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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Lord of wisdom who reigns forever, judging the nations with righteousness and Your people by Your truth, Your steadfast love endures forever and Your faithfulness to all generations. Thank You for the gift of this new day and for the opportunities to promote good will and understanding here at home and unto the ends of the Earth.

Lord, forgive us when we have slept in the face of opportunity or refused to shoulder the responsibilities that come with the privileges of freedom. Today, deliver our Senators from any short-sighted policies and enable them to live up to their lofty vocation. May each of our lives ever glorify Your wonderful and holy Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will resume consideration of the highway bill. There are several amendments pending to the legislation and it is hoped that we can consider and dispose of those amendments during today's session. Although it appears as though we have not made as much progress on the floor as most of us would like, the chairman and ranking member have been working with a number of Senators on their amendments—as we said, working through the weekend and through yesterday. Thus, work continues on that front. And, again, on behalf of the managers, I encourage Senators to come forward and offer their amendments and discuss those amendments with the managers.

Rollcall votes are possible today as we continue to look for ways to make progress on the bill. I have been talking to the chairman about the continued desire to finish the bill this week. Although last week was a challenge in the Senate, the bill has been pending since that time, and we had hoped to have considered more floor amendments under the regular order.

We have now been on the bill 7 days. Again, there has been a lot of discussion, but I do ask our colleagues to accelerate the process of the consideration of amendments. And they must be brought forward now.

I will continue with discussions with the managers to look for an appropriate avenue for completing this bill this week. I will notify all Senators as we proceed as to when rollcall votes can be expected.

I thank everybody for their attention.

Mr. REID. Mr. President, will the distinguished majority leader yield for a question?

Mr. President, I say, through you to the majority leader, one of the things we have appreciated on this side during the tenure of the Senator from Tennessee as majority leader is that you have been very good to us, with rare exception, in allowing us to offer amendments. You have given us ample time to offer relevant amendments and nonrelevant amendments prior to doing something procedurally to stop the debate.

I recognize, as does Senator INHOFE, that it is not the Republican leadership that has thrown the roadblocks up to the amendment process on this bill. We acknowledge that. There are a number of Senators, for various reasons, who have prevented this bill from moving forward.

Speaking only for this Senator, I do not hold the Republican leadership responsible for these dilatory activities. I think the majority leader, in conjunction with the minority leader, the Democratic leader, has to assess how best to proceed in the immediate future.

This, as the majority leader has said, is an important piece of legislation. As Senator LOTT said yesterday, this could be the most important piece of legislation we will handle this year. Whether that is right or not, I do not know, but I know it is a very important piece of legislation. I hope there is a way we can move forward on this bill.

Mr. FRIST. I thank the Senator.

Mr. President, in closing, I do stress the importance to leadership on both sides of the aisle—we have been in constant communication—that people have the opportunity to express themselves and to have that appropriate debate on the floor. Again, we were on the bill all last week. Yes, we had some interruptions last week with extraneous circumstances, but resilience came through and we had the opportunity with the floor open, as it will be all this week.

At the end of the day, our obligation is to have that opportunity to debate, have our ideas reflected, and then give people an opportunity to choose. That is, again, my goal over the course of the debate during this 2-week period.

With that, I would like very much to finish the bill this week and give each of our colleagues the opportunity to choose and reflect their opinions on this bill.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

SAFE, ACCOUNTABLE, FLEXIBLE, AND EFFICIENT TRANSPORTATION EQUITY ACT OF 2003

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 1072, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1072) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

Pending:

Modified committee amendment in the nature of a substitute.

Dorgan amendment No. 2267, to exempt certain agricultural producers from certain hazardous materials transportation requirements.

Gregg amendment No. 2268 (to amendment No. 2267), to provide that certain public safety officials have the right to collective bargaining.

Dorgan amendment No. 2276 (to the language proposed to be stricken by the committee amendment), to modify the penalty for nonenforcement of open container requirements.

The PRESIDENT pro tempore. Who seeks recognition?

Mr. INHOFE. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. INHOFE. Mr. President, we had a number of presentations made yesterday. There is a great deal of confusion as to what this bill is all about. I would like to go over a couple points.

First, I invite all Members with amendments to bring them to the floor and discuss them. We are rapidly approaching the point where we are going to be considering amendments. I am very proud of the staff, Democrats and Republicans, who staffed an office over the weekend to get information from Members who had amendments to offer.

For those who have not had a chance to become familiar with what we are doing, an injustice has been done to some of the members of the Finance Committee, particularly the chairman and the ranking member. They have worked long and hard. They have come up with something that meets the criteria originally put forward by the administration, such as not including a gas tax. It does not include going into the general fund. I do believe there are some areas where we have rectified problems with treatments that had been taken previously to the highway trust fund. Of course, I consider that something that should have been done anyway.

We are now in position to consider the bill. It is going to be a huge jobs bill. It is going to accomplish great work for the country.

A lot of people do not understand the formula aspect. One Member came down yesterday and talked about how one State is doing better under the formula. There are a lot of considerations to the formula, considerations such as the total lane miles of interstate, the vehicle miles traveled, the annual contributions to the highway trust fund attributed to commercial vehicles, the diesel fuel used on highways, relative share of total cost of repair and replacement of deficient highway bridges—I can identify with that, as in Oklahoma we have the worst bridges in the country—weighted nonattainment in maintenance areas, rate of return of donor States. That is one of the problems people have failed to understand, that we are getting all donor States up to 95 percent.

To do this, there have to be some who have been actually in a better position than they should have been by any formula because let's keep in mind that in TEA–21, 6 years ago, we had the minimum guarantee. The minimum guarantee was a political document. Let's look at who was in charge at that time. We had quite a disproportionate number of leaders from the Northeast. We had Senator Moynihan, Congressman SHUSTER over in the House who was driving the boat, Senator CHAFEE, Senator BAUCUS from Montana. As a result, there are some States that got up to a larger share than they would have achieved under any type of formula.

What they did was start with the same formula, using the factors I just outlined, and then, halfway through the process, went to the minimum guarantee. The minimum guarantee is the easy way out. All you have to do is count up 60 people, give them what they want, and you have 60 votes. That is not the right way to do it. We are doing it the right way.

I haven't seen anyone who really understands the formula, and everything that went into the last year we spent working on it, who is not supportive. They may not like how their State fared. Their State may have been in a position where they were getting more than they were entitled to for a period of time. That might be rectified by this. But we have the best intentions of going ahead. I am quite sure, in the final analysis, we will have a bill that is far greater and better and more equitable than ISTEA was—I was here during the ISTEA debate—and TEA–21 in 1998. I believe we have done a good job.

I refer again to the cooperation we have had on both sides of the aisle. We have had an opportunity to work with the leadership, and Senators JEFFORDS and REID have been great to work with. They have set partisanship aside. Historically, this has been a nonpartisan bill. It should be that way. A lot of the actions of the Environment and Public Works Committee are nonpartisan. Certainly at the top of that list is this bill. I don't think anyone would accuse us of being at all partisan in this legislation.

There are winners and losers—no question about that—when compared to TEA–21. But let's go back to see what happened in TEA–21 before we are critical of where we are today.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, it is my understanding that the Senator from Oklahoma has to be gone from the floor this morning. We have our caucuses at 12:30. There are a number of people on our side who have requested time for morning business. I am wondering if it would be appropriate, in that we are in kind of a procedural tangle anyway, that we have time for debate only until the caucuses.

Mr. INHOFE. Mr. President, I propound that as a unanimous consent request, that we have debate only until after the conclusion of our conferences.

The PRESIDENT pro tempore. What is the request?

Mr. REID. The request is that we remain on the bill, but for debate only, until 12:30.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Vermont.

Mr. JEFFORDS. Mr. President, the EPW Committee has been working this bill for the past 2 years. Senators INHOFE, BOND, and REID and I have been very involved in this process. From the beginning, we wanted to accomplish a few important national goals: First, improve roads and bridges; second, move freight; third, address congestion; and fourth, improve safety.

Congestion is a growing concern all across America. Each day, Americans spend more time in their cars as they pursue routine activities, such as going to work, taking the kids to school, or picking up some groceries. As our Nation's population grows, travel demands grow as well.

The number of miles traveled annually on our Nation's roads is increasing at a substantial rate.

Many roads are at or approaching their physical capacity. In many areas of the country, it is both impractical and financially infeasible to add lanes to existing roadways.

However, we can increase capacity by actively managing the transportation network.

Intelligent transportation systems provide State and local governments the data and tools necessary to undertake time saving activities like incident management, ramp metering, traveler advisory systems, and variable pricing.

Over the past 10 years, some areas of the country have begun to implement these techniques, and they have realized numerous benefits.

Areas that employ transportation management techniques enjoy improved travel times, more timely incident management, and improved communication with the traveling public.

Crafting this reauthorization bill, we recognized the importance of enhancing State and local governments' ability to manage their infrastructure now and in the future.

S. 1072 expands Surface Transportation Program eligibility to ensure that States may use Federal highway dollars to manage their network.

The bill shifts Intelligent Transportation Systems out of the research realm and into the mainstream program. States may use core highway program dollars to fund ITS projects.

S. 1072 directs the Secretary to implement a nationwide real-time travel data network. Additionally, States are directed to develop statewide incident reporting systems.

Implementation of these systems will assist travelers and provide State and local transportation agencies the information they need to manage our current infrastructure and to plan for future improvements.

Finally, S. 1072 provides resources to examine future management technologies. The research title of the bill includes provisions to develop the next generation of intelligent transportation systems and management tools.

The research title also provides resources to train the engineers who will design, build, and manage our future transportation infrastructure.

Mr. President, I think it is clear that S. 1072 addresses congestion in a proactive manner by providing policy changes and financial resources to promote the efficient use of our Nation's transportation infrastructure.

As I have said before, passage of this bill is critical. I urge my colleagues to support this effort to provide much-needed resources to our States.

I yield the floor.

Mr. INHOFE. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

THE COST OF HEALTH CARE

Mr. DASCHLE. Mr. President, I will use my leader time for the day. I want to talk about health care today for a few minutes. Health expenditures in this country are at the highest levels now that they have been in our Nation's history. Not only are they at the highest levels in our history, they exceed, by some magnitude, the health expenditures in other countries.

The World Health Organization, in its most recent calculation of what we spend, lists the United States at $4,500 in total expenditures per capita; Canada, $2,058; United Kingdom, $1,774; Japan, $2,009; France, $2,335; and Sweden, $2,097. So we spend more than twice what other countries are currently spending for health care.

One would hope that if we spent twice as much, we would get twice the result. But just the opposite is true. We have the lowest life expectancy of any of the countries I have listed. Our life expectancy is 77 years. That is over 4 years less than Japan. I would hope that at least when it comes to infant mortality, we would get twice the result. But, again, it is just the opposite. We have the highest rate of child mortality of any country I have mentioned—eight deaths per thousand. In Sweden, it is three and a half per thousand. So one could only conclude from these numbers that we are not getting what we are paying for; that we are not getting a bang for the buck.

We will not have the opportunity to address infant mortality, life expectancy, and all of the other challenges we face in our health care system without making some fundamental changes in the system itself.

There are those who have argued it is now impossible for us to achieve universal insurance coverage. Some have even suggested that we would go bankrupt if we were to do that. What I find ironic is that these countries I have listed all have guaranteed health care. That has been the essence of their success, the secret to their success—this ability to cover everybody and, in so doing, reduce child mortality, increase life expectancy, and find ways in which to keep people healthy throughout their lives.

So we are paying more and not only do we have unacceptable results—at least measured by child mortality and life expectancy—we also have unacceptable levels of health coverage. Mr. President, 43.6 million Americans last year had no coverage. That is an increase of 2 million people over the year before. About 75,000—12 percent—of the people in my State have no health insurance. But statistics don't speak to the anguish that is felt by so many people in our country regarding an issue as personal as their health care.

Last summer, I spent a good deal of time on the road, dedicating virtually the entire month of August to talking with people as to how they feel about health care. The anguish, the stories of financial ruin, the extraordinary dilemmas and life-threatening circumstances that so many of these people face are still indelibly printed in my mind.

Yet there are those who say it is impossible to get everybody covered; it is impossible to get to 100 percent. It may be impossible to get to 100 percent, but I am told virtually every country I have listed—and I will list them again: Canada, Britain, Japan, France, and Sweden—virtually every industrialized country has guaranteed coverage today, near 100-percent coverage.

The Bush administration's chief architect on health issues, Health and Human Services Secretary Tommy Thompson, was quoted that he does not think that administratively or legislatively it is feasible to cover everyone. I find this a remarkable statement because we have always prided ourselves as Americans on having a can-do spirit. We have always said if we can go to the Moon, if we can set out challenges for our Nation, we will achieve them because of good leadership, and because of our values, and because of our attitude.

What does it say about our leadership, our values, and our attitude if we say we can't do what every other industrialized country has done? What does it say about our commitment? What does it say about this spirit of America about which we hear so much? We can't? Or we won't? I don't think it is impossible to ensure coverage for all Americans. I think it is imperative we do it.

The United States, as I have said, is the only industrialized country that has not. In each of these countries, one does not need to be a brain surgeon to see the connection between universal coverage and better life expectancy; universal coverage and higher rates of infant survivability, lower infant mortality. That is the key, that is the essence of our need, of our success, and of finding a way to do what we have said from the very beginning: We will always attempt to do our very best.

If we say we can't, if we think we can't, we are right. If we say we can, if we think we can, we are right. It is up to us. It is a question of our leadership, our commitment, our willingness to excite and ignite an interest and a commitment and an enthusiasm about this issue as we have done on so many other issues.

Last month, the Institute for Medicine called for universal health coverage by 2010. They think we can do it.

Bob Dole, the former Republican leader, could have spoken for all of us when he said: The bottom line is, I think we have what it takes to get it done. I think we have what it takes.

I think we have what it takes as well, but we have to demonstrate what it takes is a commitment, not an ''I can't.'' What it takes is bipartisan support for a goal shared by millions of Americans today. Let's provide universal coverage. Let's begin to address this embarrassment for our country. Let's recognize if Britain, Canada, Japan, France, and Sweden can do it, so can we, and we can do it better. Let's accept the fact that $4,500 for every man, woman, and child with less results in infant mortality and life expectancy than other countries is unacceptable in this country. We can, and we must. I hope it starts this year.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ENZI). The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

Ms. STABENOW. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

JOBS AND THE ANNUAL ECONOMIC REPORT

Ms. STABENOW. Mr. President, I wish to take a moment to comment about the report that was just released yesterday, the White House Annual Economic Report of the President, because I was stunned to see the statements regarding the economic report to the country as it relates to jobs.

I invite any member of the group who put this report together or anyone from the administration to visit us in Michigan and see literally every day now the headlines in the papers. It doesn't matter if you are in Detroit or Grand Rapids or in northern Michigan or southern Michigan; we have headlines about jobs that are leaving this country and going overseas, good-paying jobs, white-collar jobs, blue-collar jobs, service jobs, and manufacturing jobs.

When we look at the report of economic advisers and we hear them saying, ''President Bush's top economist yesterday said the outsourcing of U.S. service jobs to workers overseas is good for the Nation's economy,'' I wonder what nation are they talking about. Whose economy are they talking about? It is certainly not good for our economy when people are losing their jobs.

Let me go on to some of the other statements that are quoted in today's Washington Post:

> Shipping jobs to low cost countries is the latest manifestation of the gains from trade.

These were not the gains from trade I was hearing about. I was hearing that we were going to actually be creating more markets to produce more goods and services that would be increasing jobs, not losing jobs.

It says:

> Just as U.S. consumers have enjoyed lower prices from foreign manufacturers, so, too, should they benefit from services being offered by overseas companies that have lower labor costs.

It is stunning to me that we would not be concerned about the outsourcing of jobs, good-wage jobs to other countries. I commend any of my colleagues to watch, as I do nightly, Lou Dobbs on CNN with the continuing critique of what is happening to our country, including service jobs.

I have friends and constituents in Michigan who have been in good-paying service jobs who are now unemployed and have lost their insurance, many of them struggling to see whether they will lose their homes as a result of having lost their job. They would not agree with this report. What we are seeing is the assumption that somehow moving out of this country to lower cost labor countries, whether it is goods or services, is ultimately better for the United States. Now think about this for a moment. They are embracing a race to the bottom that will only eliminate middle-class America.

We had a recent situation occur in Greenville, MI, a small community of 9,000 people. There are 2,700 people who work at the local refrigeration plant, manufacturing refrigerators, Electrolux. They added a third shift. They have been productive. They make money. But the company came in this fall and said even though they make money, they make a profit in Greenville, MI, and people are productive, they could make more money if they went to Mexico and paid $2.50 an hour with no health benefits.

Well, I am sure that is true. I am sure any business could make more money if they paid $2.50 an hour with no health benefits. I am sure they could make more money if they paid $1 an hour or 50 cents an hour with no health benefits. My question to the management was: Who will be able to afford to buy your refrigerator? Who will be able to afford to buy our automobiles? Who will be able to afford a middle-class standard of living in this country if this is only about a race to the bottom?

When we look at what is happening in our country today, not only in manufacturing but in the service industry, we see a race to leave the country because instead of having trade policies that encourage a middle class in Mexico, in China, in India, and other places around the world so they bring up their standard of living, so they can have good wages and buy our products, we see instead pressure on our businesses and our workers to lower our standard of living, to lower our costs, and there is a race to the bottom.

This race ultimately will cost us our way of life and our middle class. But that is how we are different and strong. That is why we are the greatest country in the world—because we have a strong middle class.

I am extremely concerned when I see these kinds of statements. In fact, also quoted in this article from the Washington Post is a statement by Franklin J. Fargo, vice president of International Economic Affairs at the National Association of Manufacturers:

> It is kind of a flip thing to say when people are losing their jobs.

I would agree with that. It is more than flip; it is outrageous to say we as a country somehow benefit by the outsourcing and the elimination of jobs.

In recent years, companies have shipped out software engineering jobs, data entry, customer service, hospital jobs, as well as manufacturing. We know when we pick up the phone—in fact, I picked up the phone one time to talk to a credit card representative and asked where they were. They said: A facility near you. Well, I knew it was not a facility near me in Michigan, where I was calling from, but it was a facility overseas.

I think often of a friend of mine who goes to my church in Lansing, MI. He is a trained engineer, a very competent individual who has lost his job. He told me he is now working for $19 an hour with no health benefits, that he is now struggling with whether he will be able to keep their home with kids in college. That is very real.

I urge those making statements that losing jobs to other countries is a good idea to talk to somebody who has in fact lost their job and may lose their home, and may not be able to send their kids to college, may not be able to buy that new car or keep the house, the cottage up north, be able to do those things that spend dollars in our economy, buy that new refrigerator. How in the world have we gotten to a point where we do not understand the basic economics of people being able to have a good wage so they can purchase goods and services and care for their families and be successful in this country? We know there are serious issues.

Looking at something else in this report, it says: Indeed, outsourcing health care jobs to lower wage countries could help control the upward spiral of health care costs. When a good or service is produced more cheaply abroad, it makes more sense to import it than to make it here.

First, as someone who has worked on health care issues and helped to lead efforts to try to move us to lower health care costs, health care prices, the idea of saying the way we are going to lower health care prices is by losing jobs rather than tackling the big issues of lowering prescription drug prices, rather than allowing Medicare to negotiate group discounts under the new Medicare bill, which we did not do because the prescription drug company wants to be able to stop us from lowering prices—instead of addressing those things that will bring costs for businesses down, the suggestion is we should export health care jobs. So maybe if all of our nurses, doctors, and health care workers were all in another country where they were making less, we would be lowering our health care costs.

I find this report and the comments in it and the public comments in the paper extraordinarily out of touch with what is happening to the people of our country and what is good for our country.

I argue instead that in fact we do need to tackle health care costs. It is a major issue for businesses, large and small. In a global economy, it is a major issue for them to be able to compete. It is a major issue for our families and workers who are being asked to pay more, take a pay cut, pay more in a premium or copays. We should tackle that by addressing what is actually causing the health care costs to go up—the lack of competition, an explosion in prescription drug pricing. If we want to lower prescription drug prices and lower health care costs, rather than having the jobs go to Canada, let us open the border and bring the prescription drugs back from Canada at a cost of 50 percent less. We could do that tomorrow if the administration

would look at what is best for our families instead of what is best for the pharmaceutical lobby.

We do not have to export jobs. We can import safe prescription drugs that are actually made here, which we help to produce, that taxpayer dollars subsidize, that are then allowed to be sold in other countries around the world for half the price.

I agree, health care costs are a huge issue for our businesses, and we need to tackle it in a way that brings down prices, that maintains our quality and does not say the way we are going to cut costs is to export our jobs.

As I mentioned earlier, I also ask all of us to rethink what we are doing on trade. We must trade in a global economy, obviously. But our trade laws need to focus on incentives and on policies that will increase the standard of living in other countries, not decrease ours.

I also would ask the administration to work with us on issues to level the playing field. We know China, Japan, and others manipulate their currency. What does that mean? It means it costs us more to sell into China. Our businesses can pay up to a 40 percent tax, essentially, for selling something into China because they want us to move the plant there. It costs us more to sell to them. It costs them less to bring in goods.

If the Treasury Secretary will simply certify that this is going on, we have, then, the authority to begin to do something about it; we have legislation that will give us an opportunity to do something about it. I am proud to be a cosponsor, with Senator SCHUMER, in that effort.

There are actions we can take to level the playing field. There is no doubt in my mind that if we give American businesses and American workers a fair shot, a level playing field, we will win every time. We can compete when the rules are fair. But instead of addressing those things, we have a report coming before us that says outsourcing of U.S. jobs to overseas workers is good for our Nation's economy. With all due respect, I think they should go back to the drawing board and try this again.

I would just say one other thing. The Annual Economic Report predicted 2.6 million new payroll jobs by the end of the year. Certainly we would all greatly love to see that be the case. But last year they reported 1.7 million jobs would be created and the year before they said 3 million jobs would be created. Instead, the Nation lost 53,000 payroll jobs last year, according to the Labor Department.

Instead of proposing, and suggesting, and proclaiming millions of new jobs without the right policies to actually make it happen, I hope we will place on our agendas the loss of jobs—manufacturing jobs, service jobs, professional jobs—happening in this country, all across our Nation, and certainly in my State of Michigan, where we have paid dearly for policies that have not worked. I hope we make this our top priority and that we focus on those things that will stop the exodus from the United States and the exporting of American jobs around the world.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I say to the Senator from Michigan as she was commenting about this report about how sending jobs out of the United States is going to help with the cost of health care here in the United States, that is as ridiculous as the old medical practice, 200 years ago, of curing the patient of his disease by bleeding him.

Ms. STABENOW. That is right.

Mr. NELSON of Florida. What we need to do about the cost of health care is get to the cost of health care. The cost of health care is going up. Technology has brought us miraculous new medicines and procedures. All of that is going up. But where do you have an opportunity to bring down the cost of health care? You do it by having best business practices that allow you to have the economies of scale, ergo health insurance, the largest possible pool of people. You use the principle of insurance to work for you, which is take the health risk and spread it over the largest possible group so you bring down the per unit cost.

But we are not approaching it that way. We divide up the population in these little narrow categories and then, when that category gets sick and it gets older, what happens to the costs of that health care? It goes up to the point they cannot afford it.

Ms. STABENOW. That is right.

Mr. NELSON of Florida. Or what about what we did in the Medicare bill here, the prescription drug bill, for which the Senator from Michigan and the Senator from Florida certainly didn't vote.

Ms. STABENOW. Right.

Mr. NELSON of Florida. What it was billed as was a $400 billion bill for prescription drugs. We now find it is $525 billion over 10 years. And where did it go mostly? As a bailout to the pharmaceutical companies and as a bailout to the insurance companies.

Ms. STABENOW. That is right.

Mr. NELSON of Florida. Not in a way of providing a direct benefit. When the senior citizens in the State of Florida find out how meager this benefit is, when it kicks in in 2005, I predict senior citizens are going to be somewhat upset.

I thank the Senator from Michigan for her comments.

Ms. STABENOW. If I might ask a question of my friend from Florida, as a former insurance commissioner, he certainly understands the insurance side of this. I think, first of all, he is absolutely right. I think the two major drivers for health care now are the explosion of prescription drug prices and the fact that every time a person loses his or her insurance and that person walks into an emergency room to get care and is sicker than they otherwise would be, and so on, people with insurance end up seeing their rates go up because there is a smaller and smaller group of people who actually have insurance, and they pay more and more. Wouldn't that be the philosophy?

Mr. NELSON of Florida. That is correct. There are 40 million people in this country who do not have health insurance. But they get health care. They often get it, as the Senator suggests, at the time of the emergency. Where do they get it? They get it in the most expensive place, the emergency room. Instead of treating the sniffles, they wait until it becomes pneumonia, so the care becomes so much greater.

So you have to get that much larger a group and ensure that larger group. Do it in the private sector. That is the way it ought to be done. Let there be competition to get your most efficient health insurance product, and then give the consumers, also, a choice of plan. So if they want a Cadillac plan, they can take that. If they want a Chevrolet plan, they can take that.

But mix all of those elements into it. That is how we are going to get health insurance and health reform. But we are not going to until we get to such a crisis because there are so many players who have so much at stake and there is so much money to be made.

Ms. STABENOW. If I might ask my friend another question, wouldn't he share my amazement that, in this new economic report, the proposal is that the way we lower health care costs is to export the jobs? Export the nurses, export the doctors, radiological assistants, whoever it is—that is how we should bring down health care costs? Lose our jobs to other countries? Does that make sense?

Mr. NELSON of Florida. That is exactly the opposite of what ought to be done. What was that report the Senator cited again?

Ms. STABENOW. This report actually is the new report from the economic advisers to the President on the state of the economy and jobs, where they are saying outsourcing to other countries is, in fact, a good thing and, in fact, outsourcing health care jobs will actually bring health care costs down.

I was stunned at what I was reading. Certainly, it is not something I know the people in Michigan are going to be very happy to hear about.

Mr. NELSON of Florida. What has happened to our world today? It is almost, if one person says it is white, another person says it is black; if a person says it is up, another person says it is down. Where is common sense? Where is reconciliation? Where is consensus building? Where is bipartisanship?

Take another issue. As I continue to have this dialog with the Senator from Michigan, take another issue, take the issue of the so-called independent commission that has just been appointed to

find out what went wrong with intelligence. How can a commission be independent when it is just appointed by one authority, i.e., the President, who is going to be part of the subject of the investigation of the commission? That is not independence. What we need is a commission that is truly independent, that is appointed by the Congress and the President.

Ms. STABENOW. Absolutely.

Mr. NELSON of Florida. Both parties. That is not a commentary on the people on the commission because these people seem to be—several of them are personal friends of mine—enormously accomplished people. It is the question of setting up the commission.

If I have been informed correctly, it is hard for my ears to believe what I have heard, which is that in setting up this commission to examine the intelligence that was faulty in Iraq, they are not giving this commission subpoena power.

Then how are they going to get the documents? How are they going to compel the witnesses? Is it all going to be voluntary? Our very existence is on the line in order to have adequate, timely, and accurate intelligence to protect ourselves in this era of terrorism in which we find ourselves.

Where is common sense in this country?

Mr. JEFFORDS. Will the Senator yield for a question?

Mr. NELSON of Florida. I am happy to yield to the distinguished ranking member of this committee, as we consider this transportation bill, even though we are talking about other very timely topics.

Mr. JEFFORDS. Is my understanding correct that the Senator said there will be no authority to be able to get documents or be able to subpoena information?

Mr. NELSON of Florida. This is what I was informed this morning by the leadership of this, that this commission is not going to have the ability to subpoena. If that commission that has just been announced over the weekend doesn't have the ability to subpoena people—witnesses and documents—then how can we get at the truth?

What we want to do is get at the truth. We were told there were weapons of mass destruction and we were told there were unmanned aerial vehicles, pilotless drones, and we were told there was even a potential plan to put those drones on ships off the Atlantic coast to drop those chemical and biological weapons over eastern seaboard American cities, and all of that turned out not to be true.

We were told that was the gospel truth when, in fact, as the Washington Post reported a week ago, there was a huge dispute in the intelligence community, including Air Force intelligence which knows best about unmanned aerial vehicles, and, as reported by the Post, that those UAVs did not exist to drop biological and chemical weapons.

So why were we not told that there was a dispute in the intelligence community? It was presented to us before we voted on that resolution in October of 2002 as if it were the gospel truth.

The long and short of it is the whole point of a commission is to get to the truth so we don't make these mistakes in the future. If the commission—a so-called independent commission—is not given the power to subpoena, how in the world are you going to get to the truth?

Mr. JEFFORDS. Being one of those who never believed there was a threat of any kind and a sufficient level to warrant the war, it shocks me to find out the route being set up to verify what I believed to be the truth will have no power to find the truth. This is very disturbing for me.

Mr. NELSON of Florida. The distinguished 9/11 commission composed of well-respected and very accomplished people, headed by former Governor of New Jersey Kean and so many other distinguished citizens on that panel questioning the intelligence and trying to find out what went wrong on the September 11 attack, has been frustrated over and over again by delays and a lack of willingness to come forth with the information. If they have had that experience in the last year and a half, why are we to think this next so-called independent commission is going to have any different experience? I think, since what is at stake is the security of our homeland, raw election year politics is getting in the way much to the frustration of those members of the panel and certainly to the frustration of this Senator.

Mr. JEFFORDS. I thank the Senator from Florida for enlightening me on this very disturbing news. I will do whatever I can, working with him and with others, to make sure we get the kind of resolution for finding the information which should be ours to be able to make judgments. I thank the Senator very much for his statement.

Mr. NELSON of Florida. Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant journal clerk proceeded to call the roll.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTELLIGENCE COMMUNITY ASSESSMENTS

Mr. FEINGOLD. Mr. President, I rise to comment on the controversy surrounding the intelligence community's assessments of Iraq's weapons of mass destruction programs and capabilities in the months leading up to the military action in Iraq.

It has been suggested that the intelligence community failed policymakers by presenting a picture of Iraq's WMD capacities that appears to have been far more advanced than the reality on the ground. It has been suggested that, as we have all heard, certain pieces of information were presented as certainties when, in reality, the accuracy of the information was very much in dispute among experts within the intelligence community.

I made a concerted effort to go to every briefing that was offered, and I think I largely succeeded, or maybe had entirely succeeded. I went to briefings for all Members, and I also went, of course, to the special briefings that were held for members of the Foreign Relations Committee. I am not a member of the Intelligence Committee and perhaps that committee had access to information dramatically different from what was put before the rest of us.

What I recall is that the CIA representatives who briefed us were careful and their statements were qualified. As CIA Director George Tenet recently indicated, it was made clear disagreements existed about how to interpret some pieces of information.

What I remember about the CIA is that they played it straight. I wish I could say the same about the political rhetoric that some in the administration used to characterize the content of those briefings.

Of course, I am certainly not saying the CIA is perfect or that the U.S. intelligence community is perfect. No one who reviewed the joint Intelligence Committee's report on 9/11 would make such a claim. And I am not asserting that all of the CIA's information and analysis presented in the lead-up to the Iraq war was correct. But what I am saying is, in the many briefings I attended I simply saw no evidence—no evidence—to support the accusations that the CIA was trying to spin the facts or that they were trying to lead us in one direction or another.

My sense was that they were professionals, and I remember being very grateful for their thorough and candid presentations. In fact, in those briefings, they didn't give us easy answers, and that made our decisions tougher. But the people expect us to make tough decisions.

Time and again, I came away from the briefing room concerned about the unanswered questions related to Iraq's chemical and biological weapons capacities. But I also came away each time with the conclusion that we had no evidence of any imminent threat. Indeed, Director Tenet acknowledged that the CIA never characterized Iraq's WMD programs as an imminent threat when Mr. Tenet made his remarks last week.

When the President of the United States called Iraq ''a threat of unique urgency,'' that sure sounded a lot like imminent to many ears. When senior officials, speaking about Iraq, told us they did not want the smoking gun to be a mushroom cloud, that sure sounded like an imminent threat of nuclear attack to most Americans.

Yet just last week, CIA Director Tenet reminded the country the agency made two judgments that are too often overlooked today. They said:

Saddam did not have a nuclear weapon and probably would have been unable to make one until 2007 to 2009.

Of course, that is a serious issue certainly but not an imminent threat.

The fact that the briefings we received did not present a picture of an imminent threat certainly did not mean there was no cause for concern or that the right course of action would have been to do nothing. Those who claim the only choices before us were rushing to war or being utterly complacent are quite simply misleading the American people.

I had long supported regime change in Iraq, and I am pleased that Saddam Hussein's regime has fallen. But the facts did not suggest that we had to invade Iraq in March of 2003. That means we could have had more time to build a solid international coalition, to combat some of the most damaging misperceptions of American motives and intentions, and more time to put in place a plan of action that would address our security interests without leaving American troops and American taxpayers holding the bag at the end of the day, bogged down in a risky occupation and mortgaging our children's future to pay for it.

Director Tenet said last week: To understand a difficult topic like Iraq takes patience and care. He is right. The same is true of understanding this debate and this controversy. That is why it is so important to discuss these issues carefully and responsibly. It is important because the stakes are so very high and because the public, especially our men and women in uniform and their families, who take tremendous risks and make tremendous sacrifices to serve this country, has every right to know what happened, what the facts were, what we got right and what we got wrong.

One of the difficulties for those of us who attend classified briefings, of course, is that we have an obligation to protect the content of those briefings. So we are limited in what we can say publicly. We are left to generalize and we run the risk of characterizing the same briefings in very different ways, leading us to debates about one person's interpretation versus another's. For this reason, an independent commission is desperately needed.

I am glad the President has agreed to establish a commission to examine our prewar intelligence. But I am concerned about the specifics of the commission's mandate. It is charged with examining the intelligence community's capacity to collect, process, analyze, produce, and disseminate information concerning the capabilities, intentions, and activities of foreign powers relating to the design, development, manufacture and acquisition, possession, proliferation, transfer, testing, potential or threatened use or use of WMD, related means of delivery, and other related threats of the 21st century. All of this, of course, is useful.

In the wake of the horror of September 11, 2001, we must make every effort to ensure that America's intelligence services are as reliable and effective and accountable as they possibly can be. As I have indicated, I believe a large part of our problem in the runup to the war in Iraq was a problem of how intelligence was used, how it was invoked, sometimes out of context, and how in some cases it was used in powerful and often frightening rhetoric aimed at painting a much more conclusive picture than the actual intelligence revealed.

Intelligence, as all data, can be manipulated. I am concerned about the appearance of a concerted effort to interpret information to justify a seemingly predetermined course of action and to too easily disregard information that could not be used for this purpose. I think such an approach serves no one. I think it actually diminishes American power. I think it risks making this country far less secure.

So we must investigate matters such as the activities of the Office of Special Plans at the Pentagon, which seems to have been charged with sifting through information to assemble only those pieces that bolstered the case for going to war.

We must also address the way that intelligence was alluded to in public settings, in ways that painted a much more decisive picture than actually existed. Obviously, not all Americans could be in the briefing room, but all Americans hear the public debate.

Those of us who receive and act on classified briefings have a vitally important responsibility to ensure that we never abuse their trust. I believe we need to make sure that in our efforts to review intelligence-gathering capacities and analysis capacities we do not fail to take a hard look at how policymakers employ intelligence in public remarks. Our words and our characterizations matter. The context that it is or is not provided matters. Even now some would insist that Iraq was a threat to America because even if Saddam Hussein did not have WMD, he had the capacity to make a weapon. But chemical or biological weapons could be produced in dual-use facilities in almost every country that has any significant domestic, pharmaceutical, or chemical manufacturing capacity.

This is a serious issue to be sure, but it does not make the case for the threat of unique urgency a good case. It does not make for a threat of unique urgency directed at the American people.

Finally, I propose that we need to take a look at how people responded and prepared for things we were warned about in briefings about Iraq, some of which then became public knowledge. Given what we all heard in the briefing room about the possibility that Iraq continued to possess biological and chemical weapons stockpiles and given the administration's clear belief that such stockpiles existed, why was there no better policy planning and execution when it came to rounding up these things?

Former chief weapons inspector David Kay has suggested that we may just all have to live with, as he called it, an unresolved ambiguity about what happened, that he traces to the failure on April 9 to establish immediate physical security in Iraq.

The looting that ensued has introduced a host of alarming unknowns into our consideration of what might have happened to the materiel that may or may not have existed in the first place and, quite frankly, any assertion that the United States would not have anticipated this looting has no credibility whatsoever. From think tanks to military planners to nongovernmental organizations, there were multiple, consistent, and high-level warnings about the risks of chaos and looting in the wake of the regime's fall.

There were plenty of questions about this issue which were never satisfactorily answered in the lead-up to war. In fact, I spent over 6 months, primarily in the Senate Foreign Relations Committee, repeatedly asking whatever administration witness I could the same important questions. For example, I remember asking Secretary Powell in 2002: Are you aware of any significant planning for securing weapons of mass destruction sites in Iraq in the event of a military invasion if the Government would be toppled and some degree of chaos were to rein for some period? Is there not a very real risk that WMD and the means to make them will be taken out of the country or sold off to exactly the kind of nonstate actors that the United States is worried about? Do we know enough about where WMD sites are to be confident in our ability to secure them, I asked the Secretary of State?

Secretary Powell could provide no details. He simply assured me that our military planners were making this issue their highest priority. Those military planners never provided any details, either.

In the end, we are left with video footage of the unchecked looting of the country, with unanswered questions, with David Kay's unresolved ambiguity. So we have a case of inadequate follow-up on a vitally important issue presented to us by the intelligence community and that, too, is something we need to review and address in the interest of national security.

