pilot programs. The Secretary may enter into cooperative agreements with as many as 15 such State or local governments or public authorities to establish, maintain, and monitor value pricing programs.]

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Secretary may enter into cooperative agreements with State and local governments to carry out not more than 25 congestion pricing pilot projects.

(B) PREVIOUSLY APPROVED PROJECTS.—Projects carried out under paragraph (1) shall include each project approved under this subsection before the date of enactment of the Transportation Equity Act: A Legacy for Users and under which highway tolls are being collected as of such date of enactment.

[(2) Notwithstanding]

(2) FEDERAL SHARE; ELIGIBLE COSTS.—Notwithstanding section 129 of title 23, United States Code, the Federal share payable for such [programs] *projects* shall be 80 percent. The Sec-

retary shall fund all preimplementation costs and project design, and all of the development and other start up costs of such projects, including salaries and expenses, for a period of at least 1 year, and thereafter until such time that sufficient revenues are being generated by the [program] *project* to fund its operating costs without Federal participation, except that the Secretary may not fund the preimplementation or implementation costs of any project for more than 3 years.

[(3) Revenues]

(3) USE OF REVENUES.—Revenues generated by any pilot project under this subsection must be applied to projects eligible under such title.

[(4) Notwithstanding]

(4) USE OF TOLLS ON INTERSTATE SYSTEM.—Notwithstanding sections 129 and 301 of title 23, United States Code, the Secretary shall allow the use of tolls on the Interstate System as part of any [value pricing pilot program] *congestion pricing pilot project* under this subsection.

[(5) The Secretary]

(5) MONITORING.—The Secretary shall monitor the effect of such [programs] *projects* for a period of at least 10 years, and shall report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives every 2 years on the effects such [programs] *projects* are having on driver behavior, traffic volume, transit ridership, air quality, and availability of funds for transportation programs.

(6) HOV PASSENGER REQUIREMENTS.—Notwithstanding section 102(a) of title 23, United States Code, a State may permit vehicles with fewer than 2 occupants to operate in high occupancy vehicle lanes if the vehicles are part of a [value pricing pilot program] *congestion pricing pilot project* under this subsection.

[(7) FINANCIAL EFFECTS ON LOW-INCOME DRIVERS.—Any value pricing pilot program under this subsection shall include, if appropriate, an analysis of the potential effects of the pilot program on low-income drivers and may include mitigation measures to deal with any potential adverse financial effects on low-income drivers.]

(7) REDUCED TOLLS FOR LOW-INCOME DRIVERS.—Any congestion pricing pilot project carried out under this subsection that involves the collection of highway tolls shall include a program to permit low-income drivers to pay a reduced toll amount.

(8) FUNDING.—

(A) * * *

* * * * * * *

(D) SET-ASIDE FOR PROJECTS NOT INVOLVING HIGHWAY TOLLS.—Of the amounts made available to carry out this subsection, $3,000,000 per fiscal year shall be available only for congestion pricing pilot projects that do not involve highway tolls.

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SEC. 1023. GROSS VEHICLE WEIGHT RESTRICTION.

(a) * * *

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(h) OVER-THE-ROAD BUSES AND PUBLIC TRANSIT VEHICLES.—

(1) TEMPORARY EXEMPTION.—The second sentence of section 127 of title 23, United States Code, relating to axle weight limitations for vehicles using the Dwight D. Eisenhower System of Interstate and Defense Highways, shall not apply, for the period beginning on October 6, 1992, and ending on October 1, [2003] *2009*, to—

(A) * * *

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SEC. 1105. HIGH PRIORITY CORRIDORS ON NATIONAL HIGHWAY SYSTEM.

(a) * * *

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(c) IDENTIFICATION OF HIGH PRIORITY CORRIDORS ON NATIONAL HIGHWAY SYSTEM.—The following are high priority corridors on the National Highway System:

(1) * * *

* * * * * * *

(45) The United States Route 78 Corridor from Memphis, Tennessee, to Corridor X of the Appalachian development highway system near Fulton, Mississippi, and Corridor X of the Appalachian development highway system extending from near Fulton, Mississippi, to near Birmingham, Alabama.