We have a lot of work to do. Some of that certainly does involve reforms of the intelligence community. I believe our biggest problems did not come in the briefing room. In the interest of our national security, in the interest of protecting the public's trust in Government, in the interest of this country's global prestige and power to persuade, we have to avoid scapegoating tactics. We have to face some hard truths about the process and the rhetoric that led this country into Iraq in March 2003.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I came to the Chamber to speak about the highway bill, and obviously we hope to be talking about that later on today, but having taken the responsibility of serving on the Intelligence Committee, I thought I might add a few comments to the discussions begun by my colleague from Wisconsin.

Let's be clear; the Senate Intelligence Committee on a bipartisan basis has launched a massive effort to determine whether our intelligence was accurate, where it had holes in it, where are our assessments and our estimates.

In intelligence, they are all estimates. The only time there is absolute confirmation that something has happened is when the World Trade Center comes down or when the Pentagon is hit. Then one knows that terrorists have planned something and have executed it.

We were dealing with an intelligence system that provided estimates throughout the 1990s and no action was taken. The intelligence service provided estimates about the danger of Osama bin Laden. We considered all kinds of actions, and then September 11 happens.

Now, the September 11 commission goes in to try to determine why we did not act on the intelligence we had. The big charge there is that something should have been done about Osama bin Laden. Well, there are now published reports on the intelligence, and I would refer my colleagues to Richard Miniter's book ''Losing bin Laden.'' There were many instances where it was clear that Osama bin Laden was planning to attack the United States. In several instances, it appeared that in the 1990s we might have had an opportunity to deal with Osama bin Laden in one way or another and we chose not to do it. So right after September 11 we are looking backwards and saying, Why did we not act? Now my colleagues, primarily on the other side of the aisle, are saying, Why did we act in Iraq?

Let's be perfectly clear. When people start talking about imminent threat, seeming to imply that the President said there was an imminent threat, I distinctly remember the State of the Union message in which the President said: We cannot wait until there is an imminent threat. In essence, he was saying we cannot wait until we see the second airplane heading for the second tower of the World Trade Center.

Why were we suspicious of Saddam Hussein? The same reason President Clinton, Secretary Albright, Secretary Cohen, Security Council Chief Sandy Berger had? They said Saddam Hussein was a real and great threat. He was in flagrant violation of all the U.N. resolutions which followed on the cease-fire in the first gulf war.

He kicked the inspectors out in 1998. We know he was the only despot alive, the only tyrant ruling a country, who used weapons of mass destruction, and he kicked the inspectors out without ever saying what he had done with them.

Sure, there will be things we can find out about what we should have done differently in intelligence. There has already been public discussion about the lack of human intelligence resources. We may find that. We may find other things when we complete our work in the Intelligence Committee and submit a report to be fully declassified and discussed.

We need to make our intelligence system better. I think we have gone a long way. The PATRIOT Act broke down the walls between the CIA and the FBI, which legislatively prohibited them sharing information. That was a mistake. We have changed that.

Some of my colleagues say we ought to look at the use, look at what people said about that. You don't need to have a commission to do that. You have a Lexis-Nexis search to find out what people said. Are some people making charges? Yes, everybody has a right to make their comments about whether they believed the intelligence. A lot of that intelligence has been laid out in the public.

I was astounded at the degree to which Secretary Powell's discussion before the United Nations in February of 2003 went into so much of the intelligence we had at the time. That was out on the table. That was the best intelligence Secretary Powell had. Published reports indicate he went through that intelligence himself and asked questions and only used those things about which he was personally satisfied the intelligence estimates were accurate.

So, yes, use—we did use it. We did act. Saddam Hussein is no longer ruling a country, murdering hundreds of thousands, if not millions, of people. We pulled him out of a spider hole. He said he was a great ruler of the Iraqi people. He wanted to negotiate. Well, he is in jail.

You know something, Muammar Qadhafi in Libya took a look at what happened to Saddam Hussein and said: ''Oh, I don't think I want to wind up like Saddam Hussein did.'' That is what he told Italian President Berlesconi. ''I don't want to see happen to me what happened to Saddam Hussein.'' So he is coming clean based on the information we had gathered about his weaponry, his participation with Dr. Kahn of Pakistan. We knew he had weapons and was working on a weapons program and he came clean. I think that makes a great deal of sense.

There has been a tremendous change in the Middle East. There has been a change because Saddam Hussein no longer rules. It is a tragedy when we lose American lives. It is a tragedy when Iraqi lives are lost. But the Iraqis are slowly but steadily taking back control of their country.

Let's talk about what David Kay found. David Kay said when all the facts are known, it will appear, I believe, that Saddam Hussein was a far greater danger than our intelligence even knew. Our intelligence was not adequate before the first gulf war. We didn't know how far along he was at that time with his nuclear program. We did not know, apparently, according to Dr. Kay, how far along he was with his long-range missile program. It was a country, Dr. Kay said, which was attracting terrorists like ants to honey, to come to a country busily engaged in pursuing means of getting at the infidels. That means anybody who doesn't agree with them.

It is clear Ansar al-Islam had a ricin factory manufacturing that potent chemical, attempting to weaponize it, in northeast Iraq. It was under the direction of al Zarqawi. Ansar al-Islam is part of the brotherhood with al-Qaida.

By the way, you probably read in the New York Times about what we learned about the memo, from al Zarqawi. He was totally frustrated because he thinks the infidel, i.e., the coalition, our coalition, seems to be winning. We are making progress. We are turning Iraq back to the Iraqis and we have not cut and run. Their effort to conduct jihad is getting more and more difficult as we get more and more Iraqis engaged as police, as soldiers.

Danger still exists, but the danger that Saddam Hussein or the terrorist groups operating out of Iraq will be able to do so with impunity and continue to pursue their weapons of mass destruction programs is much less now that Saddam Hussein is in captivity.

You can talk about what the President said, what the President did, but I believe what we are seeing in the Middle East, what we have heard publicly from Dr. Kay, indicates we have taken a major step toward lessening the likelihood of terrorist attacks on the United States and toward stabilizing the Middle East so it will no longer be a hotbed and a haven for terrorists.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I thank the Senator from Missouri for his remarks. Perhaps they were intended as response to my remarks or perhaps they were general remarks, but my remarks have to do with the fact there is a perception in this country that somehow the briefings the CIA gave us with regard to Iraq were distorted or inappropriate or oversold the case for the war.

My purpose here was to indicate that is not the way I saw it. I was in those briefings. As I have indicated, I felt the CIA was very measured and careful in its presentation.

The Senator from Missouri can talk as much as he wants about whether Iraq worked or not, and what the consequences are. But there are real consequences when Members of both parties decide to tell the public the misinformation or the problems were the fault of the CIA.

I think that is dangerous for the CIA. I think it is dangerous for our country.

I think it is dangerous for how we are perceived in the world.

Some of the members of the other party—including the administration, frankly—and some of the members of my own party are pointing their fingers at what we heard in the briefings. I want everyone to know that I went to the briefings. I did not hear a compelling case for the war to be conducted at that time.

Regardless of what has happened since, I would be happy to debate at any point whether it was the right thing to do and whether how we did it was the right thing to do. Regardless of all that, the point is, as one Senator who went to those briefings and did not hear the case made, I give the CIA credit for being measured and careful. And we should thank Mr. Tenet for his leadership.

I yield the floor.

Mr. BOND. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, I rise today to talk about a truly bad idea that has been proposed on this floor. I believe an amendment was discussed yesterday when I was not here—I didn't have an opportunity to hear it—to provide stiff sanctions on States which do not have primary seatbelt laws. The goal is to move every State up to 90 percent seatbelt use. It specifically says States would be sanctioned if they did not meet one of the following two conditions within 3 years of the enactment of this bill: Either have a primary seatbelt law which would allow law enforcement to pull over a driver if that officer sees the driver is not wearing a seatbelt without having to arrest them for any other infraction, or the State does not get up to a 90 percent seatbelt use rate.

In other words, it would require a State to achieve a 90 percent seatbelt use, and it left it up to the individual States on how to get there.

The objective of getting to 90 percent seatbelt use is a worthwhile one. As Governor of Missouri, I talked often about the need for seatbelts.

When I was young, the primary entertainment when we weren't listening to Cardinal baseball was to crawl under the fence and go out and watch the stock car races. I watched stock car races every Friday night. Sometimes I paid to get in but not often. There were horrendous wrecks every night. Yet the drivers wore harnesses and seatbelts. I saw one driver taken off. He had severe alcohol poisoning because of fuel he had taken internally. But I never saw anybody hurt.

I have been in two serious crashes in my life. Both times I had on a seatbelt. I was shaken up and scared. In the first one, the other driver was taken to the hospital unconscious. I did not find out until the next day whether he had survived.

I am a believer in seatbelt use. I have sponsored and pushed for seatbelts and for safety seats for infants. I tried to get them on airplanes. But I don't believe taking money away from the 36 States that don't have primary seatbelt laws is a way to get there.

If the State fails to meet either of the conditions—either the 90-percent seatbelt use rate or enactment of a primary seatbelt law—the State would lose 2 percent of its general highway safety funds, and the sanction increases to 4 percent for each successive year. The sanctions approach would decrease the amount of funding available to make the necessary investment in safety for their transportation system.

States that do not enact a primary seatbelt law or do not achieve a 90-percent use rate will get less funding and fall behind other States in safety. That is not the way to encourage States to increase safety. That is a way to make some States fall further behind.

I know more lives can be saved with seatbelts. Good friends of mine who are troopers have said they have never unbuckled a dead driver from a seatbelt, although they have taken a lot of dead people out of cars in car accidents. I do not believe, however, the Federal Government should sanction States, trying to get people to use seatbelts. The Federal Government would force enactment of primary seatbelt laws. This approach is essentially Federal blackmail by Congress. It is telling the States we are not going to return the money you pay into the Federal highway trust fund because some of us in Washington, DC, think your State legislature and your Governor need to enact this law. Well, that is the purpose of the folks we elect at the State level to represent us in our general assemblies and to represent us in our Governors' offices.

I held the office of Governor at one point. I spent an awful lot of time looking at federally imposed mandates, many of which did not make any sense. They told us, for example, we had to use our clean water funds to clean up water from our major cities going back into the Missouri and Mississippi Rivers, putting in water that was higher quality than was already in the river. We wanted to use it on the pristine Ozark streams where small communities and septic tanks were seriously downgrading streams which had been fishable, swimmable, and drinkable. The priority did not make sense for Missouri.

I came up here to try to work with the States, not to tell States that we are not going to send back money you send to Washington unless you adopt our idea.

Only 20 States have decided to enact a primary seatbelt law. Other States have decided a primary seatbelt law is not the way to increase seatbelt usage.

Missouri has made great strides in seatbelt use, and this has been done without a primary seatbelt law. As you can see on this chart, the States which have primary seatbelt laws have the bold numbers. You start out with Alabama, California, Connecticut, the District of Columbia—everybody in the District of Columbia knows you get pulled over if you are not wearing a seatbelt—Georgia, Hawaii, Indiana, Iowa, Louisiana, Maryland, and Michigan, to name the lefthand side.

You can see what progress they have made. Alabama has a primary seatbelt law. In 2002, they had 79 percent usage, and it fell back to 77 percent in 2003. They went down. Other States are nowhere near that. Virginia, for example, has no primary seatbelt law, apparently, according to this chart. In 2003 it only had 75 percent seatbelt usage. The good news is, reduction in non-use, from 30 percent to 25 percent, was a 17-percent reduction.

The State of Missouri has gone from 31-percent non-use to 27-percent non-use without the seatbelt law. Why should this body say we are going to take money away from the State of Missouri because we don't like the way you are reducing non-usage of seatbelts?

I think public statements—and I certainly have made them, and will continue to make them—educational campaigns and incentives are the way to go to improve usage.

When you look at this chart, you see a lot of States with seatbelt usage that is definitely below 90 percent. For most of them, the usage is 70 and 80 percent. We are making progress. We ought to continue to do that with incentives. If you give States incentives, they have the flexibility to use their own solutions to increase seatbelt use. That flexibility would be lost. States would be limited in their ability to educate the public with regard to the importance of highway safety. They would lose safety money. That makes no sense.

The enforcement of primary seatbelt laws costs the State a lot of money, from increased law enforcement personnel, hours of work for clerical representation, and prosecutions. Is that the best way to use their law enforcement people? I think that is something that is better left to the authorities in the individual States.

We have to stop this sanctions approach and, I believe, use incentives. Under title I, under the Commerce Committee report, NHTSA would be authorized to use over $3.5 billion in grant funding and approximately $800 million for vehicle safety-related rules. The NHTSA programs would pay strong attention to driver safety and seatbelt use.

Under the National Highway Safety Program, section 104 grants would be administered by NHTSA in three high-visibility areas of safety: to reduce alcohol-impaired driving, drug-impaired driving, and increase seatbelt usage. I

believe that is the appropriate way to go.

The amendment that was described yesterday represents a double penalty for States that do not enact primary seatbelt laws. In fiscal year 2005 and thereafter, 10 percent of section 148 funds—those are funds for highway safety improvement—would be transferred to the section 402 program unless the State has a primary safety belt law or has achieved at least a 90-percent safety belt use rate.

Beginning in 2007, 2 percent of the interstate maintenance, surface transportation, and bridge programs would be withheld from States that do not have a primary seatbelt law or a 90-percent usage rate. The percentage withheld would rise to 4 percent in fiscal year 2008 and thereafter. If Congress enacts these sanctions, we are not likely to authorize incentives. The States have used section 157 safety belt incentive grant funding to support national safety belt mobilization and other safety belt enforcement activities. Without the incentives, the States would have drastically reduced resources for those purposes.

I believe enactment of a primary safety belt penalty mandate, forced upon the States, is premature and unwarranted. There has never been a sufficient program to convince the States to enact primary seatbelt laws or to find other means of increasing usage and decreasing nonusage of seatbelts.

Under the Senate Commerce bill, the new safety belt incentive grant program would provide the States with a grant of five times their apportionment if they enact a primary seatbelt law. We need to see if this program works and see if it is effective.

Many Governors and State legislatures oppose penalties and sanctions. There are currently 18 penalties and sanctions, 7 of which are highway safety related. Increasingly, Congress has relied on punishing the States if they do not meet safety performance objectives. As a result, I think there is an understandable revolt and reaction growing to this approach. The ''Mother May I'' coming to Washington is bad enough, but when ''Mama Federal Government'' tells us: ''You have to do it this way or you don't get your supper,'' particularly when your voters, your constituents, your taxpayers have been the ones who have paid for that supper, that is, I think, a real problem. Typically, State legislatures being forced to do this are going to rebel, and I think it is very inappropriate.

We have a letter from the executive director of the American Association of State Highway and Transportation Officials; the executive director of the Governors Highway Safety Association; the president and chief executive officer of the American Highway Users Alliance; the executive director of the International Association of Chiefs of Police; the executive director of the Commercial Vehicle Safety Alliance; the chief executive officer of the Associated General Contractors of America; the executive director of the American Traffic Safety Services Association; the executive director of the National Conference of State Legislatures; the executive director of the American Road & Transportation Builders Association; the president of the American Council of Engineering Companies; the vice president of Public Affairs of AAA, and the executive director of the National Governors Association, all saying:

. . . we oppose the use of penalties and sanctions.

Our organization supports the underlying safety goals. We believe the use of sanctions and penalties reflect an all-or-nothing approach that forces absolute and unconditional compliance with Federal safety requirements or goals while stifling innovation and redirecting funds from highway construction and maintenance projects with tangible safety benefits.

That makes the case very well.

I ask unanimous consent to print this letter in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JANUARY 30, 2004.

Hon. Senator BOND,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR BOND: The organization listed below represent a broad array of national, state and local elected leaders, policymakers and transportation and highway safety interests. Our organizations oppose the use of sanctions and penalties. We believe the use of sanctions and penalties reflect an all-or-nothing approach that forces absolute and unconditional compliance with federal safety requirements or goals while stifling innovation and redirecting funds from highway construction and maintenance projects with tangible safety benefits.

Currently states face eight highway safety-related sanctions and penalties that are designed to force compliance with various federal highway safety mandates or goals including enactment, by specified deadlines, of various types of state safety legislation. While our organizations support the underlying safety goals, we oppose the use of penalties and sanctions. In fact, many of our organizations have adopted the new United States Department of Transportation's safety goal of 1.0 fatalities per hundred million vehicle miles of overall highway travel by 2008—a one-third reduction in today's rate. Sanctions and penalties decrease the amount of funding available to the states to make necessary investments to the highway system, compromising the construction, rehabilitation, operation and maintenance of a safe highway system. Fewer resources to invest means delays in roadway and intersection improvements, fewer dollars for upgrading highway signage and markings, and less funding available for investment in safety research.

We urge you to employ incentives and positive strategies to encourage states to accomplish both public safety and transportation-related objectives rather than adopting a negative sanctions approach. Incentives from an increased overall multiyear funding program give states the flexibility and resources to find creative solutions to safety problems that fit their needs while ensuring stable funding for improving, constructing, operating and maintaining safe highways.

As you consider reauthorization of the Transportation Equity Act for the 21st Century (TEA 21), we urge you to reject any changes to current law that would impose new sanctions or penalties on the states for failure to comply with federal highway safety mandates and goals.

Sincerely,

John Horsley, Executive Director, American Association of State Highway and Transportation Officials; Barbara L. Harsha, Executive Director, Governors Highway Safety Association; Diane Steed, President and Chief Executive Officer, The American Highway Users Alliance; David Rosenblatt, Executive Director, International Association of Chiefs of Police; Stephen Campbell, Executive Director, Commercial Vehicle Safety Alliance; Stephen Sandherr, Chief Executive Officer, Associated General Contractors of America.

Roger Wentz, Executive Director, American Traffic Safety Services Association; William T. Pound, Executive Director, National Conference of State Legislatures; Peter Ruane, Executive Director, American Road & Transportation Builders Association; David A. Raymond, President, American Council of Engineering Companies; Susan Pikrallidas, Vice President, Public Affairs, AAA; Ray Scheppach, Executive Director, National Governors Association.

Mr. BOND. I urge my colleagues to oppose any effort to mandate primary laws or arbitrary usage of seatbelts on the States.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, I would like to continue my discussion about key provisions of S. 1072. In particular, I would like to discuss some of the bicycle and pedestrian provisions. According to the National Highway Traffic Safety Administration, 5,600 pedestrians and bicyclists were killed in traffic accidents in 2001. Tens of thousands more were injured in traffic accidents.

In that same year, more than one-fifth of the bikers killed in traffic crashes were between the ages of 5 and 15, our Nation's children. Pedestrian and bicyclist fatality numbers have been slowly decreasing over the years, but one death is too many. We must improve our record.

S. 1072 provides resources to help States address this safety problem. Our bill reauthorizes the bicycle/pedestrian provisions found in TEA–21. We recognize the importance of these provisions. More people walking and bicycling means fewer people in cars. It means healthier communities and a cleaner environment. We should promote it. Under our proposal, States may continue to use core program dollars to fund improvements for bicyclists and pedestrians.

However, if we really want to encourage people to walk and bicycle around

our communities, we must make these activities safer. Mr. President, 5,600 fatalities is an unacceptable number.

In addition to reauthorizing current programs, our bill directs the Secretary of Transportation to make safety grants to fund an information clearinghouse and educational programs to promote bicycle and pedestrian safety. These provisions will support existing efforts to improve bicycle and pedestrian access to transportation facilities and to enhance safety for all transportation users.

I believe that these provisions in the bill, if taken into use by our States and communities, will do a great deal to protect the children presently in our system and in the future.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

Mr. BOND. Mr. President, after conferring with both sides of the aisle, I ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 12:19 p.m., recessed until 2:17 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. INHOFE. I ask unanimous consent that the Senator from New York, Mrs. CLINTON, be recognized for up to 5 minutes as in morning business and then for me to reclaim the floor at the conclusion of her remarks.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from New York.

OUTSOURCING AMERICAN JOBS

Mrs. CLINTON. Mr. President, I thank the Senator from Oklahoma.

I rise today because I could not believe my eyes when I saw this headline in the Los Angeles Times today: ''Bush Supports Shift of Jobs Overseas.'' If one reads this article, it is clear the concern I feel on behalf of my constituents, who are finding their jobs going to other countries, is not shared in the White House. In fact, Gregory Mankiw, the President's Chair of the Council of Economic Advisers, has this to say:

> Outsourcing is just a new way of doing international trade. More things are tradable than were tradable in the past. And that's a good thing.

I do not think outsourcing American jobs is a new kind of trade. I do not think we should be thinking of our people as commodities, and I certainly do not believe it is a good thing. If the other end of Pennsylvania believes it is a good thing to have companies shift jobs from America to the rest of the world, then maybe they do not have a clue about what it is going to take to bring jobs back to this country and create the kind of economic prosperity that will put our people back to work again.

Of course, this goes hand in hand with the budget the President sent up, which cuts investments and workforce training of dislocated workers, which underscores the failure to push for stricter standards or real enforcement of labor and environmental standards in our trade agreements, has no plans to address rising health care costs or legacy health and pension costs that are strangling American manufacturing companies, and apparently does not care we are now outsourcing radiologists and engineers, people we told to go get a good education, get that college degree, get that advanced degree; there will always be a place for you in the American economy. If this is what the opinion is on the other end of Pennsylvania Avenue—''Bush Supports Shift of Jobs Overseas''—I certainly hope this body will join to pass a resolution repudiating this strategy. This is a strategy for decline. This is a strategy for the destruction of the American job market.

We will be presenting a resolution, a sense of Senate, to stand against this philosophy in the White House that turns a blind eye to the damage that is being done to the American economy: The loss of jobs, the loss of income, the loss of self-confidence and prestige that is now sweeping our land.

I hope both sides of the aisle, Democrats and Republicans, will join in a sense-of-the-Senate resolution saying: We don't know what they are drinking up there in the White House, we don't know what the Council of Economic Advisers is reading, but we in the Senate do not believe shifting jobs overseas is a good economic strategy and we want, once and for all, to not only repudiate that but to come together with real plans and policies that will keep our jobs here and make it possible for us to promise the American workforce that this economy will be creating opportunities for them and they will not be watching the American dream be outsourced as well.

Mr. President, I thank my colleague from Oklahoma for his kindness in letting me express and vent my frustration about this headline and the words coming out of the White House at this time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CRAPO). Without objection, it is so ordered.

SAFE, ACCOUNTABLE, FLEXIBLE, AND EFFICIENT TRANSPORTATION EQUITY ACT OF 2003—Continued

AMENDMENT NO. 2276 WITHDRAWN

Mr. REID. Mr. President, I ask unanimous consent that I be allowed to withdraw amendment No. 2276 on behalf of Senator DORGAN.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE AMENDMENT IN THE NATURE OF A SUBSTITUTE WITHDRAWN

Mr. INHOFE. Mr. President, with the approval of the committee, I now withdraw the committee substitute amendment.

The PRESIDING OFFICER. The Senator has that right.

AMENDMENT NO. 2285

Mr. INHOFE. Mr. President, I now send a substitute amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> The Senator from Oklahoma (Mr. INHOFE) proposes an amendment numbered 2285.

Mr. INHOFE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The PRESIDING OFFICER. The majority leader.

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion on the pending substitute to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

> CLOTURE MOTION
>
> We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending substitute to Calendar No. 426, S. 1072, a bill to authorize funds for Federal-Aid Highways, Highway Safety Programs, and Transit Programs, and for other purposes.
>
> Bill Frist, James Inhofe, Christopher Bond, Gordon Smith, Lamar Alexander, Richard G. Lugar, Pat Roberts,

Robert F. Bennett, Mike Crapo, Jim Bunning, Ted Stevens, Conrad Burns, Chuck Hagel, Charles Grassley, Trent Lott, Saxby Chambliss.

Mr. FRIST. Mr. President, I will allow the manager to explain what went on so our colleagues will fully understand, but I wish to make a statement. I encourage colleagues who are interested in bringing amendments to the floor to do that and continue to work in that vein. Again, my whole purpose over the last week and a half we have been on this bill has been to make sure people could come to the floor to discuss the bill, and if there are amendments people feel strongly, we are going to continue to move forward.

The objective of the leadership on both sides of the aisle is to complete this bill this week. I encourage people to come to the floor if they have amendments and to talk to the managers this afternoon.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Since this process started, we have been encouraging people to come to discuss their amendments. We are now in a position where they can actually offer their amendments. We had quite a few Members who worked over the weekend, who also had their staff working. They brought amendments down, and I thank all of those Members.

We visited with them. As the managers, we accepted some. I think now we are at the point where we do encourage our Members to bring their amendments. While we are in this stage right now, let me share a couple of points that I think are very significant.

There has been a lot of discussion that the formulas are unfair to some States. I suggest that in almost every case where there is a donee State that becomes a donor State, it is by a very small amount. On the average, the disparity between donee and donor is far less.

In approaching this, we actually took the average donor and put 4 cents on it and then from the donee took 4 cents off. I think it is a very fair way of doing it. But when people talk about the formulas, let's keep in mind the formulas are real. They have not been real in the past. They were not real in TEA–21. They tried to do it but they ended up with a minimum guarantee, which is a political document.

The formulas include such things as total lane miles on the interstate, on principal arterial routes; vehicle miles traveled; annual contributions to the highway trust fund attributed to commercial vehicles; diesel fuel used on highways; relative share of total cost to repair or replace deficient highway bridges. That is one I am particularly interested in since, as I have said many times, my State of Oklahoma is dead last in terms of the conditions of bridges; weighted nonattainment and maintenance areas; rate of return of donor States. All of those are in the formula.

This is the first time, since we started this process—at least since I have been here in 1991 when ISTEA came out—that we actually are using the formula and staying with it. It has not been easy, because people who do not like the way their State was treated come down and say all kinds of detrimental things about the formula, about our motives, about the bill in general.

The bottom line is, we have been honest with the Senate and honest with all of the States.

I do not think it will shock anyone to hear that there were political considerations in the past. We know that from the other body. The House Member from Pennsylvania was always very aggressive in getting the most he could for his State. I think a lot of them are like that, and we have corrected a lot of those.

I would say this: Of all of the ones who are the big players in TEA–21, and that was 1998, there was Senator Moynihan, whom we loved so much. His State was 1.25. We had Pennsylvania, which was Congressman Shuster, 1.21; Rhode Island, of course, Chairman Chafee, 2.17; the Senator from Montana was not only the ranking on the committee but also on the subcommittee, 2.18. At the same time all of that happened, my State was .9050, so we are way down there.

With SAFETEA, our percentages really do not change that much. We do ultimately bring everybody up to 95 percent and that is what this will do. Some are dissatisfied because they do not get up to 95 percent until the sixth year. It is unfortunate we could not come up with any other way, but it would cost so much money that if we did that, the ones who would be paying for it would be the donee States, and that would not be fair to them.

So I feel very good about where we are today. I think we have a fair bill. Very few people in this Chamber know the hours, the months, and the years that have been involved in this bill. Certainly the managers of the bill do because we have been working on this bill for such a long period of time.

Now that we have cloture filed, after it expires, it is our intention to go ahead and have a vote on cloture and get the bill completed. I believe it can be done this week.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. Mr. President, I ask unanimous consent that I be recognized for up to 7 minutes as if in morning business and then we return immediately to the bill, S. 1072.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator is recognized.

(The remarks of Mr. INHOFE are printed in today's RECORD under ''Morning Business.'')

Mr. INHOFE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, it is so ordered.

AMENDMENT NO. 2286 TO AMENDMENT NO. 2285

(Purpose: To provide a highway safety improvement program that includes incentives to States to enact primary safety belt laws)

Mr. WARNER. Mr. President, I send an amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for himself, Mrs. CLINTON, Mr. DEWINE, and Mrs. MURRAY, proposes an amendment numbered 2286.

Mr. WARNER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. WARNER. Mr. President, this is an amendment I submitted the other day on behalf of myself, Senator CLINTON, and Senator DEWINE of Ohio. It is an amendment to increase our national seatbelt use rate to 90 percent, a concept that is well known to the Members of the Senate. This amendment is identical to the legislation I introduced last year, S. 1993.

As my colleagues examine the highway bill and what it means to each of our States, our foremost responsibility, in my judgment, and the judgment of many, as well as the judgment of the President of the United States, must be to improve highway safety for the driving public.

I commend the distinguished chairman of the Environment and Public Works Committee because he has a section in the bill on improving highway safety. But I fear that somehow the President's proposal—actually the proposal the President sent up to the Congress regarding the use of seatbelts—was not included in the final markup. It is for that reason I rise to include in this bill a provision that was sought by the President.

Simply by increasing the number of Americans who will buckle up is the most effective—I repeat, the most effective—step that can be taken to save their lives and the lives of others. That is the single most important step.

I am privileged to serve on the Environment and Public Works Committee,

which has the primary responsibility for reauthorizing TEA–21. The bill addresses, as it should, highway safety measures such as how to build safer roads and how to use new technologies to improve safety.

But statistics show that the greatest measure of safety, again, to drivers, passengers, and possibly third parties not connected with the vehicle, is through the use of a seatbelt. It is remarkable the lives that have been saved through the use of this simple device. America has about a 79-percent use rate of seatbelts. Now, that is quite a commendation to the drivers all across this country. Seventy-nine percent of Americans, according to reliable statistics, use their seatbelts. That has been translated into the saving of tens of thousands of lives and injuries in automobile accidents. But I believe, as do many in this Chamber, we can do better.

Those are the facts. Are we just going to have a standstill or are we going to move forward? Senator CLINTON, Senator DEWINE, and I think we should move forward with a firmer approach with achievable goals and funding.

We have debated the benefits of seatbelt use on many occasions in this body and elsewhere across America. And whether it is in the town forums we conduct, town meetings, or here on the floor of the Senate, there is always that individual who comes back: Don't tell me what I have to do. What does it matter to you, JOHN WARNER—or to any other colleague with whom I am privileged to serve—what does it matter to you whether I buckle up?

Well, let's take a look. No one disputes that the absence of wearing a seatbelt causes more loss of life and serious injury. The statistics show that the impact associated with the crash, to the extent the driver can maintain control of the vehicle in those fatal seconds, the severity of the crash, and perhaps the loss of life can be reduced by the use of a safety belt—simply said.

Accidents involving unbelted drivers result in a significant cost to your wallet. Many people are rushed from the accident scene to various emergency facilities. All of that has the initial cost of the law enforcement that responds, the rescue squads that respond, and eventually the costs to the emergency room or whatever medical facility you might have the good fortune to be taken to, to hopefully save your life. That isn't free. There is a cost. Regrettably, a number of persons who suffer these types of injuries in automobile accidents are uninsured. Again, the cost often devolves down on the good old hard-working taxpayers—in most instances, the taxpayers who buckle up.

When an accident happens on our roads and highways across this great Nation, we are all impacted. Accidents cause significant congestion, which results in lost time and productivity as we try to get to our work or to our home along the highway where they are engaged in trying to remove the accident.

More often than not, the accident, with the combined slowdown of those passing the accident, causes significant congestion for some considerable portion of time. Either the lane in which we are traveling moves very slowly because of the accident or, indeed, we come to a standstill, as often is the case when a lane is closed to clear an accident. That standstill frequently is necessitated because of the severity of the injuries experienced in that accident. It takes the response team longer to get to the accident. It takes the response team longer in their carefully trained steps to extricate the injured person. All of that requires needed time.

To give the initial treatment and then to carefully transport that individual, if necessary, to a medical facility takes time. That costs money. The road becomes backed up. That is lost time for your mission on the road, be it for business, family, or pleasure. That is lost time and productivity. Behind you often are trucks and other vehicles involved in commerce. That is lost time and delay due to the seriousness occasioned by injuries and accidents where there has been the lack of use of seatbelts. It is as simple is that. Those are the facts. Then, of course, there is the cost to the community for caring for the injured person who, regrettably, frequently doesn't have the insurance to pay for his or her costs. The local people in your communities end up paying the bill.

The legislation we are proposing today will take an important step forward for the States to adopt either a primary safety belt law or take steps of their own devising to meet a 90-percent seatbelt rate—not the Warner amendment or the legislative measure put forth by the administration upon which we draw our concept for certain portions. The States can decide for themselves how they achieve a 90-percent goal of the use of seatbelts in their respective States. That is the purpose of this legislation—to move every State to a 90-percent use rate for safety belts.

In a letter dated November 12, 2003, to Chairman INHOFE of the Committee on Environment and Public Works, on which I am privileged to serve, Secretary Mineta stated:

> President Bush and I believe that increasing safety belt usage rates is the single most effective means to decrease highway fatalities and injuries.

That is explicit and clear. The Secretary goes on to say:

> The surest way for a State to increase safety belt usage is through the passage of a primary safety belt law.

I have had this debate with Governors and former Governors, even in this Chamber with former Governors. I think they would tell you that a primary safety belt law is a tough piece of legislation for the State legislature to pass solely on its own. I mean that. Frankly, it needs the impetus of those of us here in the Congress, of the combined efforts of the executive and the legislative branches of the Federal Government because it is just one of those things that State legislatures have extraordinary difficulty grappling with.

Regrettably, in my own State this law has come down to a single vote defeating it in two consecutive attempts. Stop to think, one vote in the distinguished General Assembly of the Commonwealth of Virginia has stopped our State from adopting this type of law.

I believe the impetus here will make it possible for our State and many others to adopt this statute.

As provided in our amendment, States can increase seatbelt use either by enacting, as I said, a primary seatbelt law. Everybody knows what a primary seatbelt law is and how it works. It means a law enforcement officer can literally stop a vehicle if they observe that the individual is not wearing his or her seatbelt. It is as simple as that. But a State, if they decide not to enact a primary safety belt law, can, by implementing their own strategies, whatever they may be—and there is a lot of innovation out in the States—that would result in a 90-percent safety belt use rate. So that is a challenge to the States.

The current national belt use, as I said, is 79 percent. But many States—those that have the primary law—are sometimes at 90, or even above 90, but those that do not have the primary seatblet law are down sometimes in the 60 percentile. It is the weight of the primary States that carries the percentile and brings it up to 79 from those States that don't have an effective law. States with their primary safety belt law have the greatest success for drivers wearing seatbelts.

On an average, States with the primary seatbelt law have a 10- to 15-percent higher seatbelt use compared to those with a secondary system. This demonstrates that secondary seatbelt laws are far more limited in their effectiveness than a primary law.

Essentially, the secondary laws say that if a law enforcement officer has cause other than a perceived or actual seatbelt violation—namely, the driver didn't have it buckled—if they have cause to stop that car, for example, for a speeding offense or a reckless driving offense or indeed an accident and they observed there has been no use of the seatbelt, then in the course of proceeding to enforce the several laws of the State as regards speeding or reckless driving, or whatever the case may be, they can add a second penalty to address the absence of the use of the seatbelt in that State.

Drivers are gamblers. They say: Oh, well, don't worry, I will not buckle up. State law doesn't require it. Unless they stop me—and they are not going to stop me today. It is that gambling

attitude that, more often than not, will cause an accident. Then it is too late.

So we come forward today to build on our national programs. We are building on what we did in TEA–21. I was privileged to be on the committee. I was chairman of the subcommittee 6 years ago. I worked with Senator Chafee, who was chairman of the full committee, and we drove hard to make progress with the seatbelt laws, and we did it. We basically put aside a very considerable sum of money to encourage States—again, using their own devices—to increase uses. As a direct consequence of what we did in TEA–21, there has been an 11-percent increase in these 6 years in the use of seatbelts.

Sadly, traffic deaths in 2002 rose to the highest level in over a decade. It is astonishing. Of the nearly 43,000 people killed on our highways, over half were not wearing their seatbelts. That is according to the National Highway Traffic Safety Administration. And 9,200 of these deaths might have been prevented if the safety belt had been used.

Those are alarming statistics. Automobile crashes are the leading cause of death for Americans age 2 to 34. Stop to think of that: Age 2, that means a child; that means a parent neglected to buckle up a child. Automobile crashes as the leading cause of death for Americans age 2 to 34. That is our Nation's youth. Do we have a higher calling in the Congress of the United States than to do everything we can to foster the dreams and ambitions and the productivity of our Nation's youth? I think not. And this is one of the ways.

Last year, 6 out of 10 children who died in car crashes did not have the belt on—6 out of 10; that is over half. I plead with colleagues to join with me, join with the President who has taken this initiative.

My primary responsibility in the Senate—and this is one of the reasons I got interested in this subject—is the welfare of the men and women in the Armed Forces. I say to colleagues, again, the statistics are tragic. Traffic fatalities are the leading noncombat cause of death for our soldiers, sailors, airmen, and marines. They are in that high-risk age category, 18 to 35.

Someone even took a look at the statistics, the total of the fatalities least year, and said that represents in deaths approximately the size of the average U.S. Army battalion. That is several companies and maybe a reinforced element. Just think, that is the magnitude in one category of those who serve our United States, the men and women in the Armed Forces.

I cannot think of any reason why we all cannot join behind this effort. That alone is a driving impetus for this Senator.

The time is long overdue for a national policy to strengthen seatbelt use rates. I said a national policy, and that is what this bill represents, either through States enacting a primary seatbelt law or giving far greater attention to public awareness programs that result in more drivers and passengers wearing safety belts. Our goal is 90 percent—90 percent.

I have been privileged to serve on this committee 17 years, and I, together with many others, notably my dear friend and late chairman, Senator Chafee, addressed this issue. Our committee is rich in the history of focusing revenue from the highway trust fund on effective safety programs. It goes back through many chairmen and members of the committee.

With jurisdiction over the largest share of the highway trust fund, our committee has had the vision to tackle important national safety problems. The legislation before us does provide more funding to help build safer roads—that is a step forward—but it does not have, in my judgment, that provision which represents a step up from what we did in TEA–21, that provision that would represent a recognition of the President's initiative.

The President has taken a decidedly strong initiative to increase the use of seatbelts. It is absent from the bill, and this is why we need a provision to strengthen and to move forward the position of the Congress on the issue of increased use of safety belts. That is the purpose of this amendment.

It is just unfortunate, but those with reckless intent quickly disregard responsible behavior and drive unbelted at excessive speeds and many times with the use of alcohol. So no increased dollars for improved road engineering, which is in this bill, can defy in many instances the type of personal conduct that results in reckless behavior. It is as simple as that.

Our automobiles now come equipped with crash avoidance technologies and are more crashworthy than ever before, but these advances are only part of the solution.

In repeated testimony before the Environment and Public Works Committee, from the administration, our States, safety groups, and the highway industry, we are told that three main causes of traffic deaths and injuries are unbelted drivers, speed, and alcohol.

The formula we have devised in this legislation does have a reduction in the amount a State receives under this proposed bill that we will consider next year when they fail to achieve the 90 percent safety belt use rate. It is as simple as that. But the formula is patterned directly after the law that is on the books now with respect to the .08 legal blood alcohol content level.

The net effect of this legislation is simply to recognize we are asking that the same type of sanction policy with regard to one of the three major causes of death—alcohol—be equated to a second cause of death and injury, and that is absence of the use of seatbelts, bringing into parallel two of the three principal causes of death and injury on today's highways.

The administration put forward an innovative safety belt program, as I said, under the leadership of the President that was a major component of their new core transportation program, the Highway Safety Improvement Program. Our amendment incorporates the administration's bill and includes additional incentives for states to increase seat belt use rates.

I ask unanimous consent to have printed in the RECORD a number of documents that show widespread support for this legislation, from the Virginia Association of Chiefs of Police, the American Medical Association, and the letter to Senator INHOFE from the Secretary of Transportation. One hundred thirty-five organizations across the United States are in support of this legislation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN MEDICAL ASSOCIATION,
February 9, 2004.

AMA APPLAUDS LEGISLATION TO PROMOTE SEAT BELT ENFORCEMENT AND SAFETY

AMA SPEAKS AT CONGRESSIONAL PRESS CONFERENCE TO URGE SEAT BELT AMENDMENT PASSAGE

On behalf of the American Medical Association, I'm proud to stand here with Senator Warner in support of enforcing seat belt use. Preventing deaths and injuries on our nation's roadways has been a priority of the AMA for many years. In fact, over the last seven years the AMA has distributed more than 16 million brochures on protecting children in motor vehicles, and just last year we released a physicians' guide to assess and counsel older drivers. Requiring all states to enact a primary enforcement seat belt law or achieve a seat belt use rate of at least 90 percent will help protect Americans on the road.

We know the wearing seat belts saves lives. Over half of the 43,000 people killed on America's highways in 2002 were not wearing seat belts. Tragically, six out of 10 children who died that year in motor-vehicle collisions were also not wearing seat belts. Just taking one moment to buckle-up could make a life-or-death difference to the thousands who needlessly die on our roadways every year.

For those lucky enough to survive a devastating auto crash, the health care costs can be staggering. On average, hospitalization costs for unbelted traffic crash victims are 50 percent higher than for those who buckled-up. The needless deaths and injuries that result from not wearing seat belts cost society an estimated $26 billion annually in medical care, lost productivity and other injury-related costs.

There deplorable statistics are reversible. We can significantly reduce deaths and serious injuries from motor-vehicle crashes by enforcing seat belt use nationwide through a primary enforcement law like the one Senator Warner is now proposing.

In my home state of Michigan, a primary enforcement law has been in effect for three years. In that time, nearly 200 lives have been saved, and over 1,000 serious collisions have been averted because of this change in the law.

As a physician, it is a rare blessing to be in a situation where we can easily identify the solution to a public health threat. Passage of the primary enforcement seat belt law will saves lives. It's that simple.

RON DAVIS,
AMA Trustee.

VIRGINIA ASSOCIATION
OF CHIEFS OF POLICE,
Richmond, VA, February 9, 2004.

The Virginia Association of Chiefs of Police (VACP) endorses S. 1993, a bill to create incentives for the states to enact primary safety belt laws. In 2002 in Virginia, we had 913 automobile fatalities. Of those 913 fatalities, 438 (62.7%) were not wearing a safety belt. In those 913 fatality crashes, 9,912 injuries were sustained by unbuckled occupants.

Under our current secondary enforcement law, Virginia's front seat safety belt use is 74.6%, which includes drivers and front seat passengers. Research tells us that front seat occupants of vehicles involved in potentially fatal crashes in states with primary safety belt laws have a 15 percentage point higher belt use than persons in states without primary laws.

The VACP supports the passage of primary safety belt laws as a proven tool to increase safety belt usage and reduce serious injuries and fatalities in the event of a traffic crash. Public education and enhanced traffic enforcement efforts have failed to increase Virginia's safety belt usage rate much beyond 75%. States with primary safety belt laws consistently experience safety belt usage rates up to 90%. The VACP believes that the passage of a primary safety belt law in Virginia will increase belt usage and save the lives of countless Virginians.

DANA G. SCHRAD,
Executive Director,
Virginia Association of Chiefs of Police.

THE SECRETARY OF TRANSPORTATION,
Washington, DC, November 12, 2003.

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

DEAR MR. CHAIRMAN: With almost 43,000 people dying every year on our nation's highways, it is imperative that we do everything in our power to promote a safer transportation system. The Bush Administration's proposal to reauthorize surface transportation programs, the Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003 (SAFETEA), offers several bold and innovative approaches to address this crisis.

President Bush and I believe that increasing safety belt usage rates is the single most effective means to decrease highway fatalities and injuries. As a result, SAFETEA's new core highway safety program provides States with powerful funding incentives to increase the percentage of Americans who buckle up every time they get in an automobile. Every percentage point increase in the national safety belt usage rate saves hundreds of lives and millions of dollars in lost productivity.

Empirical evidence shows that the surest way for a State to increase safety belt usage is through the passage of a primary safety belt law. States with primary belt laws have safety belt usage rates that are on average eight percentage points higher than States with secondary laws. Recognizing that States may have other innovative methods to achieve higher rates of belt use, SAFETEA also rewards States that achieve 90% safety belt usage rates even if a primary safety belt law is not enacted. I urge you to consider these approaches as your Committee marks up reauthorization legislation.

While safety belts are obviously critical to reducing highway fatalities, so too is a data driven approach to providing safety. Every State faces its own unique safety challenges, and every State must be given broad funding flexibility to solve those challenges. This is a central theme of SAFETEA, which aims to provide States the ability to use scarce resources to meet their own highest priority needs. Such flexibility is essential for States to maximize their resources, including the funds available under a new core highway safety program.

I look forward to working with you on these critically important safety issues as development of a surface transportation reauthorization bill progresses.

Sincerely yours,

NORMAN Y. MINETA.

Mr. WARNER. Mr. President, I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. Is there a sufficient second?

At the moment, there is not a sufficient second.

Mr. WARNER. I thank the Presiding Officer. I see other hands.

The PRESIDING OFFICER. There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, it is appropriate that the occupant of the Chair at the present time is the Senator from Rhode Island because the amendment being offered by the Senator from Virginia is one that was a favorite of one of my favorite people, his father. I can remember many times he would be talking about this amendment. In fact, I can recall some disagreements.

I would say: John, your son is a mayor of a significant city. I am sure if you call him up he will tell you, if there is one thing they don't want, it is unfunded mandates. I was the mayor of a city for four terms. The biggest, greatest plague we had was unfunded mandates.

I will reluctantly oppose the Warner-Clinton-DeWine-Murray seatbelt sanction amendment at the appropriate time. This amendment makes a significant and damaging change to the core safety program established in the highway reauthorization bill.

The amendment imposes a new sanction on States that fail to achieve a 90-percent seatbelt rate or enact a primary seatbelt law. Currently, only 20 of the 50 States meet the requirements of this proposed new Federal mandate. As a result, if this amendment were to pass, 30 States would be immediately thrust into a status of noncompliance with this mandate and the clock would start ticking against them, threatening a significant penalty through the loss of funding. My State of Oklahoma is already in compliance. Actually it wouldn't affect us. We are in compliance with the requirements proposed by this new sanction. But I fundamentally oppose imposition of new sanctions on the States.

While most agree that seatbelts represent the single greatest factor in saving lives on our Nation's highways, the decision to pass a primary seatbelt law is best made at the State level.

The penalties proposed by Senator WARNER's seatbelt sanction are twofold. The first penalty takes effect in calculating apportionments for fiscal year 2005. This is especially disconcerting because that gives States who do not already have primary seatbelt laws on the books only 8 months from now to enact a primary law. It doesn't affect me. Our State of Oklahoma already has them. This first penalty would require States in noncompliance to spend 10 percent of the funds apportioned to them under the new core safety programs on safety behavioral projects. Under section 405 of title 23, any funds subject to this transfer cannot be recovered in future years by a State's subsequent compliance with the seatbelt sanction.

A second penalty would be imposed if States had still not enacted a primary seatbelt law or brought their seatbelt rate up to 90 percent by the beginning of fiscal year 2007. States still in noncompliance by this time would lose up to 4 percent of their apportionments under each of the National Highway System programs: The Surface Transportation Program, Interstate Maintenance Program, and the Highway Bridge Replacement and Rehabilitation Program. That one is significant to me. These funds would be completely lost to the States in noncompliance and redistributed among other States.

You could argue that my position in Oklahoma could be enhanced by the passage of this amendment because we know there will be some States that are not in compliance. Certainly our bridges in Oklahoma need as much help as they can get.

The amendment proposes instituting a huge penalty for States without a primary seatbelt law. Although I support the increased use of seatbelts across the United States and would encourage States to enact primary seatbelt laws to reach this objective, I believe threatening States with the loss of needed Federal dollars for surface transportation is not the right approach.

I admire so much the Senator from Virginia and his dedication. I never appreciated what he had to go through 6 years ago as chairman of the Environment and Public Works Committee during the last reauthorization until I became the chairman and am going through it. I am sure he did a far better job than I. But I disagree with this particular amendment.

Mr. WARNER. Will the Senator yield for a question?

Mr. INHOFE. I am happy to yield.

Mr. WARNER. He is always so courteous about matters such as this, and particularly with reference to our dear friend, John Chafee, who felt very strongly about this legislation. It is more than a technicality, but this is not a sanction in the sense that we simply say each State should achieve 90 percent. Now, there may be ways by which States can achieve that other than following this path which, as the Senator correctly points out, has a certain sequence of penalties. They would meet the law and completely avoid the other path, where there are penalties.

My question is this: When America was faced with the problems of alcohol, which is still prevalent on the roads in our Nation, we, the Congress, enacted what we call the famous .08 law; am I correct?

Mr. INHOFE. That is correct.

Mr. WARNER. Didn't we have an identical series of steps in that law that I have put into this law?

Mr. INHOFE. I know there are similar steps. If you say they are identical, I am sure they are.

Mr. WARNER. I assure the Senator it is almost identical. You can come down to where it has worked in the case of alcohol, and now 47 States out of the 50 have adopted the alcohol legislation. I think, quite frankly, that we can see a similar number of States quickly adopt this legislation—a primary seatbelt law to avoid the penalties. So it is not without precedent, and it also gives the State the alternative of doing it by some other means than going down the path I have outlined.

Mr. INHOFE. I agree with the Senator from Virginia. I only say, if your State were to devise a way to get to the 90-percent mark that they have to get to to keep from being penalized, it would have to take some reasonable period of time. They would have to establish some criteria and then try to get there.

I cannot imagine it could be done within 8 months, and these people would already be subjected to the penalties imposed in the year 2005. That would be a concern.

Mr. WARNER. Mr. President, I say to my distinguished colleague that we selected that time period because of the language the Secretary of Transportation forwarded to the Congress. If there could be a means, if you would be willing to help me devise a formula by which you think a greater degree of fairness can be achieved, I am open to that.

Mr. INHOFE. Mr. President, I look forward to working with the Senator from Virginia, as I always do. I think many of us who came to serve in the Senate who were either Governors or mayors in major cities somehow have this obstacle or obstruction in our minds on any kind of mandates. I plead guilty to that. I think other Members might oppose the amendment, such as the Senator from Missouri who was a Governor. That is primarily the reason.

I would be happy to work with the Senator from Virginia, and I think he has an excellent point. I know his heart is right and he is trying to save lives. That is why we all love him so much.

Mr. WARNER. Well, Mr. President, I will take into consideration the views of my distinguished chairman and see what we might do to make that accommodation. I thank the chairman.

Mr. INHOFE. Mr. President, while we are waiting for people to come with their amendments, I will make a few comments relative to statements that were made on the Senate floor yesterday concerning the bill.

Comments were made by one Senator who said he would just suggest that we swap formulas between Oklahoma and Arizona. That was the senior Senator from Arizona, a very distinguished Senator. I only say that Arizona and Oklahoma and all other 48 States have exactly the same formula. You don't have to swap formulas. They are the same.

I also suggest in the case of Arizona, it gets more money than Oklahoma does under this bill—by about $60 million. So if a swap were taking place, I think I would go along with that.

I am concerned a little about the statements made that more States will become donor States. That is true under this bill. Right now, the disparity between donor and donee is far greater than it will be after this bill is passed. So if you have a State that goes from a $1.01 down to 99 cents, that is a small amount, but because it goes below the threshold of a dollar, then it is now in donor status. So the way we try to accomplish this is, if you take the average, the average donor State increased by 4 cents; the average donee State decreased by 4 cents. I don't see that anything could be more fair than that.

Third, I think if you look at the individuals who were driving this legislation 6 years ago—TEA–21—you found that there were some parts of the State that were perhaps treated better than other parts. Certainly, we had three of the most powerful people from the northeastern seaboard—Senators Moynihan, Congressman Shuster, and Senator Chafee. When you look at the amounts that they, under TEA–21, achieved, New York was $1.25; Pennsylvania, $1.21; Rhode Island, $1.26; and Oklahoma, 90.5 cents, which was the minimum. A critic of this bill said we should do what we did 6 years ago and immediately go to 90.5 cents as a floor instead of waiting until the sixth year.

The problem with that is there is not enough money. And if we did that, that would have to come out of the donee State. The other problem is we are actually much more ambitious in this bill in reaching that point.

If you look at this State by State—and several times on this Senate floor we have been challenged by Members from States who felt their State was not getting a fair shake—keep in mind that every State is going to increase by at least 10 percent under this bill, and every State is going to have a donor status of nothing less than 95 percent at the conclusion of this bill, at the sixth year.

Mr. REID. Will the chairman of the committee yield for a question?

Mr. INHOFE. I am happy to yield.

Mr. REID. Mr. President, on the issue now before the Senate, propounded by the senior Senator from Virginia, a unique situation has arisen in Nevada. In Nevada, the State legislature, last session, had a debate on whether or not they would have primary seatbelt requirements for the people of Nevada. They did something interesting. The State now has a law that requires seatbelts for children but not for adults. I think this is pretty compromising.

The Senator from Virginia is not on the Senate floor, but I could go for something like that—that there could be a requirement that States have a mandate that children have to wear seatbelts. The State of Nevada debated this and, as far as adults, it failed. So I ask you and the Senator from Virginia to consider amending the matter now before the Senate to have a requirement for children. I think that is something that would be accepted. I think the debate would be very short and to the point.

I think if he proceeds on his requirement to have seatbelts mandated for everyone, States that are individualistic, such as Nevada—the State of Nevada doesn't like to be told what to do. They believe they are a sovereign State and the legislature meets and debates these issues. On this issue about primary seatbelts, that was brought before the legislature just last session. I think it would be very difficult for this Senator to say that I know more than the Nevada State Legislature, which not only held hearings on this issue but had a long debate and turned down this mandate. While I personally may disagree with that, the point is that the people of the State of Nevada, through its elected legislature, have spoken.

I hope—I repeat for the third time—that the Senator from Virginia would consider modifying the amendment now before the Senate and have this apply just to children.

The question is, through the Chair to the Senator from Oklahoma, how he feels about this. Before he answers, I wish to compliment the Chair and his wonderful father who was one of my role models in this body. It is true he brought this amendment up on a number of occasions, but it never passed. We are now in the same situation as in years previous.

It seems to me we would be well off if we made incremental improvement, and I think that improvement would be to make sure this covers all children.

I again ask the question of my friend from Oklahoma, does he think that is a reasonable compromise?

Mr. INHOFE. Mr. President, I say to my friend from Nevada, the argument I recall against the amendment was that the driver himself or herself would be in a position where they could lose control of a vehicle by not having a seatbelt on and, obviously, the children would be safer than if nobody had on a seatbelt.

The Senator makes a very good point. It is one at which I would certainly like to look.

I can assure the Senator from Nevada, I learned the hard way what our law was in Oklahoma when we started cranking out grandbabies. We have 11 of them now. I did not realize the seriousness of this bill and I did not have

one of the young ones in a seatbelt, and I had to pay the penalties. I learned the hard way they really meant business.

Our law has teeth. I would certainly like to look and see what kind of results the State of Nevada has had.

Mr. REID. If I could, Mr. President, I try very rarely to boast on the floor of the Senate, but this is an opportunity I can do so because I noted a sense of pride with the Senator from Oklahoma talking about his 11 grandchildren. A week ago last Sunday, I had born into my family my 14th grandchild. So is it OK if I am a little boastful about that?

Mr. INHOFE. Of course.

Mr. REID. Eleven is OK, but the Senator from Oklahoma still has a way to go.

Mr. INHOFE. We haven't quit.

Mr. REID. What is that?

Mr. INHOFE. We haven't quit.

Mr. REID. Neither have we. In fact, we have just begun to propagate.

Mr. INHOFE. In terms of population of the State of Nevada and the percentage my grandchildren constitute in my State, the Senator from Nevada is way ahead of me.

Mr. President, there are other points about which I could be talking that were brought up, but I don't think it serves any useful purpose. We made great progress on this bill. People have said nothing happened last week. Something did happen last week. We had a chance to bring up the bill, go over the bill, talk to people, and line up votes, quite frankly.

We have the vast majority of people believing this is the right bill. I only regret there are those who try to say it is not fair for one reason or another. There is no question, if you take this and the last two 6-year reauthorizations, that this bill is far more fair than any other authorization we have done.

All these points were kept in mind as to donee States and donor States. Now that we get up to 95 percent, we are going to forget about what it was like to be a 70-percent donor State, but I can remember. This will be an issue that will go away because you figure you are high enough. This bill got us there.

At the same time, we have donee States, States that have done very well in the past. I mentioned a minute ago, partially because the former chairman of the House Transportation Committee, Congressman BUD SHUSTER—and I served with him for 8 years in the House on that committee—perhaps his State got a little higher than it should have through his anxious approach. However, when you compare that to the State of Oklahoma—this is an interesting comparison—you can look at a chart and see you are not getting as much as last year and, therefore, it is unfair.

That is just not true. My State has roughly the same road miles as the State of Pennsylvania. If you look at the next 6 years, the State of Pennsylvania is getting three times as much money as we are getting in our State of Oklahoma. It doesn't sound like I did a very good job for Oklahoma.

There are other factors involved. It was called to my attention by one of the Senators from that State that it is a pass-through State. Everyone goes through Pennsylvania to get someplace. How do you put that into an equation? How do you put down how many people stop to buy products or services in your State? Some of these factors can't be done.

I will say this: The old bill turned out to be a minimum guarantee. That was wrong. That was a political document that merely said we will make 60 percent of the people in this Chamber happy, and we don't care what happens to the other 40 percent. That was not an appropriate way to approach that bill.

With the factors of donee, donor, total lane miles, vehicle miles traveled, annual contributions to the highway trust fund from commercial vehicles, diesel fuel just on highways, relative share of the total cost of repair and replacement of deficient highways and bridges, weighted nonattainment in maintenance areas, and rate of return for donor States, this formula has worked, and I am very proud of it.

We have gone through the last 2 weeks complimenting each other and the leadership. I certainly compliment my friend from Vermont, the ranking member, Senator JEFFORDS, as well as Senator REID, the ranking member on the subcommittee, and, of course, KIT BOND, the chairman of the subcommittee under my committee. But I also compliment the staff.

I can promise you, Mr. President, that the staff worked many more hours than we did. They were down there all this last weekend. All I was doing was sitting on the phone calling for votes. It was a lot of hard work, a lot of dedication. I want all the staff members of the majority and the minority to know how much I personally appreciate them.

I think it is necessary to have this bill. I can't think of anything worse than going on these short extensions and no one can plan in advance. With the bill we have today, we have it set up so we can plan in advance.

The IPAM part of this bill will allow those projects which are ready to go to start working, to start those projects going, to hire the people.

We had a chart a while ago as to the number of people this bill puts to work. We are talking about almost 3 million people, 3 million jobs that will be filled as a result of having this bill pass.

I look forward to talking about the amendments, working toward cloture, and getting this bill passed in the Senate and sent to conference so we can all go to work in conference and come up with a good solution to our Nation's highways, roads, and infrastructure problems, as well as jobs in America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I, first, commend my good friend from Oklahoma, and then I will give my synopsis of some of the areas of this bill. I have just never worked with someone who has been more cooperative—and our staffs—to bring about a consensus in a very difficult bill. A little change here and a little change there will change millions of dollars and who it goes to and will bring about a consensus that will at least make enough people happy to vote for the bill, which is the ultimate goal.

We have made great progress. I think we are now in a position where we are going to be able to move forward.

TEA–21 provided record funding levels for transportation, which allowed States and local governments to make greater investments in our transportation systems than ever before. S. 1072 will continue that trend.

In crafting this bill, Chairman INHOFE, Senator BOND, Senator REID, and I wanted to ensure the resources available under this bill would be spent wisely and responsibly.

During our hearings, we learned of challenges facing communities and transportation agencies trying to manage a full load of increasingly complex transportation projects. In response, we crafted a bill that will improve the delivery and stewardship of the Federal aid highway program.

First, we have expanded the scope of a program called ''value engineering.'' Value engineering provides States and local governments an additional approach to examining transportation projects before they are finalized. It promotes improved design, construction, and funding of transportation projects.

Second, we have included provisions to address issues that arise when State and local governments develop large-scale projects, so-called mega projects that cost over $1 billion.

To ensure these projects are developed and managed efficiently, S. 1072 requires project management and financial plans.

Finally, to ensure that money received by the States is properly accounted for, we direct the Secretary to annually review States' financial management systems.

As my colleagues can see, S. 1072 provides record levels of funding for transportation investment and the provisions to ensure we are good stewards of the public funds.

I look forward to going into the amendment process and making sure we work, hopefully, efficiently and effectively and quickly to get this bill before us in final form before too long.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, the transportation planning process is a critical component of any surface transportation program or project. Poor planning may lead to cost overruns, project delays, and even project cancellations. An early and comprehensive planning process can help stakeholders and project sponsors to identify and overcome potential problems so transportation projects proceed smoothly.

Our bill includes several provisions to encourage better planning practices at both the State and metropolitan levels. We make some additions to current law to encourage transportation planning agencies to consider our environmental, natural resource, and community health issues early in the planning process.

The bill directs transportation planners to consult with relevant resource agencies when developing long-range transportation plans.

Improved coordination will promote long-range plans and project proposals that adequately consider and address the diverse implications of transportation projects. Improved interagency consultation and coordination is only one component of a successful plan.

As I have said before, transportation investment is about people and communities. It is about making life better for our citizens by providing an efficient, safe, and comprehensive transportation system.

A successful transportation program is one that considers the needs and the wishes of the people it serves. Our bill will enhance public participation in the planning process, encouraging projects that meet our infrastructure needs without sacrificing the environment or quality of life.

Finally, our bill emphasizes the role of new and emerging technologies in transportation planning. Geospatial mapping technologies have inspired innovative and successful planning processes in many States around the country. We encourage States to continue to develop and implement those technologies and to integrate them into the transportation planning process.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I have a couple of issues I will address as in morning business. I ask consent.

The PRESIDING OFFICER. Without objection, it is so ordered.

A PREMATURE BSE DECISION

Mr. DASCHLE. Mr. President, yesterday the Bush administration called to end the short-term investigation into the recent mad cow scare. While many of us believe Secretary Veneman and her staff have done a good job on many fronts, the decision to suspend the investigation is extremely premature. Despite the high safety standards met by cattle producers, consumers still have questions about the safety of America's meat supply. By curtailing its investigation, the Bush administration has chosen not to do all it can to settle the questions raised by the discovery of a single Canadian-born cow infected with BSE.

In 2001, a herd of 81 cattle came into the United States from Canada. One of those animals turned out to have BSE. USDA, through its investigation, has managed to locate 28 of the remaining 80 Canadian-born animals. We are grateful for these efforts, but there is a lot more work to do. Twenty-eight is not 80.

Last year, USDA Chief Veterinarian Ron DeHaven said:

> We feel confident that we are going to be able to determine the whereabouts of most if not all of these animals within the next several days.

Six weeks later, those early hopes have been disappointed. Consumers have a right to know why those other cattle were not found and what more, if anything, can be done.

If we assume the Canadian index herd were all fed the same bovine byproduct known to cause BSE, it is possible the other animals currently in the United States may also have the disease.

An international panel convened by USDA announced last week they believe some cattle in the U.S. may actually have BSE. While the likelihood an American consumer would come into contact with the meat from one of the infected cows is low, Government has the responsibility to do all it can to instill consumer confidence in the safety and quality of our food system and the food we feed our families.

That work has not been completed because the investigation has not been adequately ended. While the risk to human health may be remote, the Bush administration is doing a disservice to consumers by short-circuiting the good work USDA has done to locate the Canadian-born animals in question.

In the face of so many doubts and questions, it makes no sense to cut this investigation short. Some suggest pressure from the hugely concentrated meatpacking industry is responsible. A small handful of meatpackers controls 80 percent of the beef in the United States. In fact, this is such a significant problem that the Senate approved legislation as part of its last farm bill to address problematic concentration in the meatpacking industry. Unfortunately, that provision was stripped during the conference and was not included in the final farm bill.

Along with this growing concentration comes greater influence within the administration itself. I am not suggesting the packers did something unlawful, but the fact remains they wanted to end this investigation because it cast a cloud over their products. Evidently, these are the interests the Bush administration has chosen to advance above others.

Others have suggested the Bush administration took this step in its zeal for a single American trading continent—no borders with the Canadians or the Mexicans whatsoever. In fact, after the farm bill was passed, the Secretary suggested we should have a continent-of-origin label for certain agricultural products. If that had been pursued, we would never be able to differentiate between our highest quality products and those from Canada and Mexico. As it is, Americans today, still, do not have the option of knowing where our food comes from.

This is particularly important with regard to beef in light of the BSE scare. American consumers are simply asking for a label with basic information about the food they eat. In fact, 80 percent of Americans have said they would like to know where their meat comes from. That is why Senators on both sides of the aisle fought for and won approval of the country-of-origin labeling law. It is why many of us have charged those opposed to COOL with acting irresponsibly. In a backroom deal before the BSE scare, Republicans met in private and delayed the COOL law for 2 years.

The Senate has shown time and time again that we support this important consumer law and that we want to see it back in law, to ensure implementation this fall. In fact, the law still requires USDA to develop the regulations by this fall. So, when we change the date of implementation back to September of this year, there should be no delay whatsoever in USDA implementing it on time as the law originally required. But we should not even have to wait for that. USDA has the authority to immediately provide this information to consumers, to tell them where their food and, in particular, where their meat originated. If we have that, consumers can stay away from Canadian-born cattle, at least until the animals in question that have not been located in the United States are actually found.

But to date the administration will have none of it. They will not help inform U.S. consumers, even though our major export markets have requested we certify that our exports are born and raised and processed in our country. I don't understand why the administration will not provide U.S. consumers the information they want and our foreign trading partners the information they now demand.

The only answer that keeps coming back to many of us is while COOL is good for average Americans, it is inconvenient for the large meatpacking cartel since they would be required to affix a simple label to their products and track the meat from the stockyard to the store shelf. So, despite the support of 167 consumer groups representing over 50 million Americans,

the administration denies Americans this basic information.

USDA should reopen the investigation and try to locate all of the cattle from the Canadian index herd. They should also assist American consumers and American farmers and ranchers by immediately implementing a ''Product of the USA'' labeling program under emergency regulations. Instead of bowing to pressure and cutting short a valuable investigation, the administration should take a step back and rethink its priorities. The BSE scare is now hurting all of our ranchers, as over 40 countries have banned imports from the United States. The American livestock industry is being tarnished and ranchers are suffering because of one Canadian cow. The industry should not be further tarnished by inappropriate Government action. The administration should reopen the investigation, drop its opposition to labeling, and implement COOL immediately.

For the sake of America's farmers and ranchers, for consumer confidence in the safety of our food supply, the administration needs to do the right thing. Though it might upset a few special interests, the American people will overwhelmingly support such an action because it is in their interest. I, for one, will commend the President for his thoughtful reversal of this misplaced policy priority.

WHITE HOUSE SAYS EXPORTING U.S. JOBS IS ''GOOD FOR THE ECONOMY''

Mr. President, the other issue I wanted to discuss briefly is a new position taken by the administration, reflected in this newspaper. The article appeared this morning in the Los Angeles Times. The headline reads, ''Bush Supports Shift of Jobs Overseas.''

I ask unanimous consent the article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Los Angeles Times, Feb. 10, 2004]

BUSH SUPPORTS SHIFT OF JOBS OVERSEAS

(By Warren Vieth and Edwin Chen)

WASHINGTON.—The movement of American factory jobs and white-collar work to other countries is part of a positive transformation that will enrich the U.S. economy over time, even if it causes short-term pain and dislocation, the Bush administration said Monday.

The embrace of foreign out-sourcing, an accelerating trend that has contributed to U.S. job losses in recent years and has become an issue in the 2004 elections, is contained in the president's annual report to Congress on the health of the economy.

''Outsourcing is just a new way of doing international trade,'' said N. Gregory Mankiw, chairman of Bush's Council of Economic Advisors, which prepared the report. ''More things are tradable than were tradable in the past. And that's good thing.''

The report, which predicts that the nation will reverse a three-year employment slide by creating 2.6 million jobs in 2004, is part of a weeklong effort by the administration to highlight signs that the recovery is picking up speed. Bush's economic stewardship has become a central issue in the presidential campaign, and the White House is eager to demonstrate that his policies are producing results.

In his message to Congress on Monday, Bush said the economy ''is strong and getting stronger,'' thanks in part to his tax cuts and other economic programs. He said the nation had survived a stock market meltdown, recession, terrorist attacks, corporate scandals and war in Afghanistan and Iraq, and was finally beginning to enjoy ''a mounting prosperity that will reach every corner of America.''

The president repeated that message during an afternoon discussion about the economy at SRC Automotive, an engine-rebuilding plant in Springfield, Mo., where he lashed out at lawmakers who oppose making his tax cuts permanent.

''When they say, 'We're going to repeal Bush's tax cuts,' that means they're going to raise you taxes, and that's wrong. And that's bad economics,'' he said.

Democrats who want Bush's job were quick to challenge his claims.

Sen. John F. Kerry of Massachusetts, the front-runner for the Democratic presidential nomination, supports a rollback of Bush's tax cuts for the wealthiest Americans and backs the creation of tax incentives for companies that keep jobs in the United States—although he supported the North American Free Trade Agreement, which many union members say is responsible for the migration of U.S. jobs, particularly in the auto industry, to Mexico.

Campaigning Monday in Roanoke, Va., Kerry questioned the credibility of the administration's job-creation forecast.

''I've got a feeling this report was prepared by the same people who brought us the intelligence on Iraq,'' Kerry said. ''I don't think we need a new report about jobs in America. I think we need a new president who's going to create jobs in America and put Americans back to work.''

In an evening appearance at George Mason University in Fairfax, Va., Sen. John Edwards of North Carolina mocked the Bush administration's economic report.

Edwards, who also supports repealing tax cuts for the richest Americans and offering incentives to corporation that create new jobs in the United States, said it would come as a ''news bulletin'' to the American people that the economy was improving and that the outsourcing of jobs was good for America.

''These people,'' he said of the Bush administration, ''what planet do they live on? They are so out of touch.''

The president's 411-page report contains a detailed diagnosis of the forces the White House says are contributing to America's economic slowdown and a wide-ranging defense of the policies Bush has pursued to combat it.

It asserts that the last recession actually began in late 2000, before the president took office, instead of March 2001, as certified by the official recession-dating panel of the National Bureau of Economic Research.

Much of the report repeats the administration's previous economic prescriptions.

For instance, it says the Bush tax cuts must be made permanent to have their full effect on the economy.

Social Security also must be restructured to let workers put part of their retirement funds in private accounts, the report argues. Doing so could add nearly $5 trillion to the national debt by 2036, the president's advisors note, but the additional borrowing would be repaid 20 years later and the program's longterm health would be more secure.

The report devotes an entire chapter to an issue that has become increasingly troublesome for the administration: the loss of 2.8 million manufacturing jobs since Bush took office, and critics' claims that his trade policies are partly to blame.

His advisors acknowledge that international trade and foreign outsourcing have contributed to the job slump. But the report argues that technological progress and rising productivity—the ability to produce more goods with fewer workers—have played a bigger role than the flight of production to China and other low-wage countries.

Although trade expansion inevitably hurts some domestic workers, the benefits eventually will outweigh the costs as Americans are able to buy cheaper goods and services and as new jobs are created in growing sectors of the economy, the report said.

The president's report endorses the relatively new phenomenon of outsourcing high-end, white-collar work to India and other countries, a trend that has stirred concern within such affected occupations as computer programming and medical diagnostics.

''Maybe we will outsource a few radiologists,'' Mankiw told reporters. ''What does that mean? Well, maybe the next generation of doctors will train fewer radiologists and will train more general practitioners or surgeons. . . . Maybe we've learned that we don't have a comparative advantage in radiologist.''

Government should try to salve the short-term disruption by helping displaced workers obtain the training they need to enter new fields, such as healthcare, Mankiw said, not by erecting protectionist barriers on behalf of vulnerable industries or professions. ''The market is the best determinant of where the jobs should be,'' he said.

Bush's quick visit to Missouri—his 15th to a state considered a critical election battleground—was the first of several events this week intended to underscore recent economic gains. Although U.S. job creation remains relatively sluggish, the nation's unemployment rate fell from 6.4% in June to 5.6% in January, and the economy grew at the fastest pace in 20 years during the last half of 2003.

The format of his visit to SRC Automotive—one that he particularly likes—involved several employees and local business owners sharing the stage with the president to discuss their perspectives on the economy, with Bush elaborating on their stories to emphasize particular aspects of his economic program.

Today, Bush is scheduled to meet with economic leaders at the White House. On Thursday, he goes to Pennsylvania's capital, Harrisburg—in another swing state that he has already visited more than two dozen times since becoming president.

Mr. DASCHLE. When I saw the headline, I had to read it twice.

I actually could not believe what I was reading. Again the quote is from the headline, ''Bush Supports Shift of Jobs Overseas.''

Our economy has already lost 2.6 million jobs in the last 3 years. We have 9 million Americans who are unemployed. Long-term unemployment is at a 20-year high, and 80,000 workers are exhausting their unemployment benefits every week because our Republican colleagues refuse to extend temporary Federal unemployment benefits.

What does the White House say? The President's top economic advisers tell us not to worry. They say shipping American jobs to China, India, and other countries is actually good for the economy. Those comments are actually in this article. It is a direct quote, that these American jobs shipped abroad are good for the economy. They say exporting computer programming jobs and

other white-collar jobs is actually good for the economy.

The White House acknowledges some workers will be hurt. But then they say the ''benefits'' of exporting American jobs ''eventually will outweigh the costs as Americans are able to buy cheaper goods and services and new jobs are created in growing sectors of the economy.''

How are people without jobs supposed to buy all of these goods and services? How do you keep a consumer economy going when you export the jobs? What are they thinking?

The chairman of the President's Council of Economic Advisers, the office that wrote the report, says the ''government should try to salve the short-term disruption by helping displaced workers obtain the training they need to enter new fields, such as health care.'' That sounds like a cruel joke.

The President's proposed budget for next year cuts money for Federal job training.

You have on the one hand the President's council arguing we ought to train displaced workers but then have the budget presented to Congress as one which actually cuts the very training the administration is advocating.

How do people know what fields to train for? How do they know the jobs they are training for won't be the next jobs targeted to be shipped overseas with the encouragement of the White House?

Maybe exporting American jobs sounds like a good idea if you are sitting in some think tank, or behind a desk at the White House, or here on the Hill. But out in the real world, it is creating real hardship and anxiety.

I have seen what happens when plants ship their jobs overseas. It happened in my hometown 2 years ago. Midcom, Incorporated makes electronic transformers for high-tech companies. They used to employ 200 people in Aberdeen. One Tuesday morning in March of 2001, those workers showed up for work and were told their jobs were going to be gone in 3 months, many of them to Mexico and China.

I have met with many of those workers. A lot of them are women in their 40s and 50s, and their families depended on their incomes to make ends meet. They don't see how exporting their jobs was a good idea for the economy, and neither do most Americans.

The chairman of the President's Council of Economic Advisers is quoted as saying, ''Out-sourcing is just a new way of doing international trade.'' ''More things are tradable than were tradable in the past. ''

Not everything is tradable. The dignity that comes from earning an honest dollar and providing for your family is not tradable. The security that comes from knowing you can pay the bills and you are not going to lose your home is not tradable. The sense of patriotism and community that says we are all in this together is not a tradable commodity.

The White House report predicts a miraculous economic recovery this year. They say we could see the creation of 3.8 million jobs. The White House has said the economy will create millions of jobs every year now for the last 3 years. And they have been wrong. They are wrong now when they say exporting American jobs is good for the economy. The White House has lost more jobs on President Bush's watch than the last 11 administrations put together. They have cut job training in education. They are blocking Federal unemployment benefits. And now, incredibly, they are saying that exporting middle-class, white-collar jobs is good for the economy.