(46) Interstate Route 710 between the terminus at Long Beach, California, to California State Route 60.

(47) Interstate Route 87 from the Quebec border to New York City.

(48) The Route 50 High Plains Corridor along the United States Route 50 corridor from Newton, Kansas, to Pueblo, Colorado.

(49) The Atlantic Commerce Corridor on Interstate Route 95 from Jacksonville, Florida, to Miami, Florida.

(50) The East-West Corridor commencing in Watertown, New York, continuing northeast through New York, Vermont, New Hampshire, and Maine, and terminating in Calais, Maine.

(51) The SPIRIT Corridor on United States Route 54 from El Paso, Texas, through New Mexico, Texas, and Oklahoma to Wichita, Kansas.

(52) The route in Arkansas running south and parallel to United States Route 226 from the relocation of United States Route 67 to the vicinity of United States Route 49 and United States Route 63.

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TITLE III—FEDERAL TRANSIT ACT AMENDMENTS OF 1991

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SEC. 3031. NEW JERSEY URBAN CORE PROJECT.

(a) * * *

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(d) ELEMENTS OF URBAN CORE PROJECT.—For the purposes of this section, the New Jersey Urban Core Project consists of the following elements: Secaucus Transfer (including relocation and construction of the Bergen County and Pascack Valley Rail Lines and the relocation of the Main/Bergen Connection with construction of a rail station and [associated components to and at the contiguous New Jersey Meadowlands Sports Complex),] *to and at the contiguous New Jersey Meadowlands Sports Complex), including a connection to the Hudson River Waterfront Transportation System, the Lackawanna Cutoff,* Kearny Connection, Waterfront Connection, Northeast Corridor Signal System, Hudson River Waterfront Transportation System (including a connection from the Vince Lombardi Station to Saddlebrook and Edgewater), restoration of commuter rail service along the Northern Branch Line or the West Shore Line, Newark-Newark International Airport-Elizabeth Transit Link (including construction of an auxiliary New Jersey Light Rail Transit station, providing access from the Newark-Newark International Airport-Elizabeth Light Rail Transit Link to the Newark International Airport), a rail connection between Penn Station Newark and Broad Street Station, Newark, New York Penn Station Concourse, the restoration of commuter rail service [in Lakewood to Freehold to Matawan or Jamesburg, New Jersey, as described in section 3035(p) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2131)] *from Lakehurst to the Northeast Corridor or the New Jersey Coast Line*, a light rail extension of the Newark-Newark International Airport-Elizabeth Light Rail Transit Link from Elizabeth, New Jersey, to the towns of Cranford, Westfield, Fanwood, and Plainfield in Union County, New Jersey, and any appropriate light rail connections and alignments within the city of Elizabeth to be determined by the city of Elizabeth and the New Jersey Department of Transportation (and which shall include connecting midtown Elizabeth to Route 1 Park and Ride, the Elizabeth Car House Museum, Division Street, Singer Place, Ferry Terminal, Jersey Gardens Mall, Elizabeth Port to Lot D at Newark Airport) and any appropriate fixed guideway system in Passaic County, and the equipment needed to operate revenue service associated with improvements made by the project. The project includes elements advanced with 100 percent non-Federal funds.

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SECTION 351 OF THE DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 2001

[SEC. 351. Notwithstanding any other provision of law, beginning in fiscal year 2004, the Secretary shall withhold 2 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a provision described in section 163(a) of chap-

ter 1 of title 23, United States Code, in fiscal year 2005, the Secretary shall withhold 4 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a provision described in section 163(a) of title 23, United States Code; in fiscal year 2006, the Secretary shall withhold 6 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a provision described in section 163(a) of title 23, United States Code; and beginning in fiscal year 2007, and in each fiscal year thereafter, the Secretary shall withhold 8 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a provision described in section 163(a) of title 23, United States Code. If within four years from the date the apportionment for any State is reduced in accordance with this section the Secretary determines that such State has enacted and is enforcing a provision described in section 163(a) of chapter 1 of title 23, United States Code, the apportionment of such State shall be increased by an amount equal to such reduction. If at the end of such four-year period, any State has not enacted and is not enforcing a provision described in section 163(a) of title 23, United States Code, any amounts so withheld shall lapse.]