Instead of policies that reward companies for shifting jobs overseas, instead of letting companies open a post office box in some island nation and call it their corporate headquarters so they skip out on paying taxes, America needs a real plan to keep the good jobs we have here and create many more of them.

I yield the floor.

The PRESIDING OFFICER (Mr. HAGEL). The Senator from Missouri.

Mr. BOND. Mr. President, I understand there is an amendment of the Senator from Virginia and the Senator from New York pending. Is that the pending business?

The PRESIDING OFFICER. The Senator is correct.

Mr. BOND. Mr. President, I spoke about this amendment this morning. For those who may not have been fortunate enough to hear it, let me reiterate just a few of the important points.

This is a mandate. This is very clearly a mandate with a very severe penalty on any State that doesn't either have 90-percent usage of seatbelts or a primary seatbelt law.

I came to this body as a former Governor who has seen so much of the big brother influence telling State Governors and State legislators what they have to do, and I said we need to find a better way of doing things. I also said I happen to be a strong believer in seatbelts. I have been in a couple of serious accidents. Because I had a seatbelt on and the shoulder harness, I came away with only a good fright, and, fortunately, with no serious injuries. I have seen many other people who were not so fortunate. I believe in encouraging seatbelt usage. I believe the proper way to do it is through incentives and encouragement.

Under this proposed amendment, in fiscal year 2005 and thereafter, 10 percent of the funds under the Highway Safety Improvement Program would be transferred to the section 402 program, and beginning in 2007, 2 percent of the Interstate Maintenance, Surface Transportation and Bridge Programs would be withheld from States that didn't have a primary seatbelt law or achieve at least a 90-percent safety belt use rate. The percentage withheld would rise to 4 percent in fiscal year 2008 and thereafter.

Why do I object to that? That is telling the people who pay the money into the Federal highway trust fund through their taxes on the fuel they buy that their legislature has to do what we say they should or we are going to withhold the money from them. I believe we cannot continue to usurp the activities and the roles of State legislatures and State chief executive officers.

I introduced a letter from a number of organizations saying:

> Currently States face 8 highway safety-related sanctions and penalties that are designed to force compliance with various Federal highway safety mandates or goals, including enactment, by specified deadlines, of various types of State safety legislation. While our organizations support the underlying safety goals, we oppose the use of penalties and sanctions.

They go on to say:

> Fewer resources to invest means delays in roadway and intersection improvements, fewer dollars for upgrading signage and markings, and less funding available for investment and safety research.

Also signing this letter are the executive director of the American Association of State Highway and Transportation Officials, the executive director of the Governors Highway Safety Association, the president and chief executive officer of the American Highway Users Alliance, the executive director of the International Association of Chiefs of Police, the executive director of the Commercial Vehicle Safety Alliance, the executive director of the National Conference of State Legislators, the president of the American Council of Engineering Companies, and the vice president of Public Affairs of the AAA, as well, I might say not surprisingly, as the executive director of the National Governors Association.

I hope we may be able to have a vote on that very shortly. But I would defer to the principal sponsor of the amendment to speak in opposition to the arguments I have made.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank my colleague for his courtesy, and that of the distinguished chairman of the committee, Senator INHOFE.

I say to my dear friends: What price do you put on life? No one disputes this legislation will save lives. I don't know of anyone in this Chamber who wouldn't put the highest possible priority on saving lives.

This legislation follows, in many respects, what this Chamber did not too many years ago when it was faced with the problem of trying to reduce the actions and loss of life or injury occasioned by the abuse of alcohol and then driving the automobile.

As a consequence of that, 47 States now have complied with that statute. It is a success in terms of the limited goals that could be set realistically by the .08 drinking level. It achieved the goals in 47 States.

We are asking the average American, about 79 percent of our constituents in

the 50 States—it varies from State to State but overall average, nationally, 79 percent—who use the seatbelt, we are just trying to take it from 79 percent up to 90 percent.

That is the purpose, to save lives, very often innocent lives. It is a well-known, documented fact that in a collision, those who have safety belts on have a higher degree of physical control over the vehicle with the hope of trying to reduce the consequences of the inevitable accident. Without a seatbelt, the driver is often jostled in such a way that he or she loses total control of the car and often an innocent individual is injured.

It is the youth of this Nation who will be the principal beneficiaries of this legislation because, regrettably, it is the young people who are so often involved in these frightful accidents. For whatever reason, macho or otherwise, they do not wear their seatbelts.

This law would simply say that law enforcement in the several States, when they observe a car passing and the driver does not utilize their safety belt, can pull that driver over. In my State today, that driver cannot be pulled over unless he or she is committing an offense other than not wearing their safety belt. Law enforcement can then pull that driver over if he or she is not wearing their safety belt and levy whatever penalties are appropriate. But it is that fear of being pulled over, particularly among those young people, who always seem to be fighting accumulated points for driving infractions, who will be the principal beneficiaries.

The men and women of the Armed Forces, regrettably—so many of them, again, ages 18 to 30—are involved in these accidents. So we are helping our military because they will comply with this law of the several States if there is a mandatory seatbelt law.

When my colleagues cast their vote momentarily, stop to think, what price do you put on a life? I bet if you go back—perhaps I can resurrect how you voted on the .08 legislation for alcohol; this is a direct parallel in almost every way.

This is not mandated because the State, on its own initiative, can devise a program to go to 90 percent. It does not have to follow this track. Go ahead, there might be a better idea in your State to reach 90 percent. Then there is no problem under this law; you have met the criteria.

As that bell rings and you approach the Chamber, just ask yourself the question, What price do I put on a life? Because no one in this Chamber can stand up and say this law would not save lives, would not save injuries, would not save money now expended by your local community to care for those in an accident, many of whom do not have insurance. And the bill stops at your local hospital, unpaid. We did it for .08; we can do it for this.

I thank my colleagues for patiently listening to me. My distinguished colleagues from Missouri read off a list of endorsements and I have 135 groups here. The American Medical Association—I listened very carefully yesterday at a press conference when this was addressed by their representative—is strongly in favor of this. My colleague from Missouri mentioned the chiefs of police. I am proud to say my State, the Virginia Chiefs, endorse this statute. As I say, the President, through his Secretary of Transportation, while not directly addressing this specific piece of legislation, said:

> I believe that increasing safety belt usage rates is the single most effective means to decrease highway fatalities and injuries.

I have two cosponsors on this bill. I wonder if the distinguished manager would enable me just to contact them?

Mr. INHOFE. Will the Senator yield?

Mr. WARNER. Yes.

Mr. INHOFE. In fairness to the Senator's cosponsors and in fairness to others who may not be easily retrievable at this time, I believe it would be a good idea to defer the vote. I will move to table and ask for the yeas and nays but ask the leadership to maybe put it tomorrow morning sometime. That will give the Senator ample time and provide time for them to be heard on the bill. Is that acceptable?

Mr. WARNER. That is a reasonable request. I think the distinguished Senator from New York, Mrs. CLINTON, would require, say, 10 minutes and the distinguished Senator from Ohio, Mr. DEWINE, and the distinguished Senator from Washington, 10; I will take 5 more minutes; maybe 40 minutes on this side prior to the vote.

Mr. INHOFE. I do not have a problem with that and 40 minutes on this side at all. Why not plan to do that?

Now I have been told we cannot lock in time agreements on a tabling motion, so I will withhold.

Let me be sure we all understand: In my State of Oklahoma, it perhaps makes no difference. We are one of the 20 States that has mandatory seatbelt laws. In fact, it could be argued we could be benefited by this because if other States do not comply and are punished, then that amount of money could go to the States that already comply. So I could actually benefit.

My problem has always been, as the distinguished Senator from Virginia knows, it is a mandate. I would prefer not to do it this way.

I know the Senator's heart is right. I know there is another great person who served in here by the name of John Chafee who felt as strongly about this as the distinguished Senator from Virginia.

Mr. WARNER. Also, Mr. President, we discussed the possibility that I could amend this because I think the distinguished chairman pointed out that 8 months is a short time. So if we could have a gentlemen's understanding that perhaps I could amend it in such a way to take that clause and revise it to enable States to have more time.

Mr. INHOFE. Yes.

Mr. WARNER. Mr. President, we are accommodating the desires of the managers of this bill. Certainly as the chief proponents of this amendment, as long as my cosponsors have an opportunity to speak to it, this matter will be handled fairly.

I yield the floor.

MOTORCYCLE SAFETY

Ms. MURKOWSKI. Mr. President, the Bureau of Transportation Statistics tells us that almost 5 million motorcycles are registered to operate on America's roadways, covering almost 17 million miles per year. Many more are used off-road, and some estimates put the actual number of riders at up to 20 million.

All these Americans choose to ride motorcycles either for recreation or for their primary means of transportation, and every year the number of Americans on motorcycles increases. As that number increases, so does the number of accidents, including fata accidents. Yet we are falling tragically behind in training these individuals to ride safely.

The single best way to avoid injuries, fatalities, high insurance costs, lawsuits, medical costs and all the other factors that come into play is by avoiding the accidents in the first place.

The National Highway Traffic Safety Administration, in its Motorcycle Safety Program issued in January 2003, said: ''Crash prevention . . . offers the greatest potential safety benefit for motorcyclists.''

And the single best way to avoid accidents is to provide safety training.

Training works.

Untrained riders have accidents, and trained riders do not. It is really as simple as that.

A study of the California Motorcyclist Safety Program designed by Dr. John Billheimer and completed in 1996 found that rider training dramatically reduces accidents, and thus eliminates injuries and fatalities. Specifically, the study stated, ''Analyses of statewide accident trends show that total motorcycle accidents have dropped 67 percent since the introduction of the California Motorcyclist Safety Program, with a drop of 88 percent among the under-18 riders. . . . If accident trends in California had paralleled those in the rest of the U.S. over this period, the State would have experienced an additional 124 fatalities per year. By any measure, the California Motorcyclist Safety Program is a cost-effective program that pays for itself many times over in saved lives and reduced accident rates.''

Even more recent statistics from the Commonwealth of Virginia are equally telling. Virginia has approximately 110,000 registered motorcycle. Since 1998, there have been 7,099 motorcycle crashes in Virginia and 222 of those crashes have been fatal. Yet out of all those accidents, the number involving riders with formal training is less than 4 percent of the total, and the number

of fatal accidents involving trained riders is just 1.8 percent. The vast majority of all accidents—over÷ 96 percent—are riders without training.

The most far-reaching document yet completed on motorcyclist safety is the ''National Agenda for Motorcycle Safety,'' a cooperative effort by the National Highway Traffic Safety Administration, the Motorcycle Safety Foundation, the National Association of State Motorcycle Safety Administrators, and a host of others representing the insurance industry, law enforcement, riders, traffic safety experts and others.

The National Agenda identified a number of steps needed to reduce the tragic rate of motorcycle accidents. Uppermost among them is the need for better training.

Where does motorcyclist training come from? Who does it? How is it funded?

The truth is, training, and funding for training, is a mixed bag. And that, is exactly the problem. Most States provide at least moral support, but there is no uniform process for ensuring that training is provided, or that the facilities and funding is made available.

In most cases, training is funded almost entirely by the students themselves, who pay up to $300 per person for the privilege. Many States also collect money—often a nominal charge of $5.00 for a motorcycle operator's license. Both these efforts to raise funds are strongly supported by and promoted by the motorcycling community—but they want to ensure that the funds are actually used for things that enhance motorcyclist safety.

As for the curriculum itself, far and away the most frequent choice is the material created by the Motorcycle Safety Foundation (MSF), a group supported by the major motorcycle manufacturers.

The MSF course material for beginning motorcyclists is extremely comprehensive. It focuses on teaching the skills and knowledge needed for safe riding—beginning with the use of proper equipment such as gloves, boots and helmets, goes on to teach students how to predict and avoid hazardous situations, and graduates to teaching the physical skills needed for crash avoidance. This is precisely the course material that has produced such outstanding results in California, Virginia and many other States.

You may well ask, ''If training is so successful, why do we still have so many accidents? The answer is as simple as can be: training availability lags far behind the demand.

Throughout the country, the waiting list to join a training class ranges from several weeks to several months.

In California, which has one of the oldest and strongest programs, it may take as long as 3 months.

In Wisconsin, one of the States where training dollars were totally eliminated, motorcyclist groups have stepped up to the plate to self-fund training, but the waiting list may be as large as 7,000 people.

Illinois trained 8,500 people in 2000, but had to turn away nearly 3,000 more for lack of space. Course capacity increased in 2001 and 2002, but the number of people turned away increased faster. In 2003, almost 11,000 students completed training, but almost 4,000 were told ''Sorry, there's no room for you.''

And that's the story in State after State.

Unfortunately, what that means is that untrained riders are increasing in number all the time. If you can pass your State's test, you can ride. And if you just spent thousands of dollars on a new motorcycle, the chances are you won't be letting that new motorcycle license go to waste. But a licensed rider isn't necessarily a trained rider, nor is he or she necessarily a safe rider. It takes training—or years of experience—to make a safe rider. The statistics from California and Virginia confirm that for all to see.

At the appropriate time, it is my intention to seek action to encourage the State to provide more and better support for these vital training efforts.

Now, let me turn to another concern of the motorcycling community. A large part of the training needed to produce safe riders consists of teaching them how to avoid road hazards that simply should not exist in the first place. In many cases, highway engineering practices focus on four wheels, not two.

The average driver cruises past such things as bridge expansion joints, loose manhole covers, the slick sealants used to fill cracks in asphalt pavement, rough asphalt patches, rumble strips and lane-dividing buttons that keep drivers awake, and the steel or steel cable barriers along the side of the road. Yet any or all of these things may be hazardous to a rider.

The motorcycling community has long sought ways to let engineers and designers know about those hazards, and work with them to design better systems. I have seriously contemplated offering an amendment that would address this issue, but I am happy to report that such an amendment may not be needed.

That concludes my statement for the movement, but at this time I would like to engage in a colloquy with the chairman of the Environment and Public Works Committee on this matter.

I have been working in several areas to address the issue of motorcyclist safety. As part of this effort, I have been working to establish an Advisory Council to assist the Secretary of Transportation in developing the appropriate safety specifications for highways and motorcycles. Fatalities among motorcyclists have gone up dramatically, rising from 2,112 in 1997 to 3,244 in 2002. Because motorcyclists have special needs and concerns, I have long been concerned that the Department of Transportation has not had adequate input from either riders or experts outside the Department itself. Thus, I proposed establishing a council of riders and experts to advise the Secretary on their unique safety needs.

Chairman INHOFE has been very helpful in trying to find the most appropriate way to get this accomplished. He suggested and I agreed to work with the American Association of State Highway and Transportation Officials—AASHTO, which is the organization that actually develops guidelines for highway safety engineering.

I recently received from AASHTO a letter describing a task force it has developed to identify strategies that can be used to reduce motorcycle fatalities and injuries. I believe this task force may be able to accomplish my goal of elevating the unique safety needs of motorcyclists to greater attention by including both riders and outside experts in its deliberations. As a result, I have decided not to offer an amendment to establish an advisory council at this time.

I believe that Chairman INHOFE has had an opportunity to look over the AASHTO letter and I am wondering if he agrees with me that this will accomplish what we have been working towards.

Mr. INHOFE. I have read the AASHTO letter to Senator MURKOWSKI and agree with her that the task force proposed by AASHTO will indeed accomplish what she seeks to achieve.

Mr. President, I ask unanimous consent that the letter from AASHTO dated February 3, 2004 to Senator MURKOWSKI be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS,

Washington, DC, February 3, 2004.

Hon. LISA A. MURKOWSKI,

U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR MURKOWSKI: It has been brought to our attention that motorcycle safety issues are of great concern to you and your constituents. As you know, motorcycle fatalities have gone up dramatically in the past several years, rising from 2,112 fatalities in 1997 to 3,244 in 2002. The State transportation agencies share your commitment to addressing this public safety problem.

Motorcycle riding has special needs and concerns. Currently, the American Association of State Highway and Transportation Officials (AASHTO), through the National Cooperative Highway Research Program (NCHRP), is developing guidance for the State transportation departments on motorcycle issues as part of the implementation of our Strategic Highway Safety Plan. Part of this multi-million-dollar research effort is focused on improving motorcycle safety and increasing motorcycle awareness. Targeted areas in which I understand you may share a strong interest include:

Increasing the awareness of motorcycles on the road through a ''share-the-road with motorcycles'' campaign and stressing the importance of motorcycle awareness information in driver training courses, driver handbooks or manuals, and licensing tests;

Expanding comprehensive motorcycle rider education and skill testing in all States for novice riders; and

Reducing drinking and driving by motorcyclists through alcohol awareness messages and targeted enforcement.

As part of this effort, a workshop is being planned for June 2004 to identify strategies that can be used to reduce motorcycle fatalities and injuries. You and/or your constituents are welcome to participate in, and contribute to, this workshop. The result of this research project will be the development of a guide for highway officials on practices than can improve safety for motorcyclists throughout the transportation system.

Also as part of the implementation of our Strategic Highway Safety Plan, ASSHTO has committed to the creation of a joint task force to identify hazards/areas of concern to motorcyclists, as well as highway practices that can help minimize these concerns. Examples include the longitudinal expansion joints on bridges, the slickness of material used to fill asphalt pavement cracks, and the safety of various types of guardrail including traditional steel W-beam guardrail and the newer cable barriers. This joint task force will consist of members from the State transportation departments, the American Motorcyclist Association, the Motorcycle Riders Foundation, the National Highway Traffic Safety Administration, and the Federal Highway Administration. Additional input may also be sought from other noted experts in the areas of motorcycle and highway safety both here and abroad. The information developed by this special committee will be used as input into the revision and update of the various AASHTO manuals and guides.

We are very pleased that you have an interest in this area and we are committed to working with you over the next year to ensure that these issues are addressed and that the resulting recommendations are successfully implemented. Please contact my office at (202) 624–5800 if you have any questions regarding this information.

Sincerely,

JOHN C. HORSLEY,
Executive Director.

Mr. INHOFE. I understand that the Senator has also proposed creating a new program to encourage improvements in the States' motorcycle safety programs. I believe this amendment would be very valuable. I also believe it would be most appropriate offered as part of the Commerce Committee title, and would like to be added as an original cosponsor of the amendment when that happens.

Ms. MURKOWSKI. I thank the Chairman for his assistance and will add him as an original cosponsor when that amendment is offered.

The PRESIDING OFFICER. Who seeks recognition?

Mr. INHOFE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE MOTION

Mr. FRIST. Mr. President, I now send a cloture motion on the bill to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair lays before the Senate the cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 426, S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

Bill Frist, James Inhofe, Christopher Bond, Gordon Smith, Lamar Alexander, Richard Lugar, Lincoln Chafee, Elizabeth Dole, George Allen, Pat Roberts, Robert Bennett, Craig Thomas, Richard Shelby, Norm Coleman, Mike Crapo, Mike Enzi, Jim Bunning.

MORNING BUSINESS

Mr. FRIST. I now ask unanimous consent that there be a period for morning business with Senators to speak for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

HONORING OUR ARMED FORCES

SECOND LIEUTENANT LUKE S. JAMES

Mr. INHOFE. Mr. President, I rise today to honor the memory of a brave young American who gave his life defending our Nation. I went to the ceremony out at Arlington this morning for this young man. It was one of the most moving experiences I have ever had. This man felt a call to serve his country, to be a part of something bigger than himself. For that call, he paid the highest price.

2LT Luke James of Hooker, OK, was a platoon leader in the 82nd Airborne's B Company, 2nd Battalion, 505th Parachute Infantry Regiment, stationed at Fort Bragg, NC. He is survived by his wife Molly and their little son Bradley who was born just 6 months ago. His parents Brad and Arleen James live in Hooker, OK, where Luke played football at Hooker High School and graduated near the top of his class. Luke later attended and graduated from Oklahoma State University where he participated in the ROTC program and earned a degree in animal science.

While on a dismounted patrol, Luke was killed by a roadside bomb during an ambush on January 27. He gave his life for the freedom of millions of Americans and for the peace and future of the Iraqi people.

Lieutenant James had long imagined a life of service in the Army. He was going to be career. These aspirations were realized culminating with his commissioning into the airborne infantry on December of 2002. His parents have described how Luke embodied the selfless attitude toward service to country that is so evident in all of our military men and women.

On February 10, I had the opportunity to attend Lieutenant James' funeral at Arlington National Cemetery. The ceremony honored Luke, and deservedly so. In the words of Lieutenant James's mother, speaking of her son, she said:

We are very proud as his parents that he had the attitude he had, and wanted to serve. . . . It wouldn't have been this mother's choice, but you have to have young men and women willing to preserve the freedom we have. We are glad he was willing.

He was willing. We as a nation are grateful. The loss of 2LT Luke S. James is grievous to all of us. Our thoughts are with his wife and son, as well as his family in Oklahoma.

Today we recognize his valor and commitment. It is for men like Luke James I am proud to be a part of this great Nation. He was a special soldier, a real Oklahoman, and a true American.

As we tour over there, and see these young warriors and their attitude and commitment and patriotism, it is so heartwarming. I am sure at one time or another I saw Luke, but I don't remember when that was. But he is certainly typical, and his family, recognizing that he made the supreme sacrifice, but he made it for us. He knew that risk was there when he took on the position he held.

THE CASE OF MAHER ARAR

Mr. LEAHY. Mr. President, I rise to speak about a very troubling case of rendition and alleged torture that became public last fall. This is the case of Maher Arar, a Canadian and Syrian citizen, who was deported from the United States to Syria last year, who was held and interrogated for months by the Syrians at the Bush administration's request, and who claims to have suffered torture while in custody there.

Mr. Arar was stopped by immigration officers at John F. Kennedy International Airport in September 2002 as he attempted to change planes on his way home to Canada from Tunisia. He claims that he was interrogated by an FBI agent and a New York City police officer, and that he was denied access to a lawyer. He further claims that he repeatedly told U.S. officials that he feared he would be tortured if deported to Syria. After being held for nearly two weeks in a federal detention center in New York, Mr. Arar was transferred by U.S. authorities to Syria. Arar claims that he was physically tortured during the first two weeks of his detention in Syria, and that he was subjected to severe psychological abuse over the following ten months, including being held in a grave-like cell and being forced to undergo interrogation while hearing the screams of other prisoners.

Syria has a well-documented history of state-sponsored torture. In fact, President Bush stated on November 7, 2003, that Syria has left ''a legacy of torture, oppression, misery, and ruin'' to its people. Stories like Mr. Arar's are appalling and, if true, seriously

damage our credibility as a responsible member of the international community.

When unrelated allegations of rendition and possible breaches of the Convention Against Torture (''Torture Convention'') surfaced in the summer of 2003, I wrote to administration officials asking for guarantees that the United States is complying with its obligations under this Convention. I received a response from the General Counsel of the Department of Defense, William J. Haynes. His letter contained a welcome commitment by the administration that it is the policy of the United States to comply with all of its legal obligations under the Torture Convention. I wrote to Mr. Haynes again for clarification on a number of points, such as how the administration reconciled this statement of policy with reported acts of rendition and accusations of the use of interrogation techniques rising to or near the level of torture. After 2 months with no response, another letter, this one not from Haynes himself but from a subordinate, was delivered late at night on the eve of Mr. Haynes' November 19, 2003 confirmation hearing for a seat on the Fourth Circuit Court of Appeals. That letter was totally unresponsive to my questions.

Because Mr. Arar claims that he was interrogated by an FBI agent, I wrote to FBI Director Mueller on November 17, 2003 for more information on the case. Later that week, when press accounts indicated that the deportation of Mr. Arar was approved by the Department of Justice (''DOJ''), I wrote to Attorney General Ashcroft to ask a number of additional questions. Neither of these letters has been answered.

Administration officials claim that the CIA received assurances from Syria that it would not torture Mr. Arar, and yet, spokesmen for DOJ have not explained why they believed the Syrian assurances to be credible. Nor have they explained inconsistencies in statements coming from officials at different agencies. Although the administration has officially welcomed statements by the Syrian government that Mr. Arar was not tortured, other unnamed officials have been quoted in the press as saying that, while in captivity in Syria, Mr. Arar confessed under torture that he had gone to Afghanistan for terrorist training. I have asked DOJ to address that shocking contradiction and also to explain whether the United States has investigated Syria's alleged non-compliance with any assurances it provided to the U.S. government.

Whether or not Mr. Arar had ties to terrorist organizations, as is alleged by U.S. officials, or whether his confession was a false one produced by coercion, as he claims, he was subject to the legal protections provided by the Torture Convention, which the United States has ratified.

Recently, the Canadian government announced a full inquiry into the deportation of Mr. Arar to Syria and his alleged torture there. This inquiry will also examine the role played by Canadian officials in the case to determine whether the Canadian government was complicit in the rendition of Mr. Arar. And just weeks ago, a non-profit organization, the Center for Constitutional Rights, filed a constitutional and human rights case on behalf of Mr. Arar with the U.S. District Court for the Eastern District of New York challenging the decision by federal officials to deport him to Syria. As the Washington Post editorialized on February 2, 2004, ''The government should be obliged to spell out how this decision came to be made and why.''

I urge my colleagues to follow this Federal court case the Canadian inquiry closely. If the allegations by Mr. Arar are true, then our government has much to answer for. The case has already damaged our standing with foreign governments, many of which we have criticized in the past for relying on torture in interrogations. If the U.S. is ''subcontracting'' interrogation of terrorism suspects to nations that bend the rules on torture, it undermines our reputation as a Nation of laws, it hurts our credibility in seeking to uphold human rights, and it invites others to use the same tactics.

I ask unanimous consent to print the letters I mentioned and the Washington Post editorial in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, February 2, 2004]

MR. ARAR'S LAWSUIT

The Federal lawsuit filed last week by Maher Arar—the Syrian-born Canadian whom the federal government deported to Syria—offers a good opportunity to shed some light on one of the more peculiar civil liberties cases to arise during the war on terrorism. Mr. Arar and the U.S. government agree on the barest outlines of his story: He was flying home from Tunisia to Canada in the fall of 2002 on a path that took him through New York. He had, however, been placed on the terrorist watch list. When he presented his Canadian passport, he was detained for more than a week and—despite his pleas to be sent to Canada—was sent to Syria. There he was held for 10 months until intervention by the Canadian government secured his release.

That is where agreement ends. Mr. Arar denies any connection to al Qaeda. He claims to have been savagely tortured in his country of birth. And he alleges that he was sent to Syria, rather than to Canada, precisely so that he would be tortured—to be precise, ''so that Syrian authorities would interrogate him in ways that [American officials] believed themselves unable to do directly.'' All of which, if true, would violate this country's international treaty obligations, which prohibit turning someone over to a government likely to mistreat that person. In Canada, Mr. Arar's case has become a cause, cited as an example of American arrogance and contempt for Canada's interests and citizens.

The American government firmly—if vaguely—denies any wrongdoing. It still claims that its information on Mr. Arar was solid, though it refuses to release any of what it terms ''sensitive national security information.'' Mr. Arar is a member of al Qaeda, the Justice Department alleged in a recent statement. Anonymous officials have been quoted in press accounts saying that he was carrying a list of al Qaeda operatives and that then-Deputy Attorney General Larry D. Thompson signed an order certifying that returning Mr. Arar to Canada would be ''prejudicial to the interests of the United States.'' The department says that Mr. Arar's deportation to Syria was ''fully within the law and applicable international treaties and conventions.'' Far from intending that Syria would torture him, in fact, the department claims that it was ''provided with reliable assurances that Mr. Arar would be treated humanely.''

There are two questions that we hope this litigation would shed light upon. The first is whether Mr. Arar was, in fact, a would-be-terrorist. The second is why he was sent to a country known for abusing human rights, instead of being sent to Canada or detained here as an enemy combatant. What was the goal, if not to delegate to the Syrians torture that American authorities cannot engage in? At the least, the government should be obliged to spell out how this decision came to be made and why.

U.S. SENATE,
Washington, DC, June 2, 2003.

Hon. CONDOLEEZZA RICE,
National Security Adviser, The White House, Washington, DC.

DEAR DR. RICE: Over the past several months, unnamed Administration officials have suggested in several press accounts that detainees held by the United States in the war on terrorism have been subjected to ''stress and duress'' interrogation techniques, including beatings, lengthy sleep and food deprivation, and being shackled in painful positions for extended periods of time. Our understanding is that these statements pertain in particular to interrogations conducted by the Central Intelligence Agency in Afghanistan and other locations outside the United States. Officials have also stated that detainees have been transferred for interrogation to governments that routinely torture prisoners.

These assertions have been reported extensively in the international media in ways that could undermine the credibility of American efforts to combat torture and promote the rule of law, particularly in the Islamic world.

I appreciate President Bush's statement, during his recent meeting with U.N. High Commissioner for Human Rights Sergio De Mello, that the United States does not, as a matter of policy, practice torture. I also commend the Administration for its willingness to meet with and respond to the concerns of leading human rights organizations about reports of mistreatment of detainees. At the same time, I believe the Administration's response thus far, including in a recent letter to Human Rights Watch from Department of Defense General Counsel William Haynes, while helpful, leaves important questions unanswered.

The Administration understandably does not wish to catalogue the interrogation techniques used by U.S. personnel in fighting international terrorism. But it should affirm with clarity that America upholds in practice the laws that prohibit the specific forms of mistreatment reported in recent months. The need for a clear and thorough response from the Administration is all the greater because reports of mistreatment initially arose not from outside complaints, but from statements made by administration officials themselves.

With that in mind, I would appreciate your answers to the following questions:

First, Mr. Haynes' letter states that when questioning enemy combatants, U.S. personnel are required to follow ''applicable laws prohibiting torture.'' What are those laws? Given that the United States has ratified the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT), is this Convention one of those laws, and does it bind U.S. personnel both inside and outside the United States?

Second, does the Administration accept that the United States has a specific obligation under the CAT not to engage in cruel, inhuman and degrading treatment?

Third, when the United States ratified the CAT, it entered a reservation regarding its prohibition on cruel, inhuman and degrading treatment, stating that it interprets this term to mean ''the cruel, unusual and inhumane treatment or punishment prohibited by the 5th, 8th, and/or 14th amendments to the Constitution.'' Are all U.S. interrogations of enemy combatants conducted in a manner consistent with this reservation?

Fourth, in its annual Country Reports on Human Rights Practices, the State Department has repeatedly condemned many of the same ''stress and duress'' interrogation techniques that U.S. personnel are alleged to have used in Afghanistan. Can you confirm that the United States is not employing the specific methods of interrogation that the State Department has condemned in countries such as Egypt, Iran, Eritrea, Libya, Jordan and Burma?

Fifth, the Defense Department acknowledged in March that it was investigating the deaths from blunt force injury of two detainees who were held at a Bagram air base in Afghanistan. What is the status of that investigation and when do you expect it to be completed? Has the Defense Department or the CIA investigated any other allegations of torture or mistreatment of detainees, and if so, with what result? What steps would be taken if any U.S. personnel were found to have engaged in unlawful conduct?

Finally, Mr. Haynes' letter offers a welcome clarification that when detainees are transferred to other countries, ''U.S. Government instructions are to seek and obtain appropriate assurances that such enemy combatants are not tortured.'' How does the administration follow up to determine if these pledges of humane treatment are honored in practice, particularly when the governments in question are known to practice torture?

I believe these questions can be answered without revealing sensitive information or in any way undermining the fight against international terrorism. Defeating terrorism is a national security priority, and no one questions the imperative of subjecting captured terrorists to thorough and aggressive interrogations consistent with the law.

The challenge is to carry on this fight while upholding the values and laws that distinguish us from the enemy we are fighting. As President Bush has said, America is not merely struggling to defeat a terrible evil, but to uphold ''the permanent rights and the hopes of mankind.'' I hope you agree that clarity on this fundamental question of human rights and human dignity is vital to that larger struggle.

Thank you for your assistance.

Sincerely,

PATRICK LEAHY,
U.S. Senator.

GENERAL COUNSEL OF THE
DEPARTMENT OF DEFENSE,
Washington, DC, June 25, 2003.

Hon. PATRICK J. LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: I am writing in response to your June 2, 2003, letter to Dr. Rice raising a number of legal questions regarding the treatment of detainees held by the United States in the wake of the September 11, 2001, attacks on the United States and in this Nation's war on terrorists of global reach. We appreciate and fully share your concern for ensuring that in the conduct of this war against a ruthless and unprincipled foe, the United States does not compromise its commitment to human rights in accordance with the law.

In response to your specific inquiries, we can assure you that it is the policy of the United States to comply with all of its legal obligations in its treatment of detainees, and in particular with legal obligations prohibiting torture. Its obligations include conducting interrogations in a manner that is consistent with the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (''CAT'') as ratified by the United States in 1994. And it includes compliance with the Federal anti-torture statute, 18 U.S.C.. §§2340–2340A, which Congress enacted to fulfill U.S. obligations under the CAT. The United States does not permit, tolerate or condone any such torture by its employees under any circumstances.

Under Article 16 of the CAT, the United States also has an obligation to ''undertake . . . to prevent other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture.'' As you noted, because the terms in Article 16 are not defined, the United States ratified the CAT with a reservation to this provision. This reservation supplies an important definition for the term ''cruel, inhuman, or degrading treatment or punishment.'' Specifically, this reservation provides that ''the United States considers itself bound by the obligation under article 16 to prevent, 'cruel, inhuman or degrading treatment or punishment' only in so far as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.'' United States policy is to treat all detainees and conduct all interrogations, wherever they may occur, in a manner consistent with this commitment.

As your letter stated, it would not be appropriate to catalogue the interrogation techniques used by U.S. personnel in fighting international terrorism, and thus we cannot comment on specific cases or practices. We can assure you, however, that credible allegations of illegal conduct by U.S. personnel will be investigated and, as appropriate, reported to proper authorities. In this connection, the Department of Defense investigation into the deaths at Bagram, Afghanistan, is still in progress. Should any investigation indicate that illegal conduct has occurred, the appropriate authorities would have a duty to take action to ensure that any individuals responsible are held accountable in accordance with the law.

With respect to Article 3 of the CAT, the United States does not ''expel, return ('refouler') or extradite'' individuals to other countries where the U.S. believes it is ''more likely than not'' that they will be tortured. Should an individual be transferred to another country to be held on behalf of the United States, or should we otherwise deem it appropriate, United States policy is to obtain specific assurances from the receiving country that it will not torture the individual being transferred to that country. We can assure you that the United States would take steps to investigate credible allegations of torture and take appropriate action if there were reason to believe that those assurances were not being honored.

In closing, I want to express my appreciation for your thoughtful questions. We are committed to protecting the people of this Nation as well as to upholding its fundamental values under the law.

Sincerely,

WILLIAM J. HAYNES II.

U.S. SENATE,
Washington, DC, September 9, 2003.

WILLIAM J. HAYNES II,
General Counsel, Department of Defense,
Defense Pentagon, Washington, DC.

DEAR MR. HAYNES: Thank you for your June 25, 2003, letter concerning U.S. policy with regard to the treatment of detainees held by the United States.

I very much appreciate your clear statement that it is the policy of the United States to comply with all of its legal obligations under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT). I also welcome your statement that it is United States policy to treat all detainees and conduct all interrogations, wherever they may occur, in a manner consistent with our government's obligation, under Article 16 of the CAT, ''to prevent other acts of cruel, inhuman, or degrading treatment or punishment'' as prohibited under the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution.

This statement of policy rules out the use of many of the ''stress and duress'' interrogation techniques that have been alleged in press reports over the last several months, including beatings, lengthy sleep and food deprivation, and shackling detainees in painful positions for extended periods of time. It should also go a long way towards answering concerns that have been expressed by our friends overseas about the treatment of detainees in U.S. custody. It should strengthen our nation's ability to lead by example in the protection of human rights around the world, and our ability to protect Americans, including our service members, should they be detained abroad.

At the same time, the ultimate credibility of this policy will depend on its implementation by U.S. personnel around the world. In that spirit, I would appreciate it if you could clarify how the administration's policy to comply with the CAT is communicated to those personnel directly involved in detention and interrogation? As you note in your letter, the U.S. obligation under Article 16 of the CAT is to ''undertake . . . to prevent'' cruel, inhuman or degrading treatment or punishment. What is the administration doing to prevent violations? Have any recent directives regulations or general orders been issued to implement the policy your June 25 letter describes? If so, I would appreciate receiving a copy.

I understand that interrogations conducted by the U.S. military are governed at least in part by Field Manual 34–52, which prohibits ''the use of force, mental torture, threats, insults, or exposure to unpleasant and inhumane treatment of any kind.'' This field manual rightly stresses that ''the use of force is a poor technique, as it yields unreliable results, may damage subsequent collection efforts, and can induce the source to say whatever he thinks the interrogator wants to hear.'' Are there further guidelines that in any way add to, define, or limit the prohibitions contained in this field manual? What mechanisms exist for ensuring compliance with these guidelines?

Most important, I hope you can assure me that interrogators working for other agencies, including the CIA, operate from the same guidelines as the Department of Defense. If CIA or other interrogation guidelines in use by any person working for or on behalf of the U.S. government differ, could you clarify how, and why?

I am pleased that before handing over detainees for interrogation to third countries, the United States obtains specific assurances that they will not be tortured. I remain concerned, however, that mere assurances from countries that are known to practice torture systematically are not sufficient. While you state that the United States would follow up on any credible information that such detainees have been mistreated, how would such information emerge if no outsiders have access to these detainees? Has the administration considered seeking assurances that an organization such as the International Committee for the Red Cross have access to detainees after they have been turned over? If not, I urge you to do so.

Finally, has the administration followed up on specific allegations reported in the press that such detainees may have been tortured, including claims regarding a German citizen sent to Syria in 2001, and statements by former CIA official Vincent Cannistrano concerning an al-Qaeda detainee sent from Guantanamo to Egypt (see enclosed articles)?

Thank you again for your response to my last letter.

With best regards,

PATRICK LEAHY,
U.S. Senator.

DEPARTMENT OF DEFENSE,
OFFICE OF GENERAL COUNSEL,
Washington, DC, November 18, 2003.

Hon. PATRICK J. LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: I am responding to your September 9, 2003 letter, which follows up on the June 25, 2003 letter from Mr. Haynes concerning U.S. policy on the treatment of detainees held by the United States in the war on terrorism. The earlier letter to you and an April 2, 2003 letter to the Executive Director of Human Rights Watch (enclosed) contain precise statements of U.S. policy. As statements of U.S. policy, they reflect the policy applicable to the Executive Branch.

Your letter inquired about Department of Defense (DoD) implementation of the policy described in the June 25 letter. The Department takes its compliance with U.S. obligations very seriously. For that reason, the Department has a Law of War Program, which is governed by DoD directive 5100.77 (December 9, 1998), a copy of which is enclosed. That Directive, among other things, provides that it is DoD policy to ensure that DoD components observe the law of war obligations of the United States, and that those components implement an effective program to prevent violations of the law of war. Through the Law of War Program, the Department seeks to prevent law of war violations through training and by instructing DoD personnel about U.S. obligations, and ensuring that qualified legal advisers are available at all levels of command to provide advice on compliance with the law of war.

Moreover, DoD personnel are instructed to report allegations of mistreatment of or injuries to detained enemy combatants through normal command channels for ultimate transmission to appropriate authorities. Individual military personnel bear a responsibility to ensure their compliance. Commanding officers carry the additional responsibility to be aware of and to direct the conduct of the men and women under their command in order to, among other things, ensure their compliance with U.S. obligations in matters such as the treatment of those detained in an armed conflict. Although our principal institutional focus is, as it should be, on compliance with the law of war and avoiding and preventing violations of it, DoD also has an effective military criminal justice system for detecting, investigating, prosecuting, and punishing misconduct by military personnel should it occur.

Your letter also asked whether follow-up had occurred regarding allegations appearing in stories in the Washington Post on January 31, 2003, in Newsday on February 6, 2003, and in the Los Angeles Times on March 3, 2003. With respect to the first story, it does not allege unlawful activity by any U.S. official because participation in questioning abroad and knowledge of transfers to third countries, without more, do not contravene the law. With respect to the second story, the allegations of improper treatment it contains are by an individual who has not been a Central Intelligence Agency employee since well before 2001. With respect to the final story, the unnamed sources are quoted as saying that they did not know details, but they nevertheless then speculated about what was happening. To the extent that it might be possible to construe the latter two stories as containing allegations about the treatment of individuals while outside military control, I understand that the Office of the Director of Central Intelligence (DCI) has copies of these articles and is responsible for appropriate action.

Please allow me to emphasize that press stories often contain allegations that are untrue, and that my mention of the office of the DCI indicates nothing concerning the merits of those allegations and it does not express a view concerning what action might be appropriate.

I appreciate very much the opportunity to address your concerns. The Administration is committed to carrying out the law as we continue our dedicated efforts to protect Americans from terrorism.

Sincerely,

DANIEL J. DELL'ORTO,
Principal Deputy General Counsel.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, November 17, 2003.

Hon. ROBERT S. MUELLER,
Director, Federal Bureau of Investigation,
Washington, DC.

DEAR DIRECTOR MUELLER: I am writing to inquire about the role the FBI may have played in the extraordinary rendition of Maher Arar, a Canadian and Syrian citizen, from the United States to Syria last year.

Press reports indicate that Mr. Arar was stopped by immigration officers at John F. Kennedy International Airport as he attempted to change planes on his way home to Canada from Tunisia. Mr. Arar claims that he was then interrogated by an FBI agent and a New York City police officer. He further claims that, ''They told me I had no right to a lawyer because I was not an American citizen,'' and that he repeatedly told U.S. officials that he feared he would be tortured if returned to Syria. ''Deported Terror Suspect Details Torture in Syria,'' Washington Post, November 5, 2003. After being held for nearly two weeks in a federal detention center, Mr. Arar alleges that he was then handed over to U.S. intelligence officials who flew him to Jordan and turned him over to Jordanian authorities, who beat him. He was then taken to Syria, where he was detained and allegedly tortured over a period of ten months.

While the Bush administration officially denies engaging in extraordinary renditions of this sort, numerous unnamed intelligence officials have admitted to the press that renditions have occurred, purportedly under a ''secret rendition policy.'' Id. This policy was described as ''a secret presidential 'finding' authorizing the CIA to place suspects in foreign hands without due process.'' Id.

I find Mr. Arar's claims and the underlying rendition policy deeply troubling and would like information on the role of the FBI, if any, in this case.

1. Under what specific authority was Mr. Arar detained, first at the airport and then at the federal detention center in Brooklyn?

2. Is it true that one or more FBI agents interrogated Mr. Arar after he was detained by immigration officers at JFK airport?

3. If so, is it true that Mr. Arar was denied access to counsel?

4. Did the FBI participate in any manner in the transfer of Mr. Arar to Washington, D.C., Jordan, Syria, or to any other location?

5. An intelligence official is quoted in the Washington Post story as saying, ''The Justice Department did not have enough evidence to detain him when he landed in the United States.'' If this is true and if, as has also been reported in the press, U.S. officials were in contact with Canadian authorities, why did the FBI and/or other officials choose not to turn Arar over to Canadian authorities?

6. In a June 25, 2003, letter to me on the subject of rendition and other matters, the U.S. Defense Department General Counsel, William Haynes, stated that the ''United States policy is to obtain specific assurances from the receiving country that it will not torture the individual being transferred to that country.'' Did the United States seek assurances from Jordan and/or Syria that Mr. Arar would not be subject to torture, or to cruel, or inhuman, or degrading treatment or punishment while in the custody of either nation? If so, what steps did the United States take after his rendition to assess compliance with such assurances in this case? Were the assurances provided in writing? If so, please provide a copy to the Committee. If such a document is classified, please arrange for cleared staff to view it. If no assurances were obtained, please explain why not.

7. Under U.S. law, non-citizens who express concerns about torture if removed are entitled to an evaluation of their claim before being removed. Under the specific regulations that were likely applied to Mr. Arar's removal, there is an explicit prohibition against returning someone to a country where there are substantial grounds for believing he would be subjected to torture. What process was used, if any, to evaluate the likelihood that Mr. Arar would be subjected to torture before removing him to Syria?

8. Are you aware of a ''secret presidential 'finding' authorizing the CIA to place suspects in foreign hands without due process''? If so, please provide a copy to the Committee. If such a document is classified, please arrange for cleared staff to view it.

9. Has the FBI participated in any other alleged renditions, including interviewing and then handing suspects over to intelligence officers for transfer to another country?

Thank you for your prompt answers to these questions.

Sincerely,

PATRICK LEAHY,
U.S. Senator.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, November 21, 2003.

Hon. JOHN ASHCROFT,
Attorney General, Department of Justice,
Washington, DC.

DEAR ATTORNEY GENERAL ASHCROFT: I am writing to inquire about the rendition of Maher Arar, a Canadian and Syrian citizen, from the United States to Syria last year.

I wrote to FBI Director Robert Mueller about this case on Monday, November 17. (See attached). Since that time, additional

information on this case has been provided to the press, mainly in statements by unnamed administration officials, but also by Department of Justice (DOJ) spokespersons.

Washington Post articles indicate that the deportation of Mr. Arar was approved on October 7, 2002, by then-Deputy Attorney General Larry Thompson, who signed the order in his capacity as Acting Attorney General. ''Man Was Deported After Syrian Assurances,'' Washington Post, November 20, 2003 [hereinafter Washington Post, Nov. 20, 2003]; ''Top Justice Aide Approved Sending Suspect to Syria,'' Washington Post, November 19, 2003. The same story states that U.S. officials ''decided to send [Arar] to Syria last year only after the CIA received assurances from Syria that it would not torture the man.'' Washington Post, Nov. 20, 2003. And yet, ''spokesmen at the Department of Justice declined to comment on why they believed the Syrian assurances to be credible.'' Id.

Mr. Arar claims that he was, in fact, tortured while in Syrian custody. The Syrian government has denied that Arar was subjected to torture, but statements from U.S. officials contradict that assertion. In a November 15 New York Times article, ''American officials who spoke on condition of anonymity,'' were quoted as saying that Arar ''*confessed under torture* in Syria that he had gone to Afghanistan for terrorist training, named his instructors and gave other intimate details.'' ''Qaeda Pawn, U.S. Calls Him. Victim, He Calls Himself,'' New York Times, November 15, 2003 (emphasis added). I find this statement to be shocking in light of the administration's assertions that it acted within the scope of its international treaty obligations.

Mr. Arar claims to have stated repeatedly to his U.S. interrogators that he feared torture at the hands of the Syrian government. Whether or not Mr. Arar had ties to terrorist organizations, as is alleged by U.S. officials, or whether his confession was a false one produced by coercion, as he claims, he was subject to the legal protections provided by the Convention Against Torture, which the United States has ratified.

The statements by Mr. Arar and the unnamed sources in the New York Times article cited above beg the question of whether the United States has investigated Syria's alleged non-compliance with any assurances it provided to the U.S. government. This question is especially critical in light of President Bush's statement on November 7, 2003, that Syria has left ''a legacy of torture, oppression, misery, and ruin'' to its people.

In light of the above facts and assertions, I request that you provide detailed answers to the following questions:

1. Under what specific authority was Mr. Arar detained, first at John F. Kennedy Airport and then at the federal detention center in Brooklyn, New York?

2. Is it true that Mr. Arar was denied access to counsel, as he claims?

3. An intelligence official is quoted in a November 5 Washington Post story as saying, ''The Justice Department did not have enough evidence to detain him when he landed in the United States.'' ''Deported Terror Suspect Details Torture in Syria,'' Washington Post, November 5, 2003. It has also been reported that U.S. officials were in contact with Canadian authorities regarding this case. Given that Mr. Arar, a Canadian citizen, resides in Canada and was traveling home to Canada when he was detained at the airport, why did the officials choose not to turn Arar over to Canadian authorities?

4. Did you become aware of Mr. Arar's case at any point between his detention on September 26, 2002, and October 7, 2002, the date the deportation order was signed by Mr. Thompson? Did Mr. Thompson, who was serving as Acting Attorney General when he signed the order, consult with you before signing the order? Did you approve this action?

5. In a June 25, 2003, letter to me on the subject of rendition and other matters, the U.S. Defense Department General Counsel, William Haynes, stated that the ''United States policy is to obtain specific assurances from the receiving country that it will not torture the individual being transferred to that country.'' The November 20 Washington Post article cited above confirms that assurances were obtained from Syria. What was the scope of such assurances? Were they provided to the U.S. government in writing? If so, please provide a copy to the Committee. If such a document is classified, please arrange for cleared staff to view it. If the assurances were not provided in writing, please explain why written assurances were not sought or provided.

6. What steps did the United States after Arar's rendition to assess compliance with the assurances provided by Syria in this case?

7. Is the statement of an unnamed official above that Arar ''confessed under torture'' accurate? If so, then Syria's actions violated the assurances provided to the U.S. before Arar's rendition. What has the U.S. done (a) to investigate such non-compliance and (b) to hold Syria accountable for such violations.

8. Under U.S. law, non-citizens who express concerns about torture if removed are entitled to an evaluation of their claim before being removed. Under the specific regulations that were likely applied to Mr. Arar's removal, there is an explicit prohibition against returning someone to a country where there are substantial grounds for believing he would be subject to torture. What process was used, if any, to evaluate the likelihood that Mr. Arar would be subjected to torture before removing him to Syria?

9. According to the November 5 Washington Post article cited in question 3, numerous unnamed intelligence officials have admitted to the press that renditions have occurred, purportedly under a ''secret rendition policy.'' This policy was described as ''a secret presidential 'finding' authorizing the CIA to place suspects in foreign hands without due process.'' Are you aware of a ''secret presidential 'finding' authorizing the CIA to place suspects in foreign hands without due process''? If so, please provide a copy to the Committee. If such a document is classified, please arrange for cleared staff to view it.

10. Has the FBI or DOJ authorized or participated in any other alleged renditions, including interviewing and then handing suspects over to intelligence officers for transfer to another country?

11. In its effort to fight terrorism, the administration has focused on individuals who have connections to Al Qaeda that need to be further explored, and has argued that it has the right to detain and interrogate prisoners in Guantanamo Bay, perhaps as unlawful combatants or enemy combatants, as long ''as it is necessary to help win the war against the Al Qaeda network and its allies.'' Washington Post, '''High Court Will Hear Appeals From Guantanamo Prisoners,'' November 11, 2003. Notwithstanding my concerns about the legal status of those detained at Guantanamo, and the administration's treatment of enemy combatants in general, it would seem that Mr. Arar fit the classic administration profile for someone who should be detained in Guantanamo. Presumably, Mr. Arar would have been safer in detention at Guantanamo Bay than in Syria.

a. Was the option to detain Arar as an enemy combatant in Guantanamo Bay considered and rejected in favor of rendition to Syria? If so, on what basis was the decision made to send him to Syria?

b. Where there is more than one destination country to which detainees may be rendered, do you believe there should be a policy to render detainees to the country where torture is least likely (e.g., a country that does not have a history of documented humanitarian abuses)?

c. What is the standard applied by the administration in determining whether to deport an individual, transfer the individual to custody at Guantanamo Bay, or to charge the individual with a crime?

Thank you for your prompt answers to these questions.

Sincerely,

PATRICK LEAHY,
U.S. Senator.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

One such crime occurred in Passaic, NJ, in August, 1999. Kareem Washington, a gay man who sometimes dressed in women's clothing, was stabbed multiple times and left to die in an industrial area in Passaic. Police were unsure of the motive for the murder, however, the victim's wallet was found on his body. The victim was wearing a skirt, high-heeled shoes and stockings at the time he was killed.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

TRIBUTE TO GOVERNOR LOUIE B. NUNN

Mr. BUNNING. Mr. President, I would like to take a moment today to remember Gov. Louie B. Nunn of Versailles, KY, who passed away Thursday, February 5, 2004. Louie was elected Governor of Kentucky in 1967 and was a pillar of strength in the Republican Party for half a century.

Looking back through the history of the Commonwealth, I can say that he was truly the education Governor. Louie was a champion of the education system in Kentucky. He raised the standards of education for all, but focused his efforts on those people who too often fell through the cracks in the system.

He also was an advocate for mental health issues. People used to put anyone with a mental health problem in a shoebox and write them off, but Louie

saw that was wrong and got in there to fix the problem. He made it a priority and he cleaned it up.

He earned the title of Governor with a quick wit, a sharp political eye, and a gift for speaking. Louie could tell these fantastic stories and everyone would love them, captured by his words.

I have always admired his love of politics and that he always stayed committed to the Republican Party. I know he was proud to see the Republican Party win back the governorship, ending the 32-year drought since he held office in 1971. But I remember Louie for supporting his party in Kentucky through its successes and through its failures. Even when there was no one around to join him, he carried the Republican banner proudly.

And through his perseverance, he left a lasting legacy in Kentucky politics. More than any other person, he taught the people in Kentucky how to win elections and with that, he taught Republicans how to win statewide. He used to tell the story about his father, who was a precinct captain in Kentucky. Every election, his father would work as hard as he could and talk with voters one by one. And every election, they would win his precinct. Louie taught us that is how you won an election, one precinct at a time.

Gov. Louie Nunn was respected by his friends and colleagues on both sides of the aisle. All in the Commonwealth of Kentucky will miss him.

FREE TRADE AGREEMENT STRATEGY SHOULD PRIORITIZE JOBS

Mr. BAUCUS. Mr. President, I rise today to talk about our international trade policy—specifically this administration's selection of free trade agreements.

A year-and-a-half ago, many of us stood on this floor arguing that we should grant the President trade negotiating authority, or fast track. We did so because we believe that good trade agreements can create jobs for American workers and farmers.

I still believe that. And I believe we must move ahead with an aggressive trade agenda—even in an election year.

So what does that mean? Of course, our first priorities should be moving ahead with negotiations in the World Trade Organization and completing the Free Trade Area of the Americas. Those agreements provide—by far—the best opportunities for American workers and farmers.

Unfortunately, both of those agreements are languishing. WTO negotiations broke down last fall in Cancun. And the FTAA has been watered down so much that many are starting to question its value.

The administration, rightly, has chosen not to put all of its eggs in one basket. They have, over the last several years, initiated a number of new free trade agreements.

Now generally, I support this approach. We cannot allow the intransigence of some countries to hold us back from seeking new markets.

But the process by which we select new FTAs is deeply flawed. Initially, there was no process at all. There was no consultation with Congress, no public process, no criteria. To be fair, there's been some improvement—but not much, and only after serious criticism from Congress and the business community.

Mr. President, as a way to try to understand the administration's trade policy, Congressman CAL DOOLEY and I asked the General Accounting Office to assess the criteria and processes that drive the selection of our free trade agreement partners.

Today, GAO is releasing their report, and its findings confirm a number of serious concerns.

First, the criteria themselves are so broad I question whether they are meaningful. GAO finds that the criteria used within the administration to justify the selection of FTA partners have been a moving target. Different sets of criteria were used, for example, when deciding to go forward with the Central American and Australian FTAs than were used for some of the most recently announced FTAs, such as Thailand, the Andeans, and Panama.

Whatever the criteria considered, they are not weighted by importance. Moreover, the criteria are so broad—and their consideration so open-ended—it is hard to imagine any country in the world that couldn't meet them.

Second, to the extent that the existing criteria and review process set priorities, I question whether they are the right ones. GAO finds that strategic and foreign policy goals dominate the FTA selection process.

In my view, this takes our trade policy down the wrong path. I have long believed that trade agreements should be pursued on their own merits—because they create commercial opportunities for our farmers and businesses, and most critically, because they hold out the prospect of more and better-paying jobs for American workers.

These paramount concerns seem largely lost in the selection process, which looks like more of a throw-back to the Cold War—when trade policy was treated primarily as an instrument of foreign policy.

Third, the entire selection process is woefully lacking in transparency and public participation. GAO finds that, at the time this report was requested, there was virtually no formal process at all for selecting FTAs.

The attention focused on this situation by this investigation has clearly contributed to the development of a more formal interagency process for considering potential FTAs. But the process is still a closed one.

There is no notice of countries under consideration for future FTAs until the choice has already been made. There is no formal process for soliciting the views of Congress, the business community, or the general public. There is no formal public discussion of how to prioritize negotiating resources.

To my surprise, in fact, the administration has insisted until recently that the selection criteria themselves are classified. Important trade policy decisions like these should not be made in secret based on secret criteria.

Mr. President, at a time when manufacturing and other jobs are increasingly moving offshore, we need a trade policy that helps U.S. companies create and keep good jobs in this country. We need to bring the focus of our trade agenda back to commercial benefits and, most importantly, to jobs. We need to have a public dialogue on how choices are made and how resources are allocated. I urge the administration to engage with Congress to address the issues raised by this report.

I yield the floor.

ADDITIONAL STATEMENTS

RECOGNITION OF ANNIE LEE COONEY ON HER 100TH BIRTHDAY

• Mr. BOND. Mr. President, I rise today with the distinct privilege of recognizing one of St. Louis's most outstanding citizens, Mrs. Annie Lee Cooney on the occasion of her 100th birthday February 25, 2004.

Mrs. Cooney was born in Indianola, MS, as the third youngest of seven girls and two brothers. As the granddaughter of slaves and the daughter of active participants in the African-American community, Annie Lee was instilled at an early age with values and character that remain strong to this day. Her parents, Indiana and Oliver Jarman were active in the African-American community in her home town. Her father, Oliver Jarman, was a high ranking official in the Prince Hall Masons in Mississippi and was also instrumental in founding a Penny Bank in Greenville, MS.

In 1922, after attending the Tuskeegee Institute, in Tuskeegee, AL, Annie Lee moved to St. Louis to live with her sister and helped with her new baby. But it was in St. Louis where Annie Lee's life changed when she met and fell in love with Roy Cooney. The young couple were married in 1924 and Roy and Annie Lee Cooney soon became the loving parents to thirteen children—seven girls and six boys, all of whom went on to attend college.

Mrs. Cooney has been very active in the Black Catholic Community in St. Louis since the early 1930s. Some of Mrs. Cooney's professional achievements include being named President of the Sisters of the Blessed Sacrament alumni in the 1960s and Sigma Gamma Rho Sorority Mother of the Year in 1980. Mrs. Cooney has been an active member of the National Council of Negro Women, the Council of Catholic Women, the Legion of Mary, the Catholic Knights of America, the Cairo Social Club, charitable works and scholarships to Black youth, and the Seminarians Club, spiritual and financial

aid to Black Catholic Seminarians. She was also a member of the Cook Avenue Block Unit Association, and a strong force in her neighborhood—with her home often serving as a gathering place for youth and young adults. Perhaps Mrs. Cooney's greatest display of goodwill was in her frequent visits to Homer G. Phillips Hospital with the Helpers of the Holy Souls. For over forty years Mrs. Cooney visited the sick and hospitalized and would provide them with candy, toiletries, and prayer.

Mrs. Cooney has traveled the world extensively, and has brought goodwill to wherever she has been. She has remained true to her motto: ''If I can help somebody as I travel on, then my living will not be in vain.'' On behalf of the people of St. Louis and the State of Missouri, I extend my most sincere gratitude to Mrs. Annie Lee Cooney for her years of dedicated community service and the goodwill. I wish her all the best on this most important occasion, her one-hundredth birthday.●

REMEMBERING ELROY ''CRAZY LEGS'' HIRSCH

● Mr. FEINGOLD. Mr. President, today I honor an incredible athlete and a hero of University of Wisconsin athletics, Elroy ''Crazy Legs'' Hirsch.

Not many Wisconsin Badger fans can forget the 1942 football season, the only season ''Crazy Legs'' spent playing for the University of Wisconsin football team. By running, passing, and catching for over 1,400 yards, the Wausau-born Hirsch led the Badgers to a second-place finish in the Big Ten with an 8–1–1 record and a No. 3 ranking in the final Associated Press poll.

Hirsch's football career at Wisconsin was cut short when he joined the Marines and was ordered to Michigan for basic training in 1943. Hirsch continued his illustrious career at the University of Michigan and then professionally with the Chicago Rockets of the All-American Football Conference and then the Los Angeles Rams of the NFL. Hirsch was instrumental in the Rams' 1951 championship season by leading the league in catches, receiving yards and receiving touchdowns. Hirsch was inducted into the NFL Hall of Fame in 1968.

Hirsch's on-field legacy will forever be remembered, as his number 40 is one of only 4 numbers that has been retired by the Badgers. But his legacy off the field at the University of Wisconsin was just as important. He served as athletic director from 1969 to 1987. His tenure saw a rise in football attendance and a hockey program that reached national prominence.

The University of Wisconsin and fans from all over the State will be forever grateful for Elroy's devotion to UW athletics. My thoughts go out to his wife Ruth and his family. ''Crazy Legs'' was a tremendous asset to the University of Wisconsin, both on and off the field, and he will be greatly missed.●

ELLEN KAY YORK, U.S. ARMY CORPS OF ENGINEERS

● Mr. BOND. Mr. President, I rise today to honor the exemplary career of Ellen Kay York, who retired in January after 28 years of public service and returning to her home in St. Robert, MO.

Since November 2000, Ellen has served as the executive secretary to the Army's Chief of Engineers and Commander of the U.S. Army Corps of Engineers. As the senior office manager for the Executive Office, Ellen has been a valuable member of the Corps' team. In addition to her outstanding management of the Chief of Engineers' schedule, correspondence, and daily office operations, Ellen responded to a variety of requests for information from the public and the Congress, providing answers and information on behalf of the Chief of Engineers. Her skill and sensitivity have gained the respect, gratitude, and confidence of the senior leaders throughout the worldwide, 36,000-person organization.

Throughout her tenure with the Corps, Ellen Kay York has been a mentor to junior employees, spending countless hours and personal time to advise and counsel them. She has been active as well with Toastmasters International, as the Area 13 governor and as the president of the Corps' chapter, the Castle Toastmasters.

I know that the team at the Corps will miss her, particularly the so-called superior officers. I am sure that she managed and protected on too many occasions to site. But we are delighted that she is returning to God's country were she will be rewarded for and liberated from her dedicated public service. Today I congratulate this outstanding public servant for her many years of selfless and faithful service to the Nation.●

RECOGNITION OF COLONEL ROBERT C. KING

● Mr. GRASSLEY. Mr. President, I would like to take a moment to commend a remarkable Iowan. COL Robert C. King retired from his duties as Public Affairs Officer for the Iowa National Guard in December 2003 and will retire from the National Guard at the end of the year. Colonel King has been a member of the Iowa National Guard since 1968 and has worked tirelessly to break new ground in the area of communication between the Iowa National Guard and outside media outlets. It goes without saying, his service is appreciated beyond words.

In his job as Public Affairs Officer, Colonel King cultivated a media relationship with the National Guard when none existed before. He served during some of the highest profile activities since World War II including the crash of United Flight 232, Operations Desert Shield and Desert Storm, the floods of 1993, as well as Operation Enduring Freedom and Operation Iraqi Freedom. Colonel King has represented the Iowa National Guard and its thousands of members at a variety of functions throughout the State. He has held several command-directed assignments and served as the commander of the State Area Readiness Command in addition to his role as Public Affairs Officer. He handled this dual assignment with remarkable ease and showed his dedication through his willingness to take on such a committed role. While under his command, the Iowa National Guard Headquarters received Superior Unit Awards every year. Colonel King served as the 34th Rear Area Operations Center training administrator and executive officer. Colonel King also served as the administrative-supply technician for the 186th Military Police Company. He has been a valuable connection for me personally, providing information for me to stay abreast of what is going on with the Iowa National Guard. I am proud of Colonel King and the contributions he has made to Iowa. He tapped previously underutilized or noticeably absent avenues within the media relations field for the Iowa National Guard. His devotion to the soldier, the National Guard, Iowa and this country is beyond reproach.

Again, I would like to congratulate Colonel King on his retirement as Public Affairs Officer for the Iowa National Guard. He has proven to be a remarkable officer and I thank him for his inexhaustible dedication to Iowa and to America.●

RECOGNIZING SANDPOINT, IDAHO AS A SUNSET MAGAZINE ''BEST SMALL TOWN''

● Mr. CRAPO. Mr. President, Idaho is known as the Gem State. I rise today to recognize a diamond among our community gems that has gained the attention of Sunset magazine. Every year, Sunset selects a group of neighborhoods, cities, and towns which readers have nominated as ''best places to live.'' I am proud to say that Sandpoint, ID, a small community in the panhandle has earned the distinction of ''Best Small Town'' in January 2004.

Sandpoint sits tucked away in the Selkirk Mountain Range, approximately 50 miles south of the Canadian border. It borders Lake Pend Oreille, the largest freshwater lake in Idaho, and is 9 miles from the well-known ski resort, Schweitzer Basin. Sandpoint is a diverse community of about 7,500 people who have occupations ranging from retail businessperson, logger, doctor, attorney, vintner, millworker, herbalist, teacher, and builder. Tourism, timber, and a thriving arts community call attention to the complexity and wonderful character of Sandpoint.

This honor bestowed by the readers of Sunset magazine indicates the efforts Sandpoint residents have made to work together to create a warm, inviting community which upholds values of

family and prioritizes preservation of the incredible natural beauty that surrounds this precious gem of Idaho. I commend the community and its leaders for their continuing commitment to making Sandpoint ''the best.''●

RECOGNIZING LAKE CASCADE, IDAHO AS A WASHINGTON POST 2004 TRAVEL ''HOT SPOT''

● Mr. CRAPO. Mr. President, I rise today to recognize an up-and-coming resort community in my home State of Idaho. The Washington Post Travel Section recently chose the Top Ten domestic travel ''Hot Spots'' for 2004. Lake Cascade, ID was one of the destinations selected. With the construction of the first ski, golf, and lake resort in the Nation in over 20 years, the Tamarack, Lake Cascade is poised to join the ranks of Idaho's nationally renowned resort communities.

Lake Cascade will gain valuable jobs, nationwide notoriety, and welcome economic growth from the Tamarack. I commend the business and community leaders for their commitment to rural development. Lake Cascade is the gateway to the Frank Church Wilderness Area, a place of stunning beauty, largely undisturbed by man. The town has a wonderful history as a playground for outdoor enthusiasts of all types, and draws visitors from many places. I look forward to watching this burgeoning Idaho community as it embarks on a new chapter in its history.●

IN MEMORIAM OF JOHN ''JACK'' BURRIS

● Mr. CARPER. Mr. President, I would like to set aside a moment to reflect on the life of Mr. John ''Jack'' Burris upon his passing late last month. Jack was a good friend and a man who made remarkable contributions to our State. He was a truly selfless man with a kind heart, diverse interests, great abilities and boundless energy.

Jack was born in Lincoln City, now part of Milford, DE, to the late John W. and Edna Vaughn Burris. After graduating from the Peddie School in Hightstown, NJ in 1938, he went on to study at the University of Pennsylvania in 1942.

After serving his country in World War II as a member of the United States Marine Corps, Jack returned to Delaware and began farming for several years. He then founded the Burris Poultry Business, which operated from 1948 until it was sold in 1971, at which time he founded Burris Logistics, a frozen-food warehousing and distribution company, which he ran until last year.

Jack was an uncommonly active member of his community, serving on countless boards and committees. He was a member of the Executive Committee of the Wilmington Trust Co. and was chairman of its Kent County Advisory Board. For 19 years, Jack was director of the Brandywine Fund. He contributed generously of his time and energies to community, educational and service organizations.

For 35 years, he served on the Milford Memorial Hospital Board. During a portion of that time, he was the board's chairman. More recently, Jack was a member of the Bayhealth Foundation board. Annually for 37 years, he and his family cooked the chicken dinners for the Milford Hospital Fair to help support the community's hospital. For 19 years, he served as chairman of the State Integrity Commission and in 2000, he co-chaired—at my request—the committee that raised funds to remodel the State Archives Building and transform in into a state-of-the-art facility.

One of Jack's greatest joys, however, was supporting the efforts of the United Way in our State. For more than 20 years, he actively participated in Kent and Sussex Counties' United Way campaigns, serving as chairman for many years. Jack and his wife, Lillian, were honored as exceptional volunteers, receiving the United Way's Alexis de Tocqueville Society Award. He was also a charter member of the Milford Lions Club.

From 1976 to 1992, Jack was a trustee of the University of Delaware and co-chair of the search committee that recommended Dr. David Roselle as president. In 1992, he received a Doctor of Humane Letters from the University of Delaware and also served that same year on the Agriculture Advisory Committee of the University of Delaware Board of Trustees, as well as a trustees emeritus.

For more than 30 years, he was an active member of the Avenue United Methodist Church in Milford, where he served on the administrative board and was the Pastor-Parish Committee chairman for 18 years.

In 1998, Jack was inducted into the National Frozen Food Industries Hall of Fame. The Baltimore and Washington Frozen Food Association in 1993 and 1994 honored him as Man of the Year. He was inducted into the Delaware Business Leaders Hall of Fame and twice, with his wife, Lillian Marshall Burris, was named as Outstanding Citizen of the Year by the Milford Chamber of Commerce. One of his greatest honors was receiving the Josiah Marvel Cup award from the Delaware State Chamber of Commerce in 1993.

Jack Burris also has received many prestigious awards for his dedication and service. Among them are the Dover Colonial Rotary's Paul Harris Service Award, the Lions International Melvin Jones Award for Dedicated Humanitarian Services, the Delmarva Poultry Citizen of the Year and Del-Mar-Va Boy Scout Council's Citizen of the Year.

Jack leaves behind his wife of 61 years Lillian, a remarkable woman in her own right, as well as four children, twelve grandchildren, three step-grandchildren, and twelve great-grandchildren. He also leaves behind a legion of friends, colleagues and several generations of Delawareans who are living more fulfilling, satisfying lives today because of Jack's extraordinary contributions.

Jack Burris' legacy will live on in the lives of those he helped to shape and in the hearts of those who were lucky enough to call him their friend. I rise today to commemorate Jack's life, to celebrate his life, and to offer his family our heartfelt thanks for sharing this remarkable human being with all of us. Jack embodied the best of Delaware. He was one of a kind. He will be sorely missed.●

MEASURES READ THE FIRST TIME

The following bills were read the first time:

S. 2061. A bill to improve women's health access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the delivery of obstetrical and gynecological services.

S. 2062. A bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

PETITIONS AND MEMORIALS

POM–338. A memorial adopted by the Legislature of the State of Florida relative to National Forest System lands underlying the George Kirkpatrick Dam on the Oklawaha River near Palatka, Florida, and related lands to the State of Florida; to the Committee on Agriculture, Nutrition, and Forestry.

HOUSE MEMORIAL NO. 1669

Whereas, through the Water Resources Act of 1990, the United States Congress deauthorized the Cross Florida Barge Canal project located between the Gulf of Mexico and the Atlantic Ocean, and

Whereas, said act also transferred to the State of Florida all lands and interest in lands acquired and facilities completed for the project, and

Whereas, the State of Florida has established and maintained a greenway corridor which is open to the public for compatible recreation and conservation activities, and

Whereas, in order to continue these efforts it has become necessary to consolidate and collect these lands: Now, therefore, be it

Resolved by the Legislature of the State of Florida, That the Congress of the United States is requested to provide for the conveyance of the National Forest System lands underlying the George Kirkpatrick Dam on the Oklawaha River near Palatka, Florida, and the National Forest System lands lying below the 21 feet National Geodetic Vertical Datum (NGVD) underlying the Rodman Reservoir formed by such dam and National Forest Service Tract #C–615 to the State of Florida; and be it further

Resolved, That copies of this memorial be dispatched to the President of the United States, the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

POM–339. A resolution adopted by the House of Representatives of the Legislature of the State of Texas relative to the enforcement of food import restrictions on seafood imports; to the Committee on Agriculture, Nutrition, and Forestry.

HOUSE CONCURRENT RESOLUTION NO. 103

Whereas, imports of seafood from countries that use substances in aquaculture such as chloramphenicol, nitrofurans, and other veterinary drugs banned for such use in the United States pose potential threats to United States consumers; and

Whereas, the State of Texas is concerned about the use of certain antibiotics and other banned veterinary drugs in shrimp imported from outside of the United States for consumption in the State of Texas; chloramphenicol, a potent antibiotic, can cause severe toxic effects in humans, including hypoplastic anemia, which is usually irreversible and fatal; and

Whereas, because of such human health impacts, chloramphenicol, nitrofurans, and similar veterinary drugs are not approved for use in food-producing animals in the United States; and

Whereas, other countries, including Thailand, Vietnam, and China, have been found to use these drugs in the aquaculture of shrimp and other seafood; and

Whereas, the United States imports over 400,000 metric tons of shrimp annually, and Thailand, Vietnam, and China are the largest, second largest, and fifth largest exporters of shrimp to the United States, respectively; and

Whereas, on detection of chloramphenicol in certain shipments of seafood from China and other countries through the use of testing protocols that can detect such substances to 0.3 parts per billion, the European Union and Canada severely restricted imports of shrimp and other food from these countries in 2002; and

Whereas, the federal Food and Drug Administration inspects only two percent of all seafood imports into the United States and uses a testing procedure that cannot detect the presence of chloramphenicol below one part per billion; and

Whereas, United States-based companies involved in the importing and processing of shrimp are opposed to the use of chloramphenicol and are working with the domestic shrimp industry and the FDA to develop effective protocols to detect banned antibiotics and to exclude all tainted products from the United States market; and

Whereas, although the federal Food and Drug Administration tests of imported food did not detect chloramphenicol in shrimp imported from China and other countries in 2002, independent testing performed by or for Alabama, Florida, Louisiana, Mississippi, and Texas detected chloramphenicol in samples of imported shrimp from those countries at levels harmful to human health; and

Whereas, The denial of entry to the European Union and Canada of contaminated shrimp and other products will likely redirect those contaminated products to the United States: Now, therefore, be it

Resolved, That the 78th Legislature of the State of Texas hereby express concern about the presence of chloramphenicol, nitrofurans, and other banned veterinary drugs in imported shrimp, the potential adverse impact on the safety of the food supply, and the resultant risk to importers and domestic stakeholders to develop effective methods to detect and exclude seafood imports containing chloramphenicol, nitrofurans, and other banned veterinary drugs; and, be it further

Resolved, That the 78th Legislature of the State of Texas hereby call for immediate and focused actions by the United States government to improve the enforcement of food import restrictions on seafood imports containing chloramphenicol, nitrofurans, and other banned veterinary drugs in order to ensure the safety of the food supply and to protect consumers in the United States and, in particular, in Texas.

POM–340. A memorial adopted by the Legislature of the State of Florida relative to federal funding for a full accounting of those missing from our nation's wars; to the Committee on Armed Services.

HOUSE MEMORIAL NO. 209

Whereas, the men and women of the United States Armed Forces are trained and dedicated to protect the security of our nation, and

Whereas, these men and women have devoted themselves to the task of protecting our lives and liberty as United States citizens, and

Whereas, all Americans derive inspiration from the sacrifices endured by members of the armed services during captivity as prisoners of war, and

Whereas, the courage of the families of those members of the Armed Services who remain missing or unaccounted for continues to be a great source of inspiration and admiration for all Americans, and

Whereas, Americans recognize the special debt of gratitude owed to those who have sacrificed their freedom in the service of our country, and

Whereas, as a reaffirmation of our commitment to the courageous families of these military personnel, the State of Florida pledges support to the Defense Prisoner of War/Missing Personnel Office within the Department of Defense, which is the federal agency charged to deal with the POW/MIA issue, and

Whereas, the State of Florida hopes to ensure that those who served and sacrificed for our nation are not forgotten and left on faraway shores by urging the Congress to continue their support of the Defense Prisoner of War/Missing Personnel Office of the Department of Defense and its activities: Now, therefore, be it

Resolved by the Legislature of the State of Florida, That the Congress of the United States is requested to provide the funds necessary for the Defense Prisoner of War/Missing Personnel Office of the Department of Defense and other Department of Defense agencies that play critical roles in achieving the fullest possible accounting of POW/MIA's to continue their work unimpeded from budgetary constraints or reductions. Be it further

Resolved, That the State of Florida, through the Florida Department of Veterans' Affairs, will continue working with the Defense Prisoner of War/Missing Personnel Office to assist in the identification of unlocated family members of any Florida resident classified as a United States POW/MIA, thereby enabling the Defense Prisoner of War/Missing Personnel Office to request that eligible family members provide a blood sample to keep on file in the event it is needed in the identification process. Be it further

Resolved, That copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

POM–341. A memorial adopted by the Legislature of the State of Florida urging Congress to take all actions necessary to resolve the fate of Captain M. Scott Speicher; to the Committee on Armed Services.