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SECTION 124 OF THE TRANSPORTATION, TREASURY, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2004

(Division F of title I of the Consolidated Appropriations Act, 2004)

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[SEC. 124. MOTORIST INFORMATION CONCERNING PHARMACY SERVICES. (a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation shall amend the Manual on Uniform Traffic Control Devices to include a provision permitting information to be provided to motorists to assist motorists in locating licensed 24-hour pharmacy services open to the public.

[(b) LOGO PANEL.—The provision under subsection (a) may allow placement of a logo panel that displays information disclosing the names or logos of pharmacies described in subsection (a) that are located within 3 miles of an interchange on the Federal-aid system (as defined in section 101 of title 23, United States Code).]

SECTION 14102 OF TITLE 4O, UNITED STATES CODE

§ 14102. Definitions

(a) DEFINITIONS.—In this subtitle—

(1) APPALACHIAN REGION.—The term "Appalachian region" means that area of the eastern United States consisting of the

following counties (including any political subdivision located within the area):

(A) * * *

* * * * * * *

(C) In Kentucky, the counties of Adair, Bath, Bell, Boyd, Breathitt, Carter, Casey, Clark, Clay, Clinton, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Garrard, Green, Greenup, Harlan, Hart, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Menifee, Monroe, Montgomery, Morgan, *Nicholas,* Owsley, Perry, Pike, Powell, Pulaski, *Robertson,* Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe.

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(H) In Ohio, the counties of Adams, *Ashtabula,* Athens, Belmont, Brown, Carroll, Clermont, Columbiana, Coshocton, *Fayette,* Gallia, Guernsey, Harrison, Highland, Hocking, Holmes, Jackson, Jefferson, Lawrence, *Mahoning,* Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, *Trumbull,* Tuscarawas, Vinton, and Washington.

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(K) In Tennessee, the counties of Anderson, Bledsoe, Blount, Bradley, Campbell, Cannon, Carter, Claiborne, Clay, Cocke, Coffee, Cumberland, De Kalb, Fentress, Franklin, *Giles,* Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, *Lawrence, Lewis, Lincoln,* Loudon, McMinn, Macon, Marion, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Smith, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White.

(L) In Virginia, the counties of Alleghany, Bath, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Giles, Grayson, *Henry,* Highland, Lee, Montgomery, *Patrick,* Pulaski, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe.

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SECTION 2342 OF TITLE 28, UNITED STATES CODE

§ 2342. Jurisdiction of court of appeals

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

(1) * * *

* * * * * * *

(3) all rules, regulations, or final orders of—

(A) the Secretary of Transportation issued pursuant to section 2, 9, 37, or 41 of the Shipping Act, 1916 (46 U.S.C.

App. 802, 803, 808, 835, 839, and 841a) or pursuant to part B or C of subtitle IV*, subchapter III of chapter 311, chapter 313, or chapter 315* of title 49; and

* * * * * * *

SECTION 345 OF THE NATIONAL HIGHWAY SYSTEM DESIGNATION ACT OF 1995

SEC. 345. EXEMPTIONS FROM REQUIREMENTS RELATING TO COMMERCIAL MOTOR VEHICLES AND THEIR OPERATORS.