HOUSE MEMORIAL NO. 429

Whereas, the Armed Forces of the United States fought admirably, bravely, and successfully during Operation Desert Storm, and

Whereas, M. Scott Speicher, then a lieutenant commander and now a captain in the United States Navy, flew a Navy FA–18 in a bombing mission over Iraq on January 17, 1991, and

Whereas, then-Lieutenant Commander Speicher failed to return to his carrier following that mission and was erroneously declared killed in action, and

Whereas, since that time, intelligence has determined that Captain Speicher ejected from his aircraft, and

Whereas, in January 2001, in an unprecedented action, Captain Speicher's designation was changed from ''Killed in Action'' to ''Missing in Action,'' and

Whereas, the former executive chairman of the United Nations Special Commission, a renowned expert on Iraq, testified before the United States Senate in July 2002 that ''we should not give up'' on Captain Speicher, and

Whereas, in October 2002, based upon intelligence confirming that he had been taken captive by the Iraqi government, Captain Speicher's designation was changed from ''MIA'' to ''MIA-Captured,'' and further intelligence reports make it clear that Iraq is in a position to resolve questions regarding Captain Speicher's fate, and

Whereas, this nation has pledged to the members of our armed services that they will not be abandoned, and the State of Florida renews that pledge to Captain Speicher: Now, therefore, be it

Resolved by the Legislature of the State of Florida, That the Congress of the United States is requested to take all actions necessary to resolve the fate of Captain M. Scott Speicher, United States Navy, MIA-Captured. Be it further

Resolved, That copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

POM–342. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to the Fair Credit Reporting Act; to the Committee on Banking, Housing, and Urban Affairs.

SENATE RESOLUTION NO. 183

Whereas, while the advantages of technology have brought consumers and businesses numerous benefits, our information age has also greatly increased the threat of identity theft. Although this issue is clearly not a new concern, the extent to which people are vulnerable to this crime has multiplied in recent years; and

Whereas, in many ways, protections for consumers have not kept pace. Public and private institutions have taken strong actions to try to safeguard their customers, but identity theft continues to increase. Identity theft is widely acknowledged to be one of the country's fastest-growing types of crime; and

Whereas, in November 2001, the United States Supreme Court rules that the two-year statute of limitations during which an identity theft victim could take action against a credit reporting agency under the Federal Fair Credit Reporting Act is based on when the identity theft took place; and

Whereas, given the unique nature of identity theft, which can easily take place without the victim's knowledge and which often takes a long time to unravel, the Fair Credit Reporting Act needs to be amended. This legislation must ensure that a victim of identity theft can take legal action based on when the fraud is discovered. Clearly, the law should not further penalize the victim of identity theft crime: Now, therefore, be it

Resolved by the Senate, That we memorialize the Congress of the United States to amend the Fair Credit Reporting Act to provide that the statute of limitations for an identity theft suit is two years from the time the fraud was discovered; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–343. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to enacting legislation to prohibit the use of a person's Social Security number as an identification beyond its original purpose; to the Committee on Banking, Housing, and Urban Affairs.

SENATE RESOLUTION NO. 186

Whereas, Social Security numbers are unique to each individual and are invaluable for administering and policing the safety net for millions of Americans who qualify for the benefit programs administered by the Social Security Administration. Over the decades since Social Security was enacted, government agencies increasingly based their personal records on the Social Security number. This number began to assume the status of a virtual national identification number; and

Whereas, concerns over the proliferation of uses for the Social Security number outside of the Social Security Administration led to the enactment by Congress of the Privacy Act in 1974. This act was intended to limit further government use of the Social Security number. Nonetheless, congressional actions in the following years allowed the use of the Social Security number for additional non-Social Security purposes; and

Whereas, despite the federal Privacy Act, numerous governmental and even private organizations use the unique Social Security number as a basis for identifying individuals. With so many public and private organizations using a single identification number for an individual, it is possible to gather enormous amounts of information about a single person; and

Whereas, the Internet has made this explosion of information a danger to our people. Identity theft is now easy. The enormous financial and personal damage that identity theft inflicts on innocent people and the difficulty of correcting that damage is well documented. Congress must take stronger actions to prevent Social Security numbers from being used as general personal identification numbers: Now, therefore, be it

Resolved by the Senate, That we memorialize the United States Congress to enact legislation to prohibit the use of a person's Social Security number as an identification number beyond its original purpose; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–344. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to enacting legislation to provide greater protections against identity theft; to the Committee on Banking, Housing, and Urban Affairs.

SENATE RESOLUTION NO. 182

Whereas, identity theft has become a significant and growing problem in twenty-first century America. The advantages of instant communications and extensive records, which are facilitated by the technology of the digital age, have also brought misuses of these tools for criminal purposes. With frightening speed and ease, an innocent person can face great problems or even financial ruin through identity theft; and

Whereas, much stronger protections need to be created to deal with identity theft. In addition to the steps of increasing penalties and trying to prevent this crime from occurring, there are legislative measures that should be enacted to try to make sure that people who are victims of this crime can recover with a minimum of time, cost, and disruption to their lives; and

Whereas, Michigan is taking numerous steps to fight identity theft, but federal actions are clearly vital to the ultimate success of this initiative. Specific measures that should be enacted into federal law include restricting the commercial use of Social Security numbers as identification numbers and allowing consumers to freeze their credit reports to minimize losses. Clearly, stronger protections against identity theft are long overdue: Now, therefore, be it

Resolved by the Senate, That we memorialize the Congress of the United States to enact legislation to provide greater protections against identity theft. We urge that measures be enacted to restrict the commercial use of Social Security numbers as identification numbers and to allow consumers to freeze their credit reports to minimize losses; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–345. A resolution adopted by the House of Representatives of the Legislature of the State of Michigan relative to enacting legislation to provide Michigan a more equitable share of federal transit funding and increased funding for bus projects; to the Committee on Commerce, Science, and Transportation.

HOUSE RESOLUTION NO. 135

Whereas, the United States Congress reauthorizes transportation expenditures every five years, and the current authorizing legislation, TEA 21 (Transportation Efficiency for the 21st Century), will expire with Fiscal Year 2002–2003; and

Whereas, Federal public transportation funding is appropriated by Congress as part of this appropriations process; and

Whereas, the state of Michigan historically receives no greater than 45% to 50% of the tax dollars it sends to Washington as part of the national transit trust fund; and

Whereas, as part of TEA 21, states have been guaranteed a minimum of 90% return of all tax dollars in the highway trust fund; but no guarantee was granted to transit projects; and

Whereas, currently, only 20% of federal discretionary funding for transit projects may be allocated to bus or bus facilities, while 65% of all public transportation ridership is provided on buses in this country; and

Whereas, SMART, the public transit provider in southeastern Michigan, is working to secure increased federal transportation funding and a more appropriate percentage of discretionary funding for transit projects: Now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the United States to enact legislation to provide Michigan a more equitable share of federal transit funding and urge the Michigan congressional delegation to support all measures that would guarantee that a minimum of 90% of all transit trust funds be returned to the state of origin. We also call on Congress to increase funding for bus projects and urge that a minimum if 33% of federal transit discretionary funds be allocated to bus and bus facility projects; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation. Adopted by the House of Representatives, November 5, 2003.

POM–346. A resolution adopted by the House of Representatives of the Legislature of the State of Michigan relative to developing economic incentives and other programs to aid in the recovery and stabilization of the manufacturing industry in the United States; to the Committee on Environment and Public Works.

HOUSE RESOLUTION NO. 165

Whereas, historically, manufacturing has been a base industry for the national economy, steadily comprising approximately 17 percent of the Gross Domestic Product since 1947; and

Whereas, the manufacturing industry has experienced a rapid decline and economic losses over the last three years. After a peak in July 2000 of 17.3 million people employed by the manufacturing sector, employment declined by more than 2.7 million jobs over the next 38 consecutive months; and

Whereas, lowered demand due to troubled economic conditions, coupled with unfair foreign competition, has greatly hindered the economic prosperity of the manufacturing industry. There is substantial concern over the continuation of manufacturing in the United States if the unfair trade practices of other nations on our domestic market are not addressed; and

Whereas, the restoration and revival of the manufacturing sector are vital to the economic recovery of the United States, as manufacturing has consistently led the economic recovery from previous down-turns; and

Whereas, maintaining a strong and vibrant manufacturing industry is crucial to sustaining or enhancing our national security. Recent bankruptcies and other losses in the manufacturing industry could put the United States in the unprecedented position where it must purchase defense technology from other countries, as foreign companies currently produce such items as a key guidance chip for smart bombs. Most recently, a foreign company purchased a bankrupt domestic manufacturer that retained the rights to the stealth fighter technology; and

Whereas, developing a package of economic incentives to help foster additional growth in the manufacturing industry and assist in keeping domestic manufacturers competitive with their foreign counterparts will greatly benefit not only the manufacturing industry, but will also provide great economic benefits to Michigan and the entire country: Now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the United States to develop economic incentives and other programs to aid in the recovery and stabilization of the manufacturing industry in the United States; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the United States Secretary of Commerce, and the members of the Michigan congressional delegation.

POM–347. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to accelerated highway investments in any short-term economic stimulus package; to the Committee on Environment and Public Works.

SENATE RESOLUTION NO. 124

Whereas, since the events of September 11, 2001, a much sharper focus has been placed on ways to address America's economic stimulus needs and generate American jobs; and

Whereas, every $1 billion of increased investment in highway infrastructure generates 42,000 jobs and $2.1 billion in economic activity; and

Whereas, the Michigan Department of Transportation, working with their partners in the private sector, can provide an immediate stimulus to the economy, while at the same time addressing high priority infrastructure needs; and

Whereas, the Congress of the United States should provide $5 billion in obligation authority in fiscal year 2002 to the state Department of Transportation, consistent with the funding formulas included in the Transportation Equity Act for the 21st Century (TEA–21); and

Whereas, the Highway Account of the Highway Trust Fund (HTF) has a sufficient balance to allow for this investment; and

Whereas, Michigan's share of this investment would be $160.7 million; and

Whereas, this investment would create 5,804 jobs in Michigan; and

Whereas, there are considerable needs across the state for road and bridge improvement projects to warrant this additional investment: Now, therefore, be it

Resolved by the Senate, That the members of this legislative body memorialize the Congress of the United States to include accelerated highway investments in any short-term economic stimulus package that is passed in Washington, D.C.; and be it further

Resolved, That a copy of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–348. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to enacting Great Lakes environmental restoration legislation; to the Committee on Environment and Public Works.

SENATE RESOLUTION NO. 141

Whereas, although the Great Lakes network is a cornerstone of our nation's health and economic prosperity, many threats jeopardize this fresh water treasure. The invasion of nonnative species, pollution from numerous sources, damage to wetlands, and many other forces have damaged the lakes. Efforts to address these problems in the past have generally sought to reduce the damage rather than offering an opportunity to restore the lakes; and

Whereas, the proposed Great Lakes Environmental Restoration Act presently before the United States Senate holds great promise to address long-term issues facing the Great Lakes. This legislation would provide $6 billion over a ten-year span—in addition to existing programs—for a wide range of initiatives to restore the Great Lakes and put in place mechanisms to ensure better coordination of efforts and standards far into the future. Developing improved monitoring indicators is a major part of the act, with requirements for ongoing gathering and review of critical information; and

Whereas, the Great Lakes Restoration Financing Act, a similar House proposal, through $4 billion in funding over a five-year period, would provide a greater coordination of efforts through involvement by Great Lakes governors and elected officials as well as key federal agencies. There would also be an emphasis on implementing individual state management plans; and

Whereas, clearly, the Great Lakes network is one of the world's greatest natural assets. Investing in its restoration is paramount to the quality of the future we will share: Now, therefore, be it

Resolved by the Senate, That we memorialize the Congress of the United States to enact Great Lakes environmental restoration act; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–349. A resolution adopted by the House of Representatives of the Legislature of the State of Michigan relative to enacting legislation to give states the authority to ban out-of-state solid waste; to the Committee on Environment and Public Works.

HOUSE RESOLUTION NO. 85

Whereas, in 1992, the United States Supreme Court, in Fort Gratiot Sanitary Landfill v. Michigan Department of Natural Resources, ruled that states could not regulate or ban the importation of solid waste because only Congress has the authority to regulate interstate commerce. Since that time, Michigan has become the dumping ground for increasing amounts of solid waste from outside of our state and, with large amounts of trash from Canada, from outside the country; and

Whereas, Michigan has become one of the largest recipients of imported solid waste in the country. Approximately 15 percent of all trash dumped in landfills in Michigan now originates elsewhere. The amounts have increased significantly in the past several years, and recent reports of a major contract with Ontario and of the closing of the nation's largest landfill in New York seem to indicate this situation will only become a bigger issue in the future; and

Whereas, accepting unlimited volumes of trash from outside our state is a serious long-term commitment. Long after the money from the contract has been spent, there is a threat to the environment and an obligation to monitor sites to protect water and health. Clearly, any state accepting these long-term risks should be able to regulate what comes across state lines for disposal: Now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the United States to enact legislation to give states the authority to ban out-of-state solid waste; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representative, and the members of the Michigan congressional delegation.

POM–350. A concurrent resolution adopted by the Senate of the Legislature of the State of Michigan relative to regulations under the Clean Water Act; to the Committee on Environment and Public Works.

SENATE CONCURRENT RESOLUTION NO. 11

Whereas, one of the most frustrating issues facing the Great Lakes is the threat from nonindigenous species. Invaders like the zebra mussle, the round goby, and the ruffe damage the ecology of the Great Lakes and connecting waterways in many ways. The impact of exotic species on municipal water systems, fishing, and aquatic plant life exacts a terrible toll on the nation's most important freshwater resource; and

Whereas, Michigan has exercised consistent leadership in the effort to prevent the arrival of more nonnative species. Out state has put incentives in place in an effort to curb the release of untreated ballast water from the ships that traverse the lakes, which is the primary source of these foreign species. As a state that has suffered significantly because of organisms released into the lakes through the discharge of ballast water, Michigan has repeatedly called for stronger steps to prevent this from happening; and

Whereas, the effort to halt the introduction and spread of nonindigenous species through ballast water discharges continues to be frustrated by federal regulations under the Clean Water Act. Although this key federal act requires permits through the National Pollution Discharge Elimination System for discharges, 40 C.F.R. §122.3(a) provides that discharges from vessels that are incidental to normal operations are exempt from the permit requirement. Although efforts to repeal this exemption recently failed, removing the exemption remains a vitally important step to take to safeguard the Great Lakes: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That we memorializing the Congress of the United States and the Environmental Protection Agency to repeal 40 C.F.R. §122.3(a), which provides for an exemption for ballast water discharges from permit requirements under the federal Clean Water Act; and be it further

Resolved, That copies of this resolution be transmitted to the Environmental Protection Agency, the United States Coast Guard, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–351. A concurrent resolution adopted by the Senate of the Legislature of the State of Michigan relative to funding the Great Lakes Legacy Act and to expediting cleanup efforts in Michigan's designated Areas of Concern; to the Committee on Environment and Public Works.

SENATE CONCURRENT RESOLUTION NO. 13

Whereas, the United States-Canada Great Lakes Water Quality Agreement of 1972, as amended, provided for the designation of Areas of Concern in need of remedial actions to address documented pollution problems; and

Whereas, fourteen Areas of Concern (AOC) have been designated in Michigan under the Great Lakes Water Quality Agreement, each with a Remedial Action Plan that coordinates and focuses the efforts of multiple levels of government and other stakeholders; and

Whereas, substantial progress has been made in characterizing the sources and causes of beneficial use impairments, identifying necessary remediation activities, and generating broad stakeholder involvement in and support for the Remedial Action Plan process; and

Whereas, substantial resources are needed to remediate contaminated sediments, which are a persistent source of toxic pollution to the Great Lakes from each AOC and contribute to 11 of the 14 beneficial use impairments identified in the Great Lakes Water Quality Agreement; and

Whereas, Congress has enacted the Great Lakes Legacy Act, authorizing $270 million for monitoring, assessing, and cleaning up contaminated sediments in Great Lakes Areas of Concern; and

Whereas, substantial funds under the Clean Michigan Initiative environment bond program remain earmarked for cleanup efforts in Michigan's 14 Areas of Concern; and

Whereas, the United States Environmental Protection Agency is reorienting its programs to expedite progress in restoring the Areas of Concern, has finalized guidelines for removing communities from the list of toxic hot spots and has committed to a new Great Lakes Strategy that calls for completing restoration and ''delisting'' of 10 Areas of Concern by 2010; and

Whereas, the Senate Great Lakes Conservation Task Force has called for a more aggressive state role in supporting Area of Concern cleanup efforts and greater use of federal resources toward this end: Now, therefore, but it

Resolved by the Senate (the House of Representatives concurring), That we memorialize the Congress of the United States to fund the Great Lakes Legacy Act at its authorized level of $54 million in Fiscal Year 2004; and be it further

Resolved, That we urge the Department of Environmental Quality, in collaboration with local advisory councils in the Areas of Concern, to utilize funds remaining in the Clean Michigan Initiative to leverage funding under the Great Lakes Legacy Act to implement sediment cleanup projects in the state's Areas of Concern; and be it further

Resolved, That we urge the United States Environmental Protection Agency and the Department of Environmental Quality to monitor and report on progress in achieving cleanup goals in the Areas of Concern, including the documentation needed to remove the affected communities from the list of Areas of Concern and to consult with and empower local advisory groups established to represent the Area of Concern communities in the development and implementation of cleanup plans; and be it further

Resolved, That copies of this resolution be transmitted to the Administrator of the United States Environmental Protection Agency, the EPA Region 5 office, the EPA Great Lakes National Program Office, the International Joint Commission, the President of the United States Senate, the Speaker of the United States House of Representatives, the members of the Michigan congressional delegation, and the director of the Michigan Department of Environmental Quality.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Ms. COLLINS, from the Committee on Governmental Affairs:

Report to accompany S. 1245, a bill to provide for homeland security grant coordination and simplification, and for other purposes (Rept. No. 108–225).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. BOXER:

S. 2058. A bill to direct the Secretary of the Interior to cancel certain Bureau of Land Management leases that authorize extraction of sand and gravel from the Federal mineral estate in land in Soledad Canyon, California, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. FITZGERALD (for himself, Mr. LEVIN, and Ms. COLLINS):

S. 2059. A bill to improve the governance and regulation of mutual funds under the securities laws, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. REID:

S. 2060. A bill to permit certain local law enforcement officers to carry firearms on aircraft; to the Committee on Commerce, Science, and Transportation.

By Mr. GREGG (for himself and Mr. ENSIGN):

S. 2061. A bill to improve women's health access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the delivery of obstetrical and gynecological services; read the first time.

By Mr. GRASSLEY (for himself, Mr. CARPER, Mr. CHAFEE, Mr. DODD, Mr. HATCH, Mr. KOHL, Ms. LANDRIEU, Mr. LUGAR, Mr. MILLER, Mr. SCHUMER, and Mr. SPECTER):

S. 2062. A bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; read the first time.

By Mr. CONRAD (for himself, Mr. GRAHAM of Florida, Mr. ROCKEFELLER, Mr. AKAKA, and Mr. JOHNSON):

S. 2063. A bill to require the Secretary of Veterans Affairs to carry out a demonstration project on priorities in the scheduling of appointments of veterans for health care through the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

ADDITIONAL COSPONSORS

S. 11

At the request of Mr. ENSIGN, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 11, a bill to protect patients' access to quality and affordable health care by reducing the effects of excessive liability costs.

S. 491

At the request of Mr. REID, the name of the Senator from North Carolina (Mr. EDWARDS) was added as a cosponsor of S. 491, a bill to expand research regarding inflammatory bowel disease, and for other purposes.

S. 595

At the request of Mr. HATCH, the names of the Senator from Georgia (Mr. CHAMBLISS) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. 595, a bill to amend the Internal Revenue Code of 1986 to repeal the required use of certain principal repayments on mortgage subsidy bond financings to redeem bonds, to modify the purchase price limitation under mortgage subsidy bond rules based on median family income, and for other purposes.

S. 664

At the request of Mr. HATCH, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 664, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, to increase the rates of the alternative incremental credit, and to provide an alternative simplified credit for qualified research expenses.

S. 700

At the request of Mr. COCHRAN, his name was withdrawn as a cosponsor of S. 700, a bill to provide for the promotion of democracy, human rights, and rule of law in the Republic of Belarus and for the consolidation and strengthening of Belarus sovereignty and independence.

S. 736

At the request of Mr. ENSIGN, the names of the Senator from Delaware (Mr. BIDEN) and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of S. 736, a bill to amend the Animal Welfare Act to strengthen enforcement of provisions relating to animal fighting, and for other purposes.

S. 976

At the request of Mr. WARNER, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 976, a bill to provide for the issuance of a coin to commemorate the 400th anniversary of the Jamestown settlement.

S. 983

At the request of Mr. CHAFEE, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 983, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 1197

At the request of Mr. ENZI, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 1197, a bill to amend the Public Health Service Act to ensure the safety and accuracy of medical imaging examinations and radiation therapy treatments.

S. 1298

At the request of Mr. AKAKA, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 1298, a bill to amend the Farm Security and Rural Investment Act of 2002 to ensure the humane slaughter of nonambulatory livestock, and for other purposes.

S. 1558

At the request of Mr. ALLARD, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 1558, a bill to restore religious freedoms.

S. 1587

At the request of Mr. BIDEN, the names of the Senator from South Carolina (Mr. GRAHAM) and the Senator from Virginia (Mr. ALLEN) were added as cosponsors of S. 1587, a bill to make it a criminal act to willfully use a weapon, explosive, chemical weapon, or nuclear or radioactive material with the intent to cause death or serious bodily injury to any person while on

board a passenger vessel, and for other purposes.

S. 1603

At the request of Mr. GRAHAM of South Carolina, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 1603, a bill the amend title 18 of the United States Code, to prohibit the unauthorized use of military certificates, and for other purposes.

S. 1793

At the request of Mr. KENNEDY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1793, a bill to provide for college quality, affordability, and diversity, and for other purposes.

S. 1813

At the request of Mr. LEAHY, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1813, a bill to prohibit profiteering and fraud relating to military action, relief, and reconstruction efforts in Iraq, and for other purposes.

S. 1843

At the request of Ms. SNOWE, the names of the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Louisiana (Mr. BREAUX) and the Senator from South Dakota (Mr. DASCHLE) were added as cosponsors of S. 1843, a bill to amend titles XIX and XXI of the Social Security Act to provide for FamilyCare coverage for parents of enrolled children, and for other purposes.

S. 1890

At the request of Mrs. FEINSTEIN, her name was added as a cosponsor of S. 1890, a bill to require the mandatory expensing of stock options granted to executive officers, and for other purposes.

S. 1925

At the request of Mr. KENNEDY, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 1925, a bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

S. 1998

At the request of Mr. BINGAMAN, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 1998, a bill to amend title 49, United States Code, to preserve the essential air service program.

S. 2056

At the request of Mr. BROWNBACK, the names of the Senator from Virginia (Mr. ALLEN) and the Senator from Pennsylvania (Mr. SANTORUM) were added as cosponsors of S. 2056, a bill to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane language.

S. CON. RES. 8

At the request of Ms. COLLINS, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. Con. Res. 8, a concurrent resolution designating the second week in May each year as ''National Visiting Nurse Association Week.''

S. CON. RES. 81

At the request of Mr. BUNNING, his name was added as a cosponsor of S. Con. Res. 81, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. BOXER:

S. 2058. A bill to direct the Secretary of the Interior to cancel certain Bureau of Land Management leases that authorize extraction of sand and gravel from the Federal mineral estate in land in Soledad Canyon, California, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. BOXER. Mr. President, I am introducing a bill today that would terminate two Bureau of Land Management mining leases in Soledad Canyon, an area that is adjacent to the city of Santa Clarita in Los Angeles County, CA.

The bill would also prohibit the issuance of any future mining leases for sand and gravel in the Soledad Canyon area that exceed the historical level of mining, which is estimated to be 285,000 tons of sand and gravel per year. Before issuing any future leases in this area, the Secretary of the Interior would be required to consult with the city of Santa Clarita and take into consideration the environmental and traffic impacts of mining. Congressman BUCK MCKEON introduced this legislation in the House of Representatives in November 2003.

Here is the problem. These two leases in Soledad Canyon would allow mining of approximately 56 million tons of sand and gravel over the next 20 years. That will mean more dust and air pollution, as well as more traffic congestion.

The residents of the city of Santa Clarita suffer from some of the worst air quality in the Nation. The mining in Soledad Canyon would occur in an area where State standards for particulate matter are already exceeded. Development of these mining leases will worsen air pollution by increasing dust and particulate matter emissions. This will lead to more respiratory problems, increased doctor and emergency room visits, more hospitalizations for cardiac and pulmonary disease, and premature deaths for area residents.

Increased traffic congestion will also result from these mining leases. Interstate 5 and State Route 14 are located in the vicinity of the mining leases, and State Route 14 is already plagued with serious traffic problems. Development of these leases would tremendously increase truck traffic in the area, causing further congestion. It is estimated that the proposed expansion of mining in Soledad Canyon would result in 347 trucks making round trips to and from the site each day in the first 10 years, increasing to 582 trucks in the second 10 years of operation.

Due to these serious concerns over impacts on air quality and traffic congestion, there is very strong opposition to the two leases by the people of Santa Clarita and over 80 organizations in California. We need this legislation.

I believe that local health and safety concerns should not be overridden by the Federal Government. Development of these leases should not occur to the detriment of the people of Santa Clarita. I share Congressman BUCK MCKEON's interest in working with TMC/Cemex—the company that currently holds the leases—the city of Santa Clarita, and the Bureau of Land Management to find a resolution that is acceptable to all parties and that protects the health and safety of the city and its residents.

By Mr. FITZGERALD (for himself, Mr. LEVIN, and Ms. COLLINS):

S. 2059. A bill to improve the governance and regulation of mutual funds under the securities laws, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. FITZGERALD. Mr. President, today I rise to introduce the Mutual Fund Reform Act of 2004. This legislation would make fund governance truly accountable, require genuinely transparent total fund costs, enhance comprehension and comparison of fund fees, confront trading abuses, create a culture of compliance, eliminate hidden transactions that mislead investors and drive up costs, and save billions of dollars for the 95 million Americans who invest in mutual funds. Above all, the Mutual Fund Reform Act strives to preserve the attraction of mutual funds as a flexible and investor-friendly vehicle for long-term, diversified investment.

I am pleased to be joined today by my distinguished colleagues on the Committee on Governmental Affairs, Senator CARL LEVIN and Senator SUSAN COLLINS, the committee's chairman, who are original cosponsors of this legislation. I am grateful for the extensive and important input both Senators provided in the drafting of this bill, and appreciate the invaluable perspective Senator COLLINS provided based on her first-hand experience as Maine's Commissioner of Professional and Financial Regulation.

I would like to take this opportunity to recognize the work of a number of our colleagues in this area. Last year, I was pleased to cosponsor S. 1822, introduced by Senator DANIEL AKAKA, the Ranking Member of the Senate Governmental Affairs Subcommittee

on Financial Management, the Budget, and International Security, which I chair, to address mutual fund trading abuses. Senators CORZINE, DODD, and KERRY also have sponsored mutual fund bills from which I drew, as well as legislation introduced by Congressman RICHARD BAKER last summer and overwhelmingly passed by the House of Representatives at the end of the last session.

I also would like to acknowledge the ongoing work of the Senate Committee on Banking, Housing and Urban Affairs, the authorizing committee which will ultimately decide questions of mutual fund industry reform. The committee is conducting a series of legislative hearings to examine the mutual fund scandal and the merits of various reform proposals. I commend the leadership of Chairman RICHARD SHELBY and Ranking Member PAUL SARBANES, and look forward to continuing to work with them and the other members of the Banking Committee on this issue in the coming months.

The bill I am introducing today reflects extensive testimony that was presented during oversight hearings of the Financial Management Subcommittee that I chaired on November 3, 2003, and January 27, 2004. The general consensus of the panelists at the November hearing was that illegal late trading and illicit market timing were indeed very serious threats to investors but that excessive fees and inadequate disclosure of those fees were an even more serious threat to American investors. Witnesses at our hearing last month testified regarding the propriety and the adequacy of the disclosure of mutual fund fees, specifically hidden fees such as revenue sharing, directed brokerage, soft money arrangements, and hidden loads such as 12b-1 fees. The subcommittee also heard from two whistleblowers who were responsible for the initial revelations regarding Putnam Investments and Canary Capital Partners, LLC.

The bill also reflects the constructive input from a number of key organizations and leaders of mutual fund reform. I especially appreciate the extensive contributions of Mr. John Bogle, the founder and former CEO of the Vanguard Group, who has been a champion of reforms in the mutual fund industry for many years.

I ask unanimous consent that letters from Mr. Bogle, Massachusetts Secretary of State William Galvin, and organizations representing investors and consumers endorsing this bill be printed in the RECORD.

In 1980 only a small percentage of Americans invested in mutual funds and the assets of the industry were only $115 billion. Today, roughly 95 million Americans own shares in mutual funds and the assets of all the funds combined are now more than $7 trillion. Mutual funds have grown in popularity in part because Congress has sanctioned or expanded a variety of tax-sheltered savings vehicles such as 401(k)s, Keoghs, traditional IRAs, Roth IRAs, Rollover IRAs, and college savings plans. Given that mutual funds are now the repository of such a large share of so many Americans' savings, few issues we confront are as important as protecting the money invested in mutual funds.

I want to commend the many recent regulatory initiatives from the Securities and Exchange Commission (SEC). They are collectively a step in the right direction and a demonstration of our seriousness in Washington about putting the interests of America's mutual investors first. But the SEC does not have the statutory authority to take all of the needed steps to restore integrity and health to the mutual fund industry. The current scandals demand that Congress take a comprehensive look at an industry still governed by a 64-year old law.

Therefore, the Mutual Fund Reform Act of 2004 puts the interests of investors first by: ensuring independent and empowered boards of directors, clarifying and making specific fund directors' foremost fiduciary duty to shareholders; strengthening the fund advisers' fiduciary duty regarding negotiating fees and providing fund information, and instituting Sarbanes-Oxley-style provisions for independent accounting and auditing, codes of ethics, chief compliance officers, compliance certifications, and whistleblower protections.

The Mutual Reform Act of 2004 empowers both investors and free markets with clear, comprehensible fund transaction information by: standardizing computation and disclosure of (i) fund expenses and (ii) transaction costs, which yield a total investment cost ratio, and tell investors actual dollar costs; providing disclosure and definitions of all types of costs and requiring that the SEC approve imposition of any new types of costs; disclosing portfolio managers' compensation and stake in fund; disclosing broker compensation at the point of sale; disclosing and explaining portfolio turnover ratios to investors, and disclosing proxy voting policies and record.

The Mutual Fund Reform Act of 2004 vastly simplifies the disclosure regime by: eliminating asset-based distribution fees (Rule 12b-1 fees), the original purpose of which has been lost and the current use of which is confusing and misleading—and amending the Investment Company Act of 1940 to permit the use of the adviser's fee for distribution expenses, which locates the incentive to keep distribution expenses reasonable exactly where it belongs—with the fund adviser; prohibiting shadow transactions—such as revenue sharing, directed brokerage, and soft-dollar arrangements—that are riddled with conflicts of interest, serve no reasonable business purpose, and drive up costs; ''Unbundling'' commissions, such that research and other services, heretofore covered by hidden soft-dollar arrangements, will be the subject of separate negotiation and a freer and fairer market; requiring enforceable market timing policies and mandatory redemption fees—as well as provision by omnibus account intermediaries of basic customer information to funds to enable funds to enforce their market timing, redemption fee, and breakpoint discount policies; and requiring fair value pricing and strengthening late trading rules.

The Mutual Fund Reform Act also would perpetuate the dialogue and preserve the wisdom gathered from hard experience. The Act directs the SEC and the General Accounting Office to conduct several studies, including a study of ways to minimize conflicts of interest and incentivize internal management of mutual funds; a study on coordination of enforcement efforts between SEC headquarters, SEC regional offices, and state regulatory and law enforcement entities; and a study to enhance the role of the internet in educating investors and providing timely information about laws, regulations, enforcement proceedings and individual funds, possibly by mandating disclosures on websites.

Enactment of the Mutual Fund Reform Act would help restore the integrity of the mutual fund industry and would dramatically enhance the amount of retirement savings for many long term investors. Shareholders would be the big winners under this legislation, and the losers would be high cost mutual funds. I therefore urge my colleagues to support passage of this legislation.

I ask unanimous consent that the text of the bill, as well as a one-page summary and white paper describing the legislation, be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

THE VANGUARD GROUP,
Valley Forge, PA, February 6, 2004.

I salute Senator Fitzgerald for the bill he has drafted to improve the governance and regulation of mutual funds. I've spent the greater part of my career speaking out on nearly all of the important legislative issues that Senator Fitzgerald's Mutual Fund Reform Act of 2004 addresses. While nothing can solve the industry's problems overnight, I view of the bill as the gold standard in putting mutual fund shareholders back in the driver's seat, and endorse it in its entirety.

JOHN C. BOGLE,
Founder.

SECRETARY OF THE COMMONWEALTH
OF MASSACHUSETTS,
Boston, MA, January 23, 2004.

Re Mutual Fund Reform act of 2004.

Hon. PETER FITZGERALD,
Chairman, Subcommittee of Financial Management, the Budget, and International Security, Senate Committee of Governmental Affairs, Hart Senate Building, Washington, DC.

DEAR SENATOR FITZGERALD: As the chief securities regulator in Massachusetts, I write in support of the Mutual Fund Reform Act of 2004. The recently-exposed abuses relating to mutual funds show the need for this legislation. Small investors are particularly

vulnerable to these abusive practices, since nearly half of U.S. households own mutual funds—often through their retirement plans.

The bill increases the independence of fund directors and obliges them to act as fiduciaries on behalf of shareholders; it makes the costs of mutual funds more transparent; and it curtails many abusive mutual fund sales practices.

We particularly support the provisions to prohibit directed brokerage and soft dollar arrangements by mutual funds. These practices, at best, mask the true costs of fund operations; at worst, they are kick back-type payments in the securities industry.

I also encourage you to add a provision that will give investors the ability to choose the forum where they may arbitrate disputes with their brokers. Under the current system, investors are forced to arbitrate their claims in a forum chosen by the brokerage.

Please contact me if I can assist you in working for the adoption of this important legislation.

Sincerely,

WILLIAM F. GALVIN,
Secretary of the Commonwealth.

FEBRUARY 5, 2004.

Hon. PETER G. FITZGERALD,
Dirksen Building, U.S. Senate,
Washington, DC.

DEAR SENATOR FITZGERALD: We are writing to express our enthusiastic support for your draft ''Mutual Fund Reform Act.'' More than any other legislation that has yet to be introduced since the mutual fund scandals erupted last year, this bill recognizes the need to fundamentally transform the way in which mutual funds are governed, operated, and sold to ensure that they live up to their statutory obligation to operate in their shareholders' best interests.

This legislation offers a thoughtful and far-reaching agenda for reform. It addresses significant gaps in the SEC's proposals to improve fund governance, dramatically enhances the quality of mutual fund cost disclosures, and prohibits distribution practices that create unacceptable and poorly understood conflicts of interest. It also takes the necessary step of banning hidden ''soft dollar'' arrangements that boost shareholder costs and create additional conflicts of interest. We look forward to working with you to win passage of these essential reforms.

Our support for this bill is based on the firm belief that mutual funds have been and will continue to be the best way for average, middle-income investors to participate in our nation's securities markets. Individuals with only modest amounts to invest have benefited greatly from the opportunity mutual funds offer to achieve broad diversification. While wealthy investors have other options that provide similar benefits, average, middle-class investors do not. The resulting influx of money into mutual funds has in turn produced generous profits for fund companies.

This long record or mutual success had caused some in the industry and among its regulators to become complacent, taking for granted that all was well. By revealing the extent to which some fund managers had abandoned their obligation to operate in fund shareholders' best interests, the trading scandals uncovered last fall provided sudden and compelling evidence that such complacency was ill-founded. The closer scrutiny of fund operations that resulted quickly uncovered evidence of other similar failings: Management fees that had failed to drop significantly, or in some cases at all, despite a massive growth in assets; use of portfolio transaction commissions, which are not incorporated in the fund expense ratio, to pay for services whose costs would otherwise have to be disclosed; use of portfolio transaction commissions borne by shareholders to pay for services whose benefits flowed in part or in whole to the fund manager; use of poorly disclosed or misunderstood compensation methods, including 12b-1 fees, directed brokerage, and payments for shelf space to induce brokers to recommend particular funds; and broker recommendation of mutual funds based on the financial incentives received rather than on which funds offer the best quality at the most reasonable price.

By driving up costs to investors and undermining competition based on cost and quality, these practices inflict far greater financial harm on their victims than the trading scandals appear to have done.

Since it became clear that mutual fund sales and trading abuses were widespread throughout the industry, the Securities and Exchange Commission has responded with an ambitious enforcement, investigation, and rule-making agenda. In addition to developing reforms targeted specifically at excessive and late trading, the Commission has issued proposals to strengthen mutual fund governance, sought suggestions on how to improve disclosure of portfolio transaction costs, and proposed rules to improve disclosure of distribution-related costs and conflicts of interest.

Despite this important progress, there are serious gaps in the SEC's regulatory agenda. Some result from the agency's lack of authority to effect change. Others result from the SEC's lack of a vision of how mutual fund regulation must be transformed. This legislation fills those gaps. If it is adopted, it will dramatically improve fund governance, eliminate practices that create unacceptable conflicts of interest, and save mutual fund investors potentially tens of billions of dollars a year by wringing out excess costs.

Our specific comments in support of some of the bill's most important pro-investor provisions follow.

1. The legislation's fund governance reforms address significant gaps in the SEC's rule proposal.

The Securities and Exchange Commission has made a promising start on the issue of fund governance. In January, it issued a rule proposal that would require that three-quarters of mutual fund board members, including the chairman, be independent. It would further require that independent members meet at least quarterly without any interested parties present. It authorizes the board to hire staff to help it fulfill its responsibilities. And it requires boards to retain copies of the written documents considered as part of the board's annual review of the advisory contract.

Although the Commission certainly deserves credit for this important first step, there is more that must be done to achieve the goal of improved fund governance. First and foremost, the Commission lacks the authority to strengthen the definition of independent director. So, even if it adopts its independent governance requirements without weakening amendments over the already announced objections of two commissioners, non-immediate family members, individuals associated with significant service providers of the fund, and recently retired fund company employees would all be eligible to serve as ''independent'' directors. Furthermore, the SEC proposal does not require that independent directors have sole authority to nominate new directors and set director compensation, potentially leaving significant issues in the hands of fund managers.

This bill addresses all those concerns. It includes an excellent definition of independence, which both specifically addresses the issue of significant service providers and authorizes the SEC to exclude from the definition of independent director any set of individuals who for business, family, or other reasons are unlikely to demonstrate the appropriate degree of independence. It requires both that independent directors determine director compensation and that a committee of independent directors nominate new directors. And it directs the SEC to study whether any limit should be placed on the aggregate amount of director compensation an individual could receive from a single fund family and still be considered independent.

The bill further recognizes that lack if independence is not the only concern about mutual fund governance. Also problematic is the failure of many mutual fund boards to act as fiduciaries, with a broad responsibility to protect shareholder interests. The bill attacks this problem by broadening the scope of directors' fiduciary duty. As defined in the legislation, that duty would include, among other things, a responsibility to: take quality of management as well as actual costs and economies of scale into account when negotiating management contracts; evaluate the quality, comprehensiveness, and clarity of disclosures to fund shareholders regarding costs; assess any distribution and marketing plan with regard to its costs and benefits; and monitor enforcement of policies and procedures to ensure compliance with applicable securities laws. The SEC would be responsible for detailing how the board's fiduciary duty applies in each instance.

By shoring up the independence of fund boards and expanding and clarifying their fiduciary duty to shareholders, this bill would increase the likelihood that fund boards would serve their intended function as the first line of defense against a variety of abusive practices.

One element missing from the bill, however, is any consideration of creating an independent board to oversee mutual funds. In testimony late last year, SEC Chairman William Donaldson suggested that the Commission was exploring ways in which funds could ''assume greater responsibilities for compliance with the federal securities laws, including whether funds and advisers should periodically undergo an independent third-party compliance audit.'' ''These compliance audits could be a useful supplement to our own examination program and could ensure more frequent examination of funds and advisers,'' he said.

Recent accounting scandals should have taught us the risks of relying on audits that are paid for by the entity being audited. If the SEC needs a supplement to its own examination program, a far better approach would be to create an independent board, subject to SEC oversight, to conduct such audits. The board could be modeled on the Public Company Accounting Oversight Board, with similar authority to set standards, conduct inspections, and bring enforcement actions and similar (or, better yet, stronger) requirements for board member independence. Your bill would require a GAO study of the SEC's current organizational structure with respect to mutual fund regulation. We urge you, at a minimum, to include an assessment of the benefits of establishing an independent oversight board as part of that study.

2. The legislation would dramatically enhance the quality of mutual fund cost disclosures.

A major shortcoming in the SEC's regulation of mutual funds have been its failure to take effective action to bring down excessive costs. Not only has the agency not used its own enforcement authority to bring cases against fund managers who charge and fund boards who approve unreasonable fees, it has criticized the New York Attorney General for negotiating fee reduction agreements as

part of his settlement with fund companies that engaged in abusive trading. In criticizing those fee reduction agreements, Commission officials have suggested that they prefer to rely on independent fund boards and the market to discipline costs.

While the Commission can show some progress on the issue of fund governance, its proposals on cost disclosure are extremely disappointing. They fall far short of the bare minimum needed to introduce meaningful cost competition in the mutual fund marketplace. This legislation attacks to excessive costs both through strengthened governance requirements that do beyond those in the SEC rule proposal and through improved disclosures that will be more effective in raising investor awareness of costs than those proposed so far by the SEC.

One important area where the bill improves on SEC proposals is in disclosure of portfolio transaction costs. These costs vary greatly from fund to fund, may be the highest cost for an actively managed stock fund, and in some cases exceed all others costs combined. A recent study found that, on average, funds spend $0.43 on portfolio transactions for every $1.00 of expenses that are disclosed in the current expense ratio, and that in some cases fund transaction costs can exceed three or four times the current expense ratio. (Jason Karceski, Miles Livingston, Edward O'Neal, Mutual Fund Brokerage Commissions, Jan. 2004, available at http://www.zeroalphagroup. com/headlines/ZAG_mutual_fund_true_cost_study.pdf.)

Yet, the SEC has long resisted incorporating these costs in the expense ratio. In response to congressional pressure, the agency has recently issued a concept release seeking suggestions for improving transaction cost disclosure, but it is not at all clear that the agency will come out in support of an approach that goes much beyond its previously stated preference for giving greater prominence to disclosure of the portfolio turnover rate. Such an approach makes not distinction between those funds that get good execution for their trades and those that do not. Furthermore, it continues to make it possible for funds to hide costs that would otherwise have to be disclosed by paying for them through soft dollar arrangements.

The bill would bring these costs out into the open where they belong. It would do so by requiring a separate computation of portfolio transaction costs that includes, at a minimum, brokerage commissions and bid-ask spread costs. And it would require this transaction cost ratio to be disclosed both separately and as part of a total investment cost ratio in the prospectus fee table and wherever else the expense ratio is disclosed. Because the bill would retain the current expense ratio, while also creating a new total expense ratio that includes portfolio transaction costs, it would allow the markets to decide which measure of fund costs is most appropriate and useful. Once this information is brought out into the open, these costs are more likely to be subject to competitive pressures, helping to drive down expenses for shareholders.

The bill would supplement this disclosure by requiring individualized disclosure in annual reports of the projected actual dollar amount of each investor's total annual costs based upon the investor's assets at the time of the disclosure. We strongly support individualized dollar cost disclosures, but believe that, to be workable, this information must be provided in the quarterly or annual account statements that show the shareholder's account balance and transaction activity. Putting cost information in dollar amounts side-by-side with information on the fund's gains or losses for the year is key to helping investors to put those costs into perspective. We urge you to adopt this clarification.

In addition, the draft version of the legislation that we have reviewed does not require pre-sale disclosure of mutual fund costs, as opposed to distribution costs. If we are to promote effective cost competition in the mutual fund industry, investors must receive cost information in advance of the sale. Post-sale disclosure, while useful in raising investor awareness of costs, comes too late to influence the purchase decision. We believe investors would be best served by pre-sale cost disclosures that are comparative in nature, showing how the fund's cost compare to category averages and minimums, and how this is likely to affect performance over the long-term. The provision in the bill that allows for point-of-sale disclosure provides an easy mechanism for offering this information. We urge you to add a provision to this effect to your bill.

With these changes, the cost disclosure provisions in this bill will go a long way toward bringing meaningful cost competition to an industry that has too long escaped its disciplining effects.

3. The bill would prohibit a variety of distribution practices that create unacceptable conflicts of interest.

Growing investor reluctance to pay the front loads that were common in the 1980s has driven mutual fund distribution costs underground. Funds substituted a variety of distribution practices—e.g., 12b-1 fees, directed brokerage, and payments for shelf space—that were less visible to shareholders. These practices encouraged the impression that the funds were load-free when in fact they imposed significant distribution costs. The practices adopted also posed significant new conflicts of interest.

Although 12b-1 fees are disclosed as a separate line item on prospectus fee tables, evidence suggests that investors are less aware of the cost implications of annual expenses than they are of front loads and do not necessarily understand that 12b-1 fees are used to compensate brokers. Because they are included in the expense ratio, 12b-1 fees appear to be a cost the shareholder pays for the fund, not a cost they pay for the services the broker provides. Problems with 12b-1 fees abound, including the fact that investors in funds that charge substantial 12b-1 fees may be stuck paying distribution costs whose benefits flow partially, or even primarily, to the fund company. Shareholders are forced to pay the fees even when they do not use the services the fees are designed to provide. With fund manager compensation based on a percentage of assets under management, fund managers reap significant benefits from the asset growth the fees promote, without having to risk their own money in the process.

Because it also uses shareholder assets to promote distribution, directed brokerage creates many of the same conflicts as 12b-1 fees and more. Not only are shareholders forced to pay higher costs for benefits that flow in part or in full to the fund manager, in some cases costs paid by one set of shareholders may be used in part to promote sale of other funds in the same fund family. Furthermore, these arrangements may encourage fund managers to decide where to conduct their portfolio transactions based not on where they can get the best execution, but on where they get the best distribution. They may even encourage fund managers to trade more than necessary simply to fulfill their directed brokerage agreements. This, in turn, drives up costs to shareholders. While 12b-1 fees are disclosed to investors, distribution costs paid through directed brokerage are not. Instead, they are hidden in undisclosed portfolio transaction costs.

Payments for shelf space are similar to directed brokerage agreements. Instead of being paid indirectly through portfolio transaction costs, however, these financial incentives are made in the form of cash payments by the fund manager to the broker. At best, by eating into the manager's bottom line, the payments may reduce the likelihood that the management fee will be reduced in response to economies of scale. At worst, fund managers will pass along those costs to shareholders in a form that is even less transparent than directed brokerage payments.

All these practices are designed to encourage brokers to recommend funds based not on which offer the best quality at the most reasonable price, but instead on which offer the most generous compensation to the broker. As such, they stand in sharp contrast to the image brokers promote of themselves as objective advisers. To its great credit, the legislation recognizes that simply disclosing these conflicts will not solve the problem. The best disclosure in the world is unlikely to counteract multi-million dollar advertising campaigns intent on convincing investors to place their trust in the objectivity and professionalism of their ''financial consultant.''

Instead, the legislation deals with these conflicts in the cleanest, most sensible way possible. It eliminates them. In doing so, it takes an enormous and much needed step toward forcing brokers to act like the objective advisers they claim to be. Furthermore, reforming the distribution system in this way is one of the most important things Congress can do to promote competition in the mutual fund industry based on cost and quality. That is because these practices allow mediocre, high-cost funds to survive and even thrive simply by offering generous compensation to the brokers that sell them. And, by making it harder for brokers to hide the compensation they receive for selling particular funds, this legislation should make it easier for shareholders to assess whether the services they receive from their broker justify the costs.

4. The bill would prohibit soft dollar arrangements that boost shareholder costs and create unacceptable conflicts of interest.

Soft dollar arrangements allow fund managers to pay for services through portfolio transaction costs that they would otherwise have to bill for directly—primarily research, but a variety of other services as well. And, because these costs are hidden, they create a strong incentive for fund managers to pay for services in this fashion. The conflicts they create are substantial. As with directed brokerage agreements, they encourage fund managers to direct their portfolio transactions based on the services they receive and not on who offers the best execution for those trades. Soft dollar arrangements also may encourage excessive trading with no purpose except to fulfill soft dollar agreements. This, in turn, requires shareholders to pay those unnecessary trading costs. Soft dollar arrangements may also encourage fund managers to choose service providers based not on who offers the best service at the best price, but on what services can be paid for through soft dollars, where the costs will be hidden.

As with the distribution practices discussed above, the legislation would deal with these conflicts by eliminating them. We strongly support this approach, which would reduce shareholder costs by requiring funds to seek best execution on all their trades. Some in the independent research community have raised concerns about this approach, suggesting that it will harm independent research. Nothing could be further

from the truth. As long as funds can pay for research through soft dollars, they will have an incentive to choose the research whose cost can be hidden in this fashion. If soft dollar arrangements are banned, however, funds will have no reason to choose research based on any consideration but which is of the highest quality. If independent research can compete on quality, its competitive position should be improved under a soft dollar ban.

CONCLUSION

Mutual funds have been largely responsible for making it possible for average, middle-income investors to participate in our Nation's securities markets. As such, they have done much to promote both the financial well-being of those investors and the financial health of our capital markets. Regulatory oversight, however, has not kept pace with mutual funds' growing and changing role in our financial markets. The recent trading and sales abuse scandals have offered a painful reminder of just how far some fund companies have strayed from their obligation to operate in shareholders' best interests.

Fundamental reform is needed to get the fund industry back on track. The SEC has gotten us part of the way there with its recent enforcement actions and rule proposals. But partway there is simply not good enough. Important gaps exist in the SEC's agenda that will keep it from delivering the comprehensive reform that the current situation demands. This legislation fills those gaps. It offers a far-reaching and thoughtful approach that, if enacted, will go a long way toward getting the mutual fund industry back to operating in shareholders' best interests once again. Please let us know what we can do to help win passage of these essential, pro-investor reforms.

Respectfully submitted,

BARBARA ROPER,
Director of Investor Protection, Consumer Federation of America.

TRAVIS PLUNKETT,
Legislative Director, Consumer Federation of America.

MERCER BULLARD,
Founder and President, Fund Democracy, Inc.

ED MIERZWINSKI,
Consumer Program Director, U.S. Public Interest Research Group.

SALLY GREENBERG,
Senior Counsel, Consumers Union.

KENNETH MCELDOWNEY,
Executive Director, Consumer Action.

COALITION OF MUTUAL FUND INVESTORS,
Washington, DC, January 26, 2004.

Hon. PETER FITZGERALD,
Chairman, Subcommittee on Financial Management, The Budget and International Security, Committee on Governmental Affairs, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FITZGERALD: The Coalition of Mutual Fund Investors (''CMFI'' or ''Coalition'') has reviewed your legislative proposals to reform the mutual fund industry. Without a doubt, your legislative initiative is the most comprehensive mutual fund bill yet to be introduced in either the House or the Senate.

The Coalition strongly supports your efforts to improve the mutual fund regulatory framework in a manner which benefits all individual investors. As the mutual fund reform debate begins this year in the Senate, your bill is likely to serve as the gold standard by which other legislative proposals are evaluated for their effectiveness in protecting the interests of individual investors.

CMFI supports the provisions contained in the mutual fund reform bill which recently passed the House of Representatives (H.R. 2420), however, the Coalition has been advocating additional regulatory measures to protect the interests of individual investors. These additional measures include: (1) better shareholder disclosure of mutual fund operating and transaction costs, (2) improved oversight of ''omnibus'' accounts operated by financial intermediaries, and (3) enhanced disclosure of the Statement of Additional Information.

You have included many of these reform proposals in your bill and so the Coalition is very pleased to offer its support to your legislation. The Coalition is particularly pleased that your legislation includes a CMFI proposal to require financial intermediaries operating ''omnibus'' accounts to disclose basic shareholder identity and transaction information to mutual funds so that the funds can ensure uniform application of their policies, procedures, fees, and charges across all shareholder classes. The interests of long-term shareholders are being harmed by a lack of oversight regarding the trading activities occurring in these ''omnibus accounts'' and your legislation addresses this structural problem with an effective solution.

The Coalition looks forward to working with you and your staff to enact the many thoughtful provisions contained in your bill.

Sincerely,

NIELS HOLCH,
Executive Director.

S. 2059

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Mutual Fund Reform Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Rulemaking.

TITLE I—FUND GOVERNANCE

Sec. 110. Independent directors.
Sec. 111. Study of director compensation and independence.
Sec. 112. Fiduciary duties of directors.
Sec. 113. Fiduciary duty of investment adviser.
Sec. 114. Termination of fund advisers.
Sec. 115. Independent accounting and auditing.
Sec. 116. Prevention of fraud; internal compliance and control procedures.

TITLE II—FUND TRANSPARENCY

Sec. 210. Cost consolidation and clarity.
Sec. 211. Advisor compensation and ownership of fund shares.
Sec. 212. Point of sale and additional disclosure of broker compensation.
Sec. 213. Breakpoint discounts.
Sec. 214. Portfolio turnover ratio.
Sec. 215. Proxy voting policies and record.
Sec. 216. Customer information from account intermediaries.
Sec. 217. Advertising.

TITLE III—FUND REGULATION AND OVERSIGHT

Sec. 310. Prohibition of asset-based distribution expenses.
Sec. 311. Prohibition on revenue sharing, directed brokerage, and soft dollar arrangements.
Sec. 312. Market timing.
Sec. 313. Elimination of stale prices.
Sec. 314. Prohibition of short term trading; mandatory redemption fees.
Sec. 315. Prevention of after-hours trading.
Sec. 316. Ban on joint management of mutual funds and hedge funds.
Sec. 317. Selective disclosures.

TITLE IV—STUDIES

Sec. 410. Study of adviser conflict of interest.
Sec. 411. Study of coordination of enforcement efforts.
Sec. 412. Study of Commission organizational structure.
Sec. 413. Trends in arbitration clauses.
Sec. 414. Hedge fund regulation.
Sec. 415. Investor education and the Internet.

SEC. 2. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission.

(2) INVESTMENT ADVISER.—The term ''investment adviser'' has the same meaning as in section 2(a)(20) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(20)).

(3) INVESTMENT COMPANY—The term ''investment company'' has the same meaning as in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80–3).

(4) REGISTERED INVESTMENT COMPANY.—The term ''registered investment company'' means an investment company that is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

SEC. 3. RULEMAKING.

(a) TIMING.—Unless otherwise specified in this Act or the amendments made by this Act, the Commission shall issue, in final form, all rules and regulations required by this Act and the amendments made by this Act not later than 180 days after the date of enactment of this Act.

(b) AUTHORITY TO DEFINE TERMS.—The Commission may, in issuing rules and regulations under this Act or the amendments made by this Act, define any term used in this Act or such amendments that is not otherwise defined for purposes of this Act or such amendment, as the Commission determines necessary and appropriate.

(c) EXEMPTION AUTHORITY.—The Commission may, in issuing rules and regulations under this Act or the amendments made by this Act, exempt any investment company or other person from the application of such rules, as the Commission determines is necessary and appropriate, in the public interest or for the protection of investors.

TITLE I—FUND GOVERNANCE

SEC. 110. INDEPENDENT DIRECTORS.

(a) INDEPENDENT FUND BOARDS.—Section 10(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(a)) is amended—

(1) by striking ''shall have'' and inserting the following: ''shall—

''(1) have'';

(2) by striking ''60 per centum'' and inserting ''25 percent'';

(3) by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(2) have as chairman of its board of directors an interested person of such registered company; or

''(3) have as a member of its board of directors any person that is not an interested person of such registered investment company—

''(A) who has served without being approved or elected by the shareholders of such registered investment company at least once every 5 years; and

''(B) unless such director has been found, on an annual basis, by a majority of the directors who are not interested persons, after

reasonable inquiry by such directors, not to have any material business or familial relationship with the registered investment company, a significant service provider to the company, or any entity controlling, controlled by, or under common control with such service provider, that is likely to impair the independence of the director.''.

(b) ACTION BY INDEPENDENT DIRECTORS.—Section 10 of the Investment Company Act of 1940 (15 U.S.C. 80a–10) is amended by adding at the end the following:

''(i) INDEPENDENT COMMITTEE.—

''(1) IN GENERAL.—The members of the board of directors of a registered investment company who are not interested persons of such registered investment company shall establish a committee comprised solely of such members, which committee shall be responsible for—

''(A) selecting persons to be nominated for election to the board of directors;

''(B) adopting qualification standards for the nomination of directors; and

''(C) determining the compensation to be paid to directors.

''(2) DISCLOSURE.—The standards developed under paragraph (1)(B) shall be disclosed in the registration statement of the registered investment company.''.

(c) DEFINITION OF INTERESTED PERSON.—Section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2) is amended—

(1) in subparagraph (A)—

(A) in clause (iv), by striking ''two'' and inserting ''5''; and

(B) by striking clause (vii) and inserting the following:

''(vii) any natural person who has served as an officer or director, or as an employee within the preceding 10 fiscal years, of an investment adviser or principal underwriter to such registered investment company, or of any entity controlling, controlled by, or under common control with such investment adviser or principal underwriter;

''(viii) any natural person who has served as an officer or director, or as an employee within the preceding 10 fiscal years, of any entity that has within the preceding 5 fiscal years acted as a significant service provider to such registered investment company, or of any entity controlling, controlled by, or under the common control with such service provider;

''(ix) any natural person who is a member of a class of persons that the Commission, by rule or regulation, determines is unlikely to exercise an appropriate degree of independence as a result of—

''(I) a material business relationship with the investment company or an affiliated person of such investment company;

''(II) a close familial relationship with any natural person who is an affiliated person of such investment company; or

''(III) any other reason determined by the Commission.'';

(2) in subparagraph (B)—

(A) in clause (iv), by striking ''two'' and inserting ''5''; and

(B) by striking clause (vii) and inserting the following:

''(vii) any natural person who is a member of a class of persons that the Commission, by rule or regulation, determines is unlikely to exercise an appropriate degree of independence as a result of—

''(I) a material business relationship with such investment adviser or principal underwriter or affiliated person of such investment adviser or principal underwriter;

''(II) a close familial relationship with any natural person who is an affiliated person of such investment adviser or principal underwriter; or

''(III) any other reason as determined by the Commission.''.

(d) DEFINITION OF SIGNIFICANT SERVICE PROVIDER.—Section 2(a) of the Investment Company Act of 1940 is amended by adding at the end the following:

''(53) SIGNIFICANT SERVICE PROVIDER.—

''(A) IN GENERAL.—Not later than 270 days after the date of enactment of the Mutual Fund Reform Act of 2004, the Commission shall issue final rules defining the term 'significant service provider'.

''(B) REQUIREMENTS.—The definition developed under paragraph (1) shall include, at a minimum, the investment adviser and principal underwriter of a registered investment company for purposes of paragraph (19).''.

SEC. 111. STUDY OF DIRECTOR COMPENSATION AND INDEPENDENCE.

(a) IN GENERAL.—The Commission shall conduct a study of—

(1) whether any limits should be placed upon the amount of compensation paid by a registered investment company or any affiliate of such company to a director thereof; and

(2) whether a director of a registered investment company who is otherwise not an interested person of a registered investment company, as defined in section 2(a)(19) of the Investment Company Act of 1940, as amended by this Act, but serves as a director of multiple registered investment companies, or receives substantial compensation from the investment adviser of any such company, should be considered an ''interested person'' for purposes of section 2 of the Investment Company Act of 1940.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report regarding the study conducted under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 112. FIDUCIARY DUTIES OF DIRECTORS.

Section 10 of the Investment Company Act of 1940 (15 U.S.C. 80a–10), as amended by this Act, is amended by adding at the end the following:

''(j) FIDUCIARY DUTY OF DIRECTORS.—

''(1) IN GENERAL.—The members of the board of directors of a registered investment company shall have a fiduciary duty to act with loyalty and care, in the best interests of the shareholders.

''(2) RULEMAKING.—The Commission shall promulgate rules to clarify the scope of the fiduciary duty under paragraph (1), which rules shall, at a minimum, require the directors of a registered investment company to—

''(A) determine the extent to which independent and reliable sources of information are sufficient to discharge director responsibilities;

''(B) negotiate management and advisory fees with due regard for the actual cost of such services, including economies of scale;

''(C) evaluate the totality of fees with reference to the interests of shareholders;

''(D) evaluate the quality of the management of the company and potentially superior alternatives;

''(E) evaluate the quality, comprehensiveness, and clarity of disclosures to shareholders regarding costs;

''(F) evaluate any distribution or marketing plan of the company, including its costs and benefits;

''(G) evaluate the size of the portfolio of the company and its suitability to the interests of shareholders;

''(H) implement and monitor policies to ensure compliance with applicable securities laws; and

''(I) implement and monitor policies with respect to predatory trading practices.''.

SEC. 113. FIDUCIARY DUTY OF INVESTMENT ADVISER.

Section 36 of the Investment Company Act of 1940 (15 U.S.C. 80a–35(b)) is amended—

(1) by redesignating subsection (c) as subsection (d); and

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

''(c) DUTIES WITH RESPECT TO COMPENSATION AND PROVISION OF INFORMATION.—For purposes of subsections (a) and (b), the fiduciary duty of an investment adviser—

''(1) with respect to any compensation received, may require reasonable reference to the actual costs of the adviser and economies of scale; and

''(2) shall include a duty to supply such material information as is necessary for the independent directors of a registered investment company with whom the adviser is employed to review and govern such company.''.

SEC. 114. TERMINATION OF FUND ADVISER.

The Commission shall promulgate such rules as it determines necessary in the public interest or for the protection of investors to facilitate the process through which the independent directors of a registered investment company may terminate the services of the investment adviser of such company in the good faith exercise of their fiduciary duties, without undue exposure to financial or litigation risk.

SEC. 115. INDEPENDENT ACCOUNTING AND AUDITING.

(a) AMENDMENTS.—Section 32 of the Investment Company Act of 1940 (15 U.S.C. 80a–31) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (1) and (2) and inserting the following:

''(1) such accountant shall have been selected at a meeting held within 30 days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year by the vote, cast in person, of a majority of the members of the audit committee of such registered investment company;

''(2) such selection shall have been submitted for ratification or rejection at the next succeeding annual meeting of stockholders if such meeting be held, except that any vacancy occurring between annual meetings, due to the death or resignation of the accountant, may be filled by the vote of a majority of the members of the audit committee of such registered company, cast in person at a meeting called for the purpose of voting on such action;''; and

(B) by adding at the end the following: ''The Commission, by rule, regulation, or order, may exempt a registered management company or registered face-amount certificate company otherwise subject to this subsection from the requirement in paragraph (1) that the votes by the members of the audit committee be cast at a meeting in person, when such a requirement is impracticable, subject to such conditions as the Commission may require.''; and

(2) by adding at the end the following:

''(d) AUDIT COMMITTEE REQUIREMENTS.—

''(1) REQUIREMENTS AS PREREQUISITE TO FILING FINANCIAL STATEMENTS.—Any registered management company or registered face-amount certificate company that files with the Commission any financial statement signed or certified by an independent public accountant shall comply with the requirements of paragraphs (2) through (6) of this subsection and any rule or regulation of the Commission issued thereunder.

''(2) RESPONSIBILITY RELATING TO INDEPENDENT PUBLIC ACCOUNTANTS.—The audit committee of the registered investment company, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and

oversight of the work of any independent public accountant employed by the registered investment company (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing the audit report or related work, and each such independent public accountant shall report directly to the audit committee.

''(3) INDEPENDENCE.—

''(A) IN GENERAL.—Each member of the audit committee of the registered investment company shall be a member of the board of directors of the company, and shall otherwise be independent.

''(B) CRITERIA.—In order to be considered to be independent for purposes of this paragraph, a member of an audit committee of a registered investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—

''(i) accept any consulting, advisory, or other compensatory fee from the registered investment company or the investment adviser or principal underwriter of the registered investment company; or

''(ii) be an interested person of the registered investment company.

''(4) COMPLAINTS.—The audit committee of the registered investment company shall establish procedures for—

''(A) the receipt, retention, and treatment of complaints received by the registered investment company regarding accounting, internal accounting controls, or auditing matters; and

''(B) the confidential, anonymous submission by employees of the registered investment company and its investment adviser or principal underwriter of concerns regarding questionable accounting or auditing matters.

''(5) AUTHORITY TO ENGAGE ADVISERS.—The audit committee of the registered investment company shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

''(6) FUNDING.—The registered investment company shall provide appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation—

''(A) to the independent public accountant employed by the registered investment company for the purpose of rendering or issuing the audit report; and

''(B) to any advisers employed by the audit committee under paragraph (5).

''(7) AUDIT COMMITTEE.—For purposes of this subsection, the term 'audit committee' means—

''(A) a committee (or equivalent body) established by and amongst the board of directors of a registered investment company for the purpose of overseeing the accounting and financial reporting processes of the company and audits of the financial statements of the company; and

''(B) if no such committee exists with respect to a registered investment company, the entire board of directors of the company.''.

(b) CONFORMING AMENDMENT.—Section 10A(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(m)) is amended by adding at the end the following:

''(7) EXEMPTION FOR INVESTMENT COMPANIES.—Effective one year after the date of enactment of the Mutual Fund Reform Act of 2004, for purposes of this subsection, the term 'issuer' shall not include any investment company that is registered under section 8 of the Investment Company Act of 1940.''.

(c) IMPLEMENTATION.—The Commission shall issue final regulations to carry out section 32(d) of the Investment Company Act of 1940, as added by subsection (a) of this section.

SEC. 116. PREVENTION OF FRAUD; INTERNAL COMPLIANCE AND CONTROL PROCEDURES.

(a) DETECTION AND PREVENTION OF FRAUD.—Section 17(j) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(j)) is amended to read as follows:

''(j) DETECTION AND PREVENTION OF FRAUD.—

''(1) COMMISSION RULES TO PROHIBIT FRAUD, DECEPTION, AND MANIPULATION.—It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company or any affiliated person of an investment adviser of or principal underwriter for a registered investment company, to engage in any act, practice, or course of business in connection with the purchase or sale, directly or indirectly, by such person of any security held or to be acquired by such registered investment company, or any security issued by such registered investment company or by an affiliated registered investment company, in contravention of such rules as the Commission may adopt to define, and prescribe means reasonably necessary to prevent, such acts, practices, or courses of business as are fraudulent, deceptive or manipulative.

''(2) CODES OF ETHICS.—The rules adopted under paragraph (1) shall include requirements for the adoption of codes of ethics by a registered investment company and investment advisers of, and principal underwriters for, such investment companies establishing such standards as are reasonably necessary to prevent such acts, practices, or courses of business. Such rules and regulations shall require each such registered investment company to disclose such codes of ethics (and any changes therein) in the periodic report to shareholders of such company, and to disclose such code of ethics and any waivers and material violations thereof on a readily accessible electronic public information facility of such company and in such additional form and manner as the Commission shall require by rule or regulation.

''(3) ADDITIONAL COMPLIANCE PROCEDURES.—The rules adopted under paragraph (1) shall—

''(A) require each registered investment company and investment adviser to adopt and implement general policies and procedures reasonably designed to prevent violations of this title, the Securities Act of 1933 (15 U.S.C. 78a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.) and amendments made by that Act, the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), subchapter II of chapter 53 of title 31, United States Code, chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951 et seq.), or section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b);

''(B) require each registered investment company and registered investment adviser to review such policies and procedures annually for their adequacy and the effectiveness of their implementation; and

''(C) require each registered investment company to appoint a chief compliance officer to be responsible for overseeing such policies and procedures—

''(i) whose compensation shall be approved by the members of the board of directors of the company who are not interested persons of the company;

''(ii) who shall report directly to the members of the board of directors of the company who are not interested persons of such company, privately as such members request, but not less frequently than annually; and

''(iii) whose report to such members shall include any violations or waivers of, and any other significant issues arising under, such policies and procedures.

''(4) CERTIFICATIONS.—The rules adopted under paragraph (1) shall require each senior executive officer, or such officers designated by the Commission, of an investment adviser of a registered investment company to certify in each periodic report to shareholders, or other appropriate disclosure document, that—

''(A) procedures are in place for verifying that the determination of current net asset value of any redeemable security issued by the company used in computing periodically the current price for the purpose of purchase, redemption, and sale complies with the requirements of this title and the rules and regulations issued under this title, and the company is in compliance with such procedures;

''(B) procedures are in place to ensure that, if the shares of the company are offered as different classes of shares, such classes are designed in the interests of shareholders, and could reasonably be an appropriate investment option for a shareholder;

''(C) procedures are in place to ensure that information about the portfolio securities of the company is not disclosed in violation of the securities laws or the code of ethics of the company;

''(D) the members of the board of directors who are not interested persons of the company have reviewed and approved the compensation of the portfolio manager of the company in connection with their consideration of the investment advisory contract under section 15(c); and

''(E) the company has established and enforces a code of ethics, as required by paragraph (2).''.

(b) WHISTLEBLOWER PROTECTION.—Section 1514A(a) of title 18, United States Code, is amended by striking the matter preceding paragraph (1) and inserting the following:

''(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES AND REGISTERED INVESTMENT COMPANIES.—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78o(d)), or that is an investment adviser, principal underwriter, or significant service provider (as such terms are defined under section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)) of an investment company which is registered under section 8 of the Investment Company Act of 1940, or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—''.

TITLE II—FUND TRANSPARENCY

SEC. 210. COST CONSOLIDATION AND CLARITY.

(a) EXPENSE RATIO COMPUTATION.—

(1) IN GENERAL.—The Commission shall, by rule, develop a standardized method of calculating the expense ratio of a registered investment company that accounts for as many operating costs to shareholders of such companies as is practicable.

(2) SEPARATE DISCLOSURES.—In developing the method of calculation required under paragraph (1), if the Commission determines that the inclusion of certain costs in such calculation will lead to a significant risk of confusing or misleading shareholders, the Commission shall develop separate standardized methods for the calculation and disclosure of such costs.

(b) TRANSACTION COST RATIO.—The Commission shall, by rule, develop a standardized method of computing the transaction cost ratio of a registered investment company that practicably and fairly accounts for actual transaction costs to shareholders, including, at a minimum, brokerage commissions and bid-ask spread costs. Such computation, if necessary for ease of administration, may be based upon a fair method of estimation or a standardized derivation from easily ascertainable information.

(c) DISCLOSURE OF EXPENSE RATIO AND TRANSACTION COST RATIO.—The Commission shall, by rule, require the prominent disclosure of the expense ratio and the transaction cost ratio of a registered company, both separately and as a total investment cost ratio, in—

(1) each annual report of the registered investment company;

(2) any prospectus of the registered investment company, as part of a fee table; and

(3) such other filings with the Commission as the Commission determines appropriate.

(d) ACTUAL COST DISCLOSURE.—The Commission shall, by rule, require, on at least an annual basis, the prominent disclosure in the shareholder account statement of a registered investment company of the actual dollar amount of the projected annual costs of each shareholder of the company, based upon the asset value of the shareholder at the time of the disclosure.

(e) DEFINITION OF FEES AND EXPENSES.—

(1) IN GENERAL.—The Commission shall, by rule, define all specific allowable types or categories of fees and expenses that may be borne by the shareholders of a registered investment company.

(2) NEW FEES AND EXPENSES.—No new fee or expense, other than any defined under paragraph (1), shall be borne by the shareholders of a registered investment company, unless the Commission finds that such new fee or expense fairly reflects the services provided to, or is in the best interests of the shareholders of—

(A) a particular registered investment company;

(B) specific types or categories of registered investment companies; or

(C) registered investment companies in general.

(f) COST STRUCTURES.—The Commission shall promulgate such rules or regulations as are necessary—

(1) to promote the standardization and simplification of the disclosure of the cost structures of registered investment companies; and

(2) to ensure that the shareholders of such registered investment companies receive all material information regarding such costs—

(A) in a nonmisleading manner; and

(B) in such form and prominence as to facilitate, to the extent practicable, ease of comprehension and comparison of such costs.

(g) DESCRIPTIONS OF FEES, EXPENSES, AND COSTS.—The Commission shall, by rule, require—

(1) the disclosure, in any annual or periodic report filed with the Commission or any prospectus delivered to the shareholders of a registered investment company, of all types of fees, expenses, or costs borne by shareholders;

(2) a clear definition of each such fee, expense, or cost; and

(3) information as to where shareholders may find out more information concerning such fees, expenses, or costs.

SEC. 211. ADVISOR COMPENSATION AND OWNERSHIP OF FUND SHARES.

(a) COMPENSATION OF INVESTMENT ADVISER.—The Commission shall, by rule, require—

(1) the disclosure to the shareholders of a registered investment company of—

(A) the amount and structure of, or the method used to determine, the compensation paid by the registered investment company to the portfolio manager or portfolio management team of the investment adviser; and

(B) the ownership interest in such company of the portfolio manager or portfolio management team; and

(2) the disclosure to the board of directors of the registered investment company of all transactions in the securities of the company by the portfolio manager or management team of the investment adviser of such company.

(b) FORM OF DISCLOSURE.—The disclosures required under subparagraphs (A) and (B) of subsection (a)(1) shall be made by a registered investment company in—

(1) the registration statement of the company; and

(2) any other filings with the Commission that the Commission determines appropriate.

SEC. 212. POINT OF SALE AND ADDITIONAL DISCLOSURE OF BROKER COMPENSATION.

Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

''(11) BROKER DISCLOSURES IN MUTUAL FUND TRANSACTIONS.—

''(A) IN GENERAL.—Each broker shall disclose in writing to each person that purchases the shares of an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8)—

''(i) the source and amount of any compensation received or to be received by the broker in connection with such transaction; and

''(ii) such other information as the Commission determines appropriate.

''(B) TIMING OF DISCLOSURE.—The disclosures required under subparagraph (A) shall be made at or before the time of the purchase transaction.

''(C) LIMITATION.—The disclosures required under subparagraph (A) may not be made exclusively in—

''(i) a registration statement or prospectus of the registered investment company; or

''(ii) any other filing of a registered investment company with the Commission.''.

SEC. 213. BREAKPOINT DISCOUNTS.

The Commission, by rule, shall require the disclosure by any registered investment company, in any quarterly or other periodic report filed with the Commission, information concerning discounts on front-end sales loads for which shareholders may be eligible, including the minimum purchase amounts required for such discounts.

SEC. 214. PORTFOLIO TURNOVER RATIO.

The Commission, by rule, shall require the disclosure, by any registered investment company, in any quarterly or periodic report filed with the Commission, and in any prospectus delivered to the shareholders of such company, of the portfolio turnover ratio of the company, and an explanation of its meaning and implications for cost and performance. Such rules shall require the disclosures to be prominently displayed within the appropriate document.

SEC. 215. PROXY VOTING POLICIES AND RECORD.

Section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) is amended by adding at the end the following:

''(k) PROXY VOTING DISCLOSURE.—

''(1) IN GENERAL.—Each registered investment company, other than a small business investment company, shall file with the Commission, not later than August 31 of each year, an annual report, on a form prescribed by the Commission by rule, containing the proxy voting record of the registrant and policies of the company with respect to the voting of such proxies for the most recent 12-month period ending on June 30.

''(2) NOTICE IN FINANCIAL STATEMENTS.—The financial statements of each registered investment company shall state that information regarding how the company voted proxies and proxy voting policies relating to portfolio securities during the most recent 12-month period ending on June 30 is available—

''(A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the company's website at a specified Internet address, or both; and

''(B) on the website of the Commission.''.

SEC. 216. CUSTOMER INFORMATION FROM ACCOUNT INTERMEDIARIES.

(a) IN GENERAL.—The Commission shall, by rule, require that each account intermediary of a registered investment company provide to such company, with respect to each account serviced by the intermediary, such information as is necessary for the company to enforce its investment, trading, and fee policies.

(b) REQUIREMENTS.—The information provided by a registered investment company under subsection (a) shall include, at a minimum—

(1) the name under which the account is opened with the intermediary;

(2) the taxpayer identification number of such person;

(3) the mailing address of such person; and

(4) individual transaction data for all purchases, redemptions, transfers, and exchanges by or on behalf of such person.

(c) PRIVACY OF INFORMATION.—The information provided under subsection (a), and the use thereof, shall be subject to all Federal and State laws with regard to privacy and proprietary information.

SEC. 217. ADVERTISING.

(a) PERFORMANCE ADVERTISING.—The Commission shall promulgate such rules as the Commission determines necessary with respect to the advertising of a registered investment company regarding—

(1) unrepresentative short-term performance;

(2) performance based upon an undisclosed or improbable event; and

(3) performance based upon incomplete or misleading data.

(b) DOLLAR AND TIME-WEIGHTED RETURNS.—

(1) IN GENERAL.—Subject to paragraph (2), the Commission shall, by rule, require each registered investment company to disclose, in its annual report and any prospectus delivered to shareholders, dollar-weighted returns and time-weighted returns for each of—

(A) the preceding fiscal year;

(B) the preceding 5 fiscal years;

(C) the preceding 10 fiscal years; and

(D) the life of the company.

(2) EXCEPTION.—The Commission may omit or require additional disclosures required under paragraph (1) for such time periods as the Commission determines necessary.

(3) COMMISSION USE OF BENCHMARKS.—The Commission may require, in the interest of facilitating non-misleading disclosures, that any performance-related advertising by a registered investment company be accompanied by such benchmarks as the Commission may deem appropriate.

(c) SUBSIDIZED YIELDS.—The Commission shall, by rule, require that any registered investment company that discloses in any publication a subsidized yield to disclose in the same publication the amount and duration of such subsidy.

TITLE III—FUND REGULATION AND OVERSIGHT

SEC. 310. PROHIBITION OF ASSET-BASED DISTRIBUTION EXPENSES.

(a) REPEAL OF RULE 12b–1.—

(1) IN GENERAL.—Beginning 180 days after the date of enactment of this Act (or such earlier time as the Commission may elect), as in effect on the date of enactment of this Act, section 270.12b–1 of chapter II of title 17 of the Code of Federal Regulations, promulgated under section 12 of the Investment Company Act of 1940 (15 U.S.C. 80a–12), is repealed, and shall have no force or effect.

(2) PRESERVATION OF ACTIONS.—Paragraph (1) shall have no effect on any case pending or penalty imposed under section 270.12b–1 of the Code of Federal Regulations prior to the date of repeal under paragraph (1).

(b) PAYMENT OF DISTRIBUTION EXPENSES FROM MANAGEMENT FEE.—Section 12 of the Investment Company Act of 1940 (15 U.S.C. 80a–12) is amended by adding at the end the following:

''(h) PAYMENT OF DISTRIBUTION EXPENSES.—Notwithstanding any provision of subsection (b), or any rule or regulation promulgated thereunder, distribution expenses incurred by an investment adviser may be paid out of the management fee received by the investment adviser.''.

(c) SUMS EXPENDED PROMOTING SALE OF SECURITIES.—The Commission shall, by rule—

(1) require that any sums expended by the investment adviser of a registered investment company to promote or facilitate the sale of the securities of such company be disclosed to the board of directors of the company;

(2) require that such sums be accounted for and identified in the expense ratio of any such company; and

(3) authorize the board of directors of any such company to prohibit its investment adviser from using any compensation received from the company for distribution expenses that the board determines not to be in the best interest of the shareholders of the company.

(d) PROHIBITION OF ASSET-BASED FEES.—Section 12 of the Investment Company Act of 1940 (15 U.S.C. 80a–12), as amended by subsection (a), is amended by adding at the end the following:

''(i) ASSET-BASED FEES.—

''(1) IN GENERAL.—It shall be unlawful for any registered investment company to pay asset-based fees to any broker or dealer in connection with the offer or sale of the securities of such investment company.

''(2) DEFINITION OF ASSET-BASED FEES.—The Commission shall, by rule, define the term 'asset-based fees' for purposes of this subsection.''.

SEC. 311. PROHIBITION ON REVENUE SHARING, DIRECTED BROKERAGE, AND SOFT DOLLAR ARRANGEMENTS.

(a) IN GENERAL.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended by inserting after section 12 the following:

''SEC. 12A. PROHIBITION ON REVENUE SHARING, DIRECTED BROKERAGE, AND SOFT DOLLAR ARRANGEMENTS.

''(a) REVENUE SHARING ARRANGEMENTS.—It shall be unlawful for any investment adviser to enter into a revenue sharing arrangement with any broker or dealer with respect to the securities of a registered investment company.

''(b) DIRECTED BROKERAGE ARRANGEMENTS.—It shall be unlawful for any registered investment company, or any affiliate of such company, to enter into a directed brokerage arrangement with a broker or dealer.

''(c) SOFT-DOLLAR ARRANGEMENTS.—It shall be unlawful for any registered investment company or registered investment adviser to enter into a soft-dollar arrangement with any broker or dealer.

''(d) REGULATIONS RESPECTING SECTION 28(E) OF THE SECURITIES EXCHANGE ACT OF 1934.—The Commission shall, by rule, narrow the soft-dollar safe harbor under section 28(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)(1)) to promote such parity as the Commission determines appropriate, and in the best interests of shareholders of a registered investment company, between registered investment companies governed by section 12A, and companies not covered by section 12A.

''(e) DEFINITIONS.—

''(1) IN GENERAL.—In this section—

''(A) the term 'directed brokerage arrangement' means the direction of discretionary brokerage by an investment company or an affiliate of that company, to a broker or dealer in exchange for services other than trade executions;

''(B) the term 'revenue sharing arrangement' means any direct or indirect payment made by an investment adviser (or any affiliate of an investment adviser) to a broker or dealer for the purpose of promoting the sales of securities of a registered investment company, other than any payment made directly by a shareholder as a commission for the purchase of such securities;

''(C) the term 'soft-dollar arrangement' means payments to a broker or dealer for best trade executions in exchange for, or which generate credits for, services or products other than trade executions; and

''(D) the term 'trade executions' has the meaning given that term by the Commission, by rule;

''(2) REGULATIONS.—The Commission may, by rule, refine the definitions under paragraph (1), define such other terms as the Commission determines necessary, and otherwise tailor the proscriptions set forth under this section to achieve the purposes of—

''(A) protecting the best interests of shareholders of a registered investment company;

''(B) minimizing or eliminating conflicts with the best interests of shareholders of a registered investment company;

''(C) enhancing market negotiation for and price competition in trade execution services, and products and services previously obtained under arrangements prohibited by this section;

''(D) ensuring the transparency of transactions for trade executions, and products and services previously obtained under arrangements prohibited by this section, and disclosure to shareholders of costs associated with trade executions, and products and services previously obtained under arrangements prohibited by this section, that is simplified, clear, and comprehensible; and

''(E) providing reasonable safe harbors for conduct otherwise consistent with such purposes.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 28(e)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)(1)) is amended by striking ''This section is exclusive'' and inserting ''Except as provided under section 12A of the Investment Company Act of 1940, this section is exclusive''.

SEC. 312. MARKET TIMING.

(a) IN GENERAL.—The Commission shall, by rule, require—

(1) the disclosure in any registration statement filed with the Commission by a registered investment company of the market timing policies of that company and the procedures adopted to enforce such policies; and

(2) that any registered investment company that declines to adopt restrictions on market timing disclose such fact in the registration statement of the company, and in any advertising or other publicly available documents, as the Commission determines necessary.

(b) FUNDAMENTAL INVESTMENT POLICY.—The policies required to be disclosed under paragraph (1) shall be deemed ''fundamental investment policies'' for purposes of sections 8(b)(3) and 13(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(b)(3) and 80a–13(a)(3)).

SEC. 313. ELIMINATION OF STALE PRICES.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Commission shall prescribe, by rule or regulation, standards concerning the obligation of registered investment companies under the Investment Company Act of 1940, to apply and use fair value methods of determination of net asset value when market quotations are unavailable or do not accurately reflect the fair market value of the portfolio securities of such a company, in order to prevent dilution of the interests of long-term shareholders or as necessary in the public interest or for the protection of shareholders.

(b) CONTENT.—The rule or regulation prescribed under subsection (a) shall identify, in addition to significant events, the conditions or circumstances from which such an obligation will arise, such as the need to value securities traded on foreign exchanges, and the methods by which fair value methods shall be applied in such events, conditions, and circumstances.

SEC. 314. PROHIBITION OF SHORT TERM TRADING; MANDATORY REDEMPTION FEES.

(a) SHORT-TERM TRADING PROHIBITED.—Section 17 of the Investment Company Act of 1940 (15 U.S.C. 80a–17) is amended by adding at the end the following:

''(k) SHORT-TERM TRADING PROHIBITED.—

''(1) PROHIBITION.—It shall be unlawful for any officer, director, partner, or employee of a registered investment company, any affiliated person, investment adviser, or principal underwriter of such company, or any officer, director, partner, or employee of such an affiliated person, investment adviser, or principal underwriter, to engage in any short-term transaction, in any securities issued by such company, or any affiliate of such company.

''(2) LIMITATION.—This subsection does not prohibit any transaction in a money market fund, or in funds, the investment policy of which expressly permits short-term transactions, or such other category of registered investment company as the Commission shall specify, by rule.

''(3) DEFINITION.—For purposes of this subsection, the term 'short-term transaction' has the meaning given that term by the Commission, by rule.''.

(b) MANDATORY REDEMPTION FEES.—The Commission shall, by rule, require any registered investment company that does not allow for market timing practices to charge a redemption fee upon the short-term redemption of any securities of such company. In determining the application of mandatory redemption fees, shares shall be considered in the reverse order of their purchase.

(c) INCREASED REDEMPTION FEES PERMITTED FOR SHORT-TERM TRADING.—Not later than 90 days after the date of enactment of this Act, the Commission shall permit a registered investment company to charge redemption fees in excess of 2 percent upon the redemption of any securities of such company that are redeemed within such period after their purchase as the Commission specifies in such rule to deter short term trading that is unfair to the shareholders of such company.

(d) DEADLINE FOR RULES.—The Commission shall prescribe rules to implement section 17(k) of the Investment Company Act of 1940, as added by subsection (a) of this section, not later than 90 days after the date of enactment of this Act.

SEC. 315. PREVENTION OF AFTER-HOURS TRADING.

(a) ADDITIONAL RULES REQUIRED.—The Commission shall issue rules to prevent transactions in the securities of any registered investment company in violation of section 22 of the Investment Company Act of 1940 (15 U.S.C. 80a–22), including after-hours trades that are executed at a price based on a net asset value that was determined as of a time prior to the actual execution of the transaction.

(b) TRADES COLLECTED BY INTERMEDIARIES.—The Commission shall determine the circumstances under which to permit, subject to rules of the Commission and an annual independent audit of such trades, the execution of after-hours trades that are provided to a registered investment company by a broker, dealer, retirement plan administrator, insurance company, or other intermediary, after the time as of which the net asset value was determined.

SEC. 316. BAN ON JOINT MANAGEMENT OF MUTUAL FUNDS AND HEDGE FUNDS.

(a) AMENDMENT.—Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a–15) is amended by adding at the end the following:

''(h) BAN ON JOINT MANAGEMENT OF MUTUAL FUNDS AND HEDGE FUNDS.—

''(1) PROHIBITION OF JOINT MANAGEMENT.—It shall be unlawful for any individual to serve or act as the portfolio manager or investment adviser of a registered open-end investment company if such individual also serves or acts as the portfolio manager or investment adviser of an investment company that is not registered or of such other categories of companies as the Commission shall prescribe by rule in order to prohibit conflicts of interest, such as conflicts in the selection of the portfolio securities.

''(2) EXCEPTIONS.—Notwithstanding paragraph (1), the Commission may, by rule, regulation, or order, permit joint management by a portfolio manager in exceptional circumstances when necessary to protect the interest of shareholders, provided that such rule, regulation, or order requires—

''(A) enhanced disclosure by the registered open-end investment company to shareholders of any conflicts of interest raised by such joint management; and

''(B) fair and equitable policies and procedures for the allocation of securities to the portfolios of the jointly managed companies, and certification by the members of the board of directors who are not interested persons of such registered open-end investment company, in the periodic report to shareholders, or other appropriate disclosure document, that such policies and procedures of such company are fair and equitable.

''(3) DEFINITION.—For purposes of this subsection, the term 'portfolio manager' means the individual or individuals who are designated as responsible for decision-making in connection with the securities purchased and sold on behalf of a registered open-end investment company, but shall not include individuals who participate only in making research recommendations or executing transactions on behalf of such company.''.

(b) DEADLINE FOR RULES.—The Commission shall prescribe rules to implement section 15(h) of the Investment Company Act of 1940, as added by subsection (a) of this section, not later than 90 days after the date of enactment of this Act.

SEC. 317. SELECTIVE DISCLOSURES.

(a) IN GENERAL.—The Commission shall promulgate such rules as the Commission determines necessary to prevent the selective disclosure by a registered investment company of material information relating to the portfolio of securities held by such company.

(b) REQUIREMENTS.—The rules promulgated under subsection (a) shall treat selective disclosures of material information by a registered investment company in substantially the same manner as selective disclosures by issuers of securities registered under section 12 of the Securities Exchange Act of 1934 under the rules of the Commission.

TITLE IV—STUDIES

SEC. 410. STUDY OF ADVISER CONFLICT OF INTEREST.

(a) IN GENERAL.—The Commission shall conduct a study of—

(1) the consequences of the inherent conflicts of interest confronting investment advisers employed by registered investment companies;

(2) the extent to which legislative or regulatory measures could minimize such conflicts of interest; and

(3) the extent to which legislative or regulatory measures could incentivize internal management of a registered investment company.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 411. STUDY OF COORDINATION OF ENFORCEMENT EFFORTS.

(a) IN GENERAL.—The Comptroller General of the United States, with the cooperation of the Commission, shall conduct a study of the coordination of enforcement efforts between—

(1) the headquarters of the Commission;

(2) the regional offices of the Commission; and

(3) State regulatory and law enforcement agencies.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 412. STUDY OF COMMISSION ORGANIZATIONAL STRUCTURE.

(a) IN GENERAL.—The Comptroller General of the United States, with the cooperation of the Commission, shall conduct a study of—

(1) the current organizational structure of the Commission with respect to the regulation of investment companies;

(2) whether the organizational structure and resources of the Commission sufficiently credit the importance of oversight of investment companies to the 95 million investors in such companies within the United States;

(3) whether certain organizational features of that structure, such as the separation of regulatory and enforcement functions, are sufficient to promote the optimal understanding of the current practices of investment companies; and

(4) whether a separate regulatory entity would improve or impair effective oversight.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report on the results of the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 413. TRENDS IN ARBITRATION CLAUSES.

(a) IN GENERAL.—The Commission shall conduct a study on the trends in arbitration clauses between brokers, dealers, and investors since December 31, 1995, and alternative means to avert the filing of claims in Federal or State courts.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 414. HEDGE FUND REGULATION.

(a) IN GENERAL.—The Commission shall conduct a study of whether additional regulation of alternative investment vehicles, such as hedge funds, is appropriate to deter the recurrence of trading abuses, manipulation of registered investment companies by unregistered investment companies, or other distortions that may harm investors in registered investment companies.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 415. INVESTOR EDUCATION AND THE INTERNET.

(a) IN GENERAL.—The Commission shall conduct a study of—

(1) the means of enhancing the role of the Internet in educating investors and providing timely information regarding laws, regulations, enforcement proceedings, and individual registered investment companies;

(2) the feasibility of mandating that each registered investment company maintain a website on which shall be posted filings of the registered investment company with the Commission and any other material information related to the registered investment company; and

(3) the means of ensuring that the EDGAR database maintained by the Commission is user-friendly and contains a search engine that facilitates the expeditious location of material information.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

S. 2059

SUMMARY OF KEY PROVISIONS OF THE MUTUAL FUND REFORM ACT OF 2004

The Mutual Fund Reform Act of 2004 makes fund governance truly accountable, requires genuinely transparent total fund costs, enhances comprehension and comparison of fund fees, confronts trading abuses, creates a culture of compliance, eliminates hidden transactions that mislead investors and drive up costs—and saves billions of dollars for the 95 million Americans who invest in mutual funds. MFRA strives above all to preserve the attractiveness of mutual funds as a flexible and investor-friendly vehicle for long-term, diversified investment.

TITLE 1: TRULY FIDUCIARY FUND GOVERNANCE

The Mutual Fund Reform Act of 2004 puts the interests of investors first by:

Ensuring independent and empowered boards of directors;

Clarifying and making specific fund directors' foremost fiduciary duty to shareholders;

Strengthening the fund advisers' fiduciary duty regarding negotiating fees and providing fund information; and

Instituting Sarbanes-Oxley-style provisions for independent accounting and auditing, codes of ethics, chief compliance officers, compliance certifications, and whistleblower protections.

TITLE 2: MEANINGFUL FUND TRANSPARENCY

The Mutual Reform Act of 2004 empowers both investors and free markets with clear, comprehensible fund transaction information by:

Standardizing computation and disclosure of (i) fund expenses and (ii) transaction costs, which yield a total investment cost ratio, and tell investors actual dollar costs;

Providing disclosure and definitions of all types of costs and requiring that the SEC approve imposition of any new types of costs;

Disclosing portfolio managers' compensation and stake in fund;

Disclosing broker compensation at the point of sale;

Disclosing and explaining portfolio turnover ratios to investors; and

Disclosing proxy voting policies and record.

TITLE 3: STRAIGHTFORWARD FUND TRANSACTIONS

The Mutual Fund Reform Act of 2004 vastly simplifies disclosure regime by:

Eliminating asset-based distribution fees (Rule 12b–1 fees), the original purpose of which has been lost and the current use of which is confusing and misleading—and amending the Investment Company Act of 1940 to permit the use of the adviser's fee for distribution expenses, which locates the incentive to keep distribution expenses reasonable exactly where it belongs—with the fund adviser;

Prohibiting shadow transactions—such as revenue sharing, directed brokerage, and soft-dollar arrangements—that are riddled with conflicts of interest, serve no reasonable business purpose, and drive up costs;

''Unbundling'' commissions, such that research and other services, heretofore covered by hidden soft-dollar arrangements, will be the subject of separate negotiation and a freer and fairer market;

Requiring enforceable market timing policies and mandatory redemption fees—as well as provision by omnibus account intermediaries of basic customer information to funds to enable funds to enforce their market timing, redemption fee, and breakpoint discount policies; and

Requiring fair value pricing and strengthening late trading rules.

MUTUAL FUND REFORM ACT OF 2004

The Mutual Fund Reform Act of 2004 (MFRA) restores truly fiduciary fund governance, simplifies fund fees, confronts trading abuses, creates a culture of compliance, and eliminates the conflict-riddled shadow transactions that drive up costs. The essence of the legislation is not any regulatory regime it creates, but the market forces it liberates. Obscurity is the enemy of a free market. Too little information—and too much incomprehensible information—equally undermine informed investor decision-making. The Mutual Fund Reform Act lifts the veil off mislabeled and misleading transactions, ensures genuine transparency, and promotes true price competition.

With 95 million American stakeholders, mutual funds are truly America's investment vehicle of choice. MFRA strives above all to preserve the attractiveness of mutual funds as a flexible and investor-friendly vehicle for long-term, diversified investment. That goal requires a careful balancing of accountability and incentive—or carrot and stick. Federal and state governments cannot police, much less micromanage, over 8,000 funds. The overriding duty to shareholders rests primarily with the funds themselves, and secondarily with the funds' service providers—each guided by a clearer statement of purpose and priority, incentivized by a more robust and transparent market that rewards low cost and good performance—because it can truly identify them—and accountable for failures that privilege fund managers' or brokers' interests over shareholders.

Vanguard Founder and industry savant John Bogle calls the Mutual Fund Reform Act of 2004 ''the gold standard in putting mutual fund shareholders back in the driver's seat.''The Consumer Federation of America says the Mutual Fund Reform Act of 2004 ''will save mutual fund investors potentially tens of billions of dollars a year by wringing out excess costs.'' The Securities and Exchange Commission's (SEC) recent spate of regulatory initiatives is a testament to Washington's will in redressing the scandals and excessive fees that erode America's retirement and college savings. But the SEC cannot take the range of initiatives that are necessary to rationalize an industry governed by 64-year-old legislation. It is time for Congress to take the step that truly empowers America's investors and invigorates market forces. It is time for reforms that finally put investors first.

MFRA is divided into four titles: Title 1 (Fund Governance); Title 2 (Fund Transparency); Title 3 (Fund Regulation and Oversight); and Title 4 (Studies). The provisions under each title are analyzed below.

TITLE 1: FUND GOVERNANCE

Independent directors

The Mutual Fund Reform Act empowers a truly independent board of directors to exercise its essential ''watchdog'' role as the original Investment company Act of 1940 envisioned. An inherent tendency to defer to authority—or to parties with more information—must be countered with both numbers and authority for the board to reliably flex its independent muscle in the best interests of shareholders. Thus, at least 75% of the board must be independent—including the chair.

That independence must be self-perpetuating. Thus, independent directors will nominate new directors and adopt qualification standards for such nomination.

Close relationships with fund advisers, or other significant service providers, can easily compromise independence. Thus, the legislation tightens the definition of independence to exclude individuals with material business or close family relationships with such service providers. Further, the legislation directs the SEC to study whether substantial aggregate compensation from a fund adviser, especially when directors serve on multiple boards, compromises independence.

Directors' fiduciary duty

Building on the ringing declaration in the Investment Company Act's Preamble, section 36(a) refers specifically to the fiduciary duty of directors—but it has been a relatively empty reference. Merely to recite ''fiduciary duty,'' it appears, will not ensure fidelity to it. Directors need direction—and content—in discharging their fiduciary duties. MFRA supplies both. MFRA amends the Investment Company Act to make expressly clear that the directors' fiduciary duty obliges them to act in the best interests of shareholders.

A ''fiduciary'' duty is supposed to be a rigorous one—yet its content has been unenforced guesswork. Mindful of the industry's complexity, NFRA thus directs the SEC to provide directors with specific guidance on the content of their fiduciary duty. Such content will include, at a minimum, determining the extent to which independent and reliable sources of information are sufficient to discharge director responsibilities, negotiating management and advisory fees with due regard for the actual cost of services, including economies of scale, evaluating management quality and considering potentially superior alternatives, evaluating the quality, comprehensiveness, and clarity of disclosures to shareholders regarding costs, evaluating any distribution or marketing plan of the company, including its costs and benefits, evaluating the size of the fund's portfolio and its suitability to the interests of shareholders, implementing and monitoring policies and procedures to ensure compliance with applicable securities laws, and implementing and monitoring policies with respect to predatory trading practices, such as market timing.

Investment advisers' fiduciary duty

After Wharton School and SEC studies in the 1960s found that mutual fund shareholders pay excessive fees because they lack bargaining power, the SEC recommended to Congress that it require that fees be ''reasonable.'' That did not happen. Instead, in 1970, Congress imposed a ''fiduciary'' duty on fund advisers with respect to fees. As with the directors' ''fiduciary'' duty, however, the term lost any meaningful moorning in client-first professional stewardship. Indeed, in a watershed judicial interpretation of the adviser's ''fiduciary'' duty under section 36(b), the Second Circuit deemed the duty satisfied unless the adviser charged ''a fee that is so disproportionately large that it bears no reasonable relationship to the services rendered and could not have been the product of arm's-length bargaining.'' Gartenberg v. Merrill Lynch Asset Mgt., Inc., 694 F.2d 923 (2d Cir. 1982). Against such a startling hurdle, no plaintiff ever wins an excessive fee case—and the SEC has declined to hold fund directors accountable for failing adequately to review adviser fee agreements (under section 36(a)).

Once again, merely invoking the phrase ''fiduciary'' will not ensure fair stewardship. MFRA makes clear that the fund adviser's fiduciary duty with respect to fees ''may require reasonable reference to actual costs of the adviser and economies of scale.'' Advisers are entitled to a fair profit—and nothing in MFRA ''caps'' or ''legislates'' fees, or otherwise imposes a ''price control.'' But MFRA does ensure that accountability is fairly allocated in the interests of shareholders.

MFRA also addresses another fiduciary deficit in the relationship between fund adviser and fund director. Conscientious independent directors may experience reckless intimidation and misdirection trying to penetrate the adviser's monopoly on critical fund information. Indeed, as Fund Democracy founder Mercer Bullard noted three years ago, under the current regime, ''fund directors who try to do their jobs may do so at their own risk. In 1997, the directors of the Navellier Aggressive Small-Cap fund complained to the SEC that the fund's adviser, Louis Navellier, had refused to provide information they needed to evaluate his services. . . . Intent on proving that no good deed goes unpunished, Navellier dragged the fund's directors through years of litigation,'' which was finally resolved in the directors' favor.

Subjecting directors to the sufferance of fund advisers turns the fiduciary duties of

both on their heads. MFRA cures this damaging imbalance by specifying that fund advisers owe a specific fiduciary duty to provide information that is material to fund governance. In other words, directors will no longer be obliged to think of every possible question necessary to obtain essential information—much less be bullied by resistant advisers.

Termination of fund adviser

When fund managers cease to perform as effective stewards of the investments entrusted to them, they should be subject to the market discipline facing most Americans on the job—termination. Independent directors, exercising their fiduciary duties in the best interests of shareholders, should have the latitude to replace fund managers without undue fear of reprisal, spurious litigation, and other tactics by recalcitrant advisers. MFRA accordingly directs the SEC to issue regulations that facilitate the process by which independent directors, upon critical evaluation of fund management, terminate the service of fund management in the exercise of their fiduciary duties without undue exposure to financial or litigation risk.

Independent accounting and auditing

Last December, Business Week magazine called for Congress to ''reverse the embarrassing exemption it gave to the mutual-fund industry from the Sarbanes-Oxley corporate reform law's requirement that outside auditors evaluate internal controls.'' MFRA requires an audit committee, with requirements that track Sarbanes-Oxley provisions, and selection by that committee of an independent accountant.

Compliance provisions

MFRA, like S.1971 introduced by Senators Corzine and Dodd, draws significant inspiration from the lessons of the corporate scandals that gave rise to the Sarbanes-Oxley Act of 2002. While those corporate scandals triggered a massive public outcry, it is noteworthy that the total cost to the American public was far less than the trading abuses and excessive fees in the $7 trillion mutual fund industry. Thus, MFRA engenders a culture of compliance—employing tools from the landmark Sarbanes-Oxley Act.

MFRA requires adoption—by funds, investment advisers, and principal underwriters—of a code of ethics, which is reasonably designed to prevent violation of securities laws. This code must be disclosed to the public and reviewed annually. MFRA further requires appointment of a chief compliance officer, whose compensation is set by independent directors, who reports directly to independent directors, who may be an employee of the fund adviser, but who may be terminated only with the consent of the independent directors.

MFRA requires certain certifications to ensure careful monitoring and accountability. And finally, mindful of the singular contribution of whistleblowers to illumination of the current scandals, MFRA installs rigorous protections against retaliation for disclosing violations of securities laws or codes of ethics.

TITLE 2: FUND TRANSPARENCY

Cost consolidation and clarity

For the market to discipline excessively high-cost funds, investors must know total costs in comprehensive and accessible disclosures. Current regulations require disclosure of a fund's ''expense ratio''—but that figure excludes significant costs borne directly by investors. These largely hidden ''transaction costs'' occur when the fund buys and sells securities in its portfolio. As the SEC recently noted in its Concept Release on transaction costs, ''for many funds, the amount of transaction costs incurred during a typical year is substantial. One study estimates that commissions and spreads alone cost the average equity fund as much as 75 basis points.'' In other words, transaction costs may sometimes double the cost of investment. Additional transaction costs, such as market impact and opportunity costs, may cost even more.

MFRA enhances cost disclosure in several ways. First, MFRA requires standardized computation and disclosure of two cost ratios: the first is the expense ratio, designed to capture fund operating expenses, and the second is the transaction cost ratio, designed to capture the true costs of portfolio management. These two ratios must then be combined and disclosed as a single ''investment cost ratio.'' MFRA recognizes that certain transaction costs, such as commissions and bid-ask spreads, are indisputable candidates for disclosure in the ''transaction cost ratio''—while others, such as market impact and opportunity costs, may more precisely reflect simply the principal price a manager is willing to pay (or accept) for securities, and thus may not, in the ultimate judgment of the SEC, warrant computation and disclosure as part of the transaction cost ratio.

Additionally, MFRA assists investors confronting voluminous fund information with clear, simple, and at-least annual actual dollar cost disclosure. Including actual cost disclosure in the one document that investors do routinely review—their own statement—simplifies cost analysis for all investors and promotes genuine cost competition.

Some say that mutual fund reform invites the proverbial ''rock on jello''—and that a wily industry will react to reasonable restraints of one type of cost by simply shifting the cost to a new label. MFRA stabilizes the mutual fund fee structure. The SEC is directed to standardize all allowable types or categories of fees, expenses, loads, or charges borne by fund shareholders. New costs cannot be created without an SEC determination that the new cost is in the best interests of shareholders of (i) a particular fund, (ii) certain types of funds, or (iii) funds generally. Everyone, including (or perhaps especially) the mutual fund industry, acknowledges the critical importance of restoring investor trust. By stabilizing the fee structure—and building in safeguards against cynical manipulation of complex fee structures—MFRA takes the long stride toward ensuring sustained investor confidence.

Finally, MFRA addresses financial literacy by requiring clear explanation and definition of all types of fees, charges, expenses, loads, commissions, and payments—as well as where investors may find additional information about them.

Advisor compensation and ownership of fund shares

The Sarbanes-Oxley Act turned the spotlight on executive compensation—not merely to satisfy casual investor curiosity but to deter conflicts of interest and distorted incentives. MFRA does the same—albeit only with respect to portfolio management. If, as a consequence of disclosure, fund managers feel more motivated to earn their compensation, so much the better for investors. It may likewise be relevant whether fund managers are invested in the very funds they manage—and investors are entitled to know. Finally, insider transactions in the fund must be disclosed to the board of directors. Insider transactions are not per se problematic—quite the contrary, it may be a strong positive to have fund managers invested in the funds they manage. But to help deter potential abuses, the board should be informed of insider transactions. (In Title 3, MFRA prohibits short-term insider transactions to prevent abusive rapid trading by insiders.)

Broker confirmations

MFRA requires point-of-sale disclosure of the source and compensation to be received by the broker in connection with the transaction. Such disclosure is standard with other financial instruments—and broker/dealers can do the same for mutual fund investors. Significantly, however, as discussed below, MFRA vastly simplifies broker disclosures by prohibiting certain conflict-riddled broker-compensation practices—such as revenue sharing, directed brokerage and soft-dollar arrangements—that artificially inflate broker commissions and introduce distorted sales incentives.

Breakpoint discounts

Breakpoint discounts are essentially ''volume discounts''—reductions in sales charges for purchases beyond certain thresholds. The policies for applying breakpoint discounts, however, can be complicated. For example, an investor may be entitled to a breakpoint discount based on total shares purchased over a period of time, or from different accounts or together with other family members.

The National Association of Securities Dealers (the self-regulatory organization of brokers and dealers) estimated that more than $86 million in breakpoint discounts were not correctly applied by broker/dealers in 2001 and 2002, which indicates investor overcharges in one out of every five eligible transactions.

MFRA requires more prominent disclosure of information and policies about breakpoint discounts, so that investors are better equipped to help themselves. Perhaps more importantly as discussed below under Customer Information from Account Intermediaries, MFRA bridges one critical gap in the uniform application of breakpoint discount policies.

Portfolio turnover ratio

Many investors do not understand that the benign, or even enticing, term—''actively managed''—may conceal inordinately high transaction costs. When fund managers buy and sell securities in the fund portfolio, they incur transaction costs, such as commissions, bid-ask spread costs, market impact costs and opportunity costs. All of these costs diminish performance. To be sure, some actively managed funds do very well. But investors have a right to know, in straightforward terms, just how ''actively'' the portfolio is managed. The portfolio turnover ratio is a good indicator. MFRA requires prominent disclosure of the portfolio turnover ratio, as well as explanation of its meaning and implications for cost and performance. Thus, MFRA takes no legislative position on the propriety of active or passive management—but merely equips investors with clearer and more comprehensible information so that they can make decisions based upon their own investment objectives.

Proxy voting policies and record

Mutual funds are a seven-trillion-dollar industry—and control nearly one-third of U.S. equity voting power. See Alan R. Palmiter, Mutual Fund Voting of Portfolio Shares: Why Not Disclose? 23 Cardozo L. Rev. 1419, 1421 (March 2002). That is an impressive stake in U.S. corporate governance. Such enormous power is ill-suited to the shadows. MFRA requires disclosure of the fund's proxy voting record, as well as any proxy voting policies that may better equip investors to align their mutual fund purchasing with their corporate governance preferences.

Customer information from account intermediaries

Rules against market timing, application of breakpoint discounts, imposition of redemption fees on short-term trading—all of these salutary practices work only if the fund knows the identify and trading activity of its investors. But many financial intermediaries, including broker/dealers, convey aggregate trading information to funds through ''omnibus accounts,'' consisting of multiple anonymous fund customers. Failure of a fund to know its own investors seriously impairs fair and uniform enforcement of its trading policies.

As Niels Holch, Executive Director of the Coalition of Mutual Fund Investors, stated in a December 12, 2003 letter to the SEC, ''individual, long-term shareholders will not be guaranteed equal and fair application of fund policies, procedures, fees and charges, unless and until each mutual fund is provided information from its intermediaries about the identity of all shareholders in omnibus accounts and the individual transactions engaged in by those shareholders.''

MFRA requires that intermediaries convey to funds the basic customer identification and trading activity information needed to enforce fund policies fairly and uniformly. However, such information may only be used to enforce fund policies, and all proprietary rights to such customer information under state and federal law are preserved.

Advertising

Mutual funds fairly compete for investor attention and purchase. Indeed, because a certain percentage of investors can be expected to sell their shares every year, mutual funds want to meet these redemptions with new purchases so that ''net redemptions'' do not force funds to sell off too many portfolio assets. Advertising is one way to stimulate demand. However, some funds engage in questionable claims. Performance advertising, in particular, is fertile territory for misleading investors. Former SEC Chief Economist Susan Woodward put the matter bluntly in a recent Wall street Journal op-ed: ''A fund's past performance provides zero guidance about its future performance.''

MFRA directs the SEC to address several aspects of performance advertising, including unrepresentative short-term performance, performance based upon undisclosed non-recurring or improbable events, and performance based upon technically accurate but incomplete or misleading data.

Truthful and non-misleading advertising is a right guaranteed by the United States Constitution. MFRA respects that right—with requisite emphasis on ''non-misleading.''

TITLE 3: FUND REGULATION AND OVERSIGHT

MFRA is truly structural reform. It does not merely mandate yet more ''disclosure'' in an industry already saturated with voluminous disclosure rules. MFRA's essence is not the regulatory regime that it creates, but the free market forces that it liberates. MFRA fuels a competitive mutual fund market by making its transactions honest and comprehensible. Market distortions occur when market players can obscure their activities and mislead consumers. Examples addressed in MFRA include 12b–1 fees, revenue sharing, soft-dollar arrangements, and directed brokerage. MFRA lifts the veil of mislabeled and misleading transactions, creates true transparency and promotes meaningful competition. Merely demanding more disclosure—while salutary up to a point—risks encyclopedic and incomprehensible data dumps on investors.

A more honest and straightforward, and thus more vibrantly competitive, mutual fund market well serves the 95 million Americans who entrust their savings to mutual funds—and not incidentally, well serves the robustness of the mutual fund industry itself. Mercer Bullar, founder of Fund Democracy and sponsor of the recent Fund Summit in Oxford, Mississippi—where 11 lawmakers, regulators, and industry leaders