(a) EXEMPTIONS.—

(1) * * *

(2) TRANSPORTATION AND OPERATION OF GROUND WATER WELL DRILLING RIGS.—Such regulations shall, in the case of a driver of a commercial motor vehicle who is used primarily in the transportation and operation of a ground water well drilling rig, permit any period of 7 or 8 consecutive days to end with the beginning of an off-duty period of 24 or more consecutive hours for the purposes of determining maximum driving and on-duty time. *Except as required in section 395.3 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this sentence, no additional off-duty time shall be required in order to operate such vehicle.*

* * * * * * *

[(4) DRIVERS OF UTILITY SERVICE VEHICLES.—Such regulations shall, in the case of a driver of a utility service vehicle, permit any period of 7 or 8 consecutive days to end with the beginning of an off-duty period of 24 or more consecutive hours for the purposes of determining maximum driving and on-duty time.**]**

(4) OPERATORS OF UTILITY SERVICE VEHICLES.—

(A) INAPPLICABILITY OF FEDERAL REGULATIONS .—Such regulations shall not apply to a driver of a utility service vehicle.

(B) PROHIBITION ON STATE REGULATIONS.—A State, a political subdivision of a State, an interstate agency, or other entity consisting of 2 or more States, shall not enact or enforce any law, rule, regulation, or standard that imposes requirements on a driver of a utility service vehicle that are similar to the requirements contained in such regulations.

* * * * * * *

(b) PREEMPTION.—**[**Nothing**]** *Except as provided in subsection (a)(4), nothing* contained in this section shall require the preemption of State laws and regulations concerning the safe operation of commercial motor vehicles as the result of exemptions from Federal requirements provided under this section.

(c) REVIEW BY THE SECRETARY.—The Secretary may conduct a rulemaking proceeding to determine whether granting any exemption provided by subsection (a) (other than **[**paragraph (2)**]** *an exemption under paragraph (2) or (4)*) is not in the public interest and would have a significant adverse impact on the safety of commercial motor vehicles. If, at any time as a result of such a proceeding, the Secretary determines that granting such exemption

would not be in the public interest and would have a significant adverse impact on the safety of commercial motor vehicles, the Secretary may prevent the exemption from going into effect, modify the exemption, or revoke the exemption. The Secretary may develop a program to monitor the exemption, including agreements with carriers to permit the Secretary to examine insurance information maintained by an insurer on a carrier.

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COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, March 26, 2004.

Hon. DON YOUNG,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN YOUNG: I am writing with regard to H.R. 3550, the Transportation Equity Act: A Legacy for Users, which was ordered reported by the Committee on Transportation and Infrastructure on March 24, 2004. As you know, the Energy and Commerce Committee has jurisdiction over matters involving air quality planning and the air quality impact of transportation projects, the Congestion Mitigation Air Quality Program, provisions involving energy production, supply and storage and other matters contained within H.R. 3550 as reported.

I recognize your desire to bring this legislation before the House in an expeditious manner. Accordingly, I will not exercise my Committee's right to a referral. By agreeing to waive its consideration of the bill, however, the Energy and Commerce Committee does not waive its jurisdiction over H.R. 3550. In addition, the Energy and Commerce Committee reserves its right to seek conferees on any provisions of the bill that are within its jurisdiction during any House-Senate conference that may be convened on this legislation. I ask for your commitment to support any request by the Energy and Commerce Committee for conferees on H.R. 3550 or similar legislation.

I request that you include this letter as part of the Committee's Report on H.R. 3550 and in the Record during consideration of the legislation on the House floor. Thank you for your attention to these matters.

Sincerely,

JOE BARTON,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, March 26, 2004.

Hon. JOE BARTON,
Chairman, Committee on Energy and Commerce, Rayburn HOB, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of March 26, 2004 regarding H.R. 3550, the Transportation Equity Act: A Legacy for Users. Your assistance in expediting consideration of the bill is very much appreciated.

I agree that there are certain provisions in the bill that are of jurisdictional interest to the Committee on Energy and Commerce and I agree that by foregoing a sequential referral, the Committee on Commerce is not waiving its jurisdiction. Be assured that I will support your request to be represented in the conference on those provisions in the jurisdiction of the Energy and Commerce Committee.

As you have requested, I will include this exchange of letters in the Committee report on the bill and in the Record when the bill is on the Floor. Thank you for your cooperation and your continued leadership and support in surface transportation matters.

Sincerely,

DON YOUNG,
Chairman.

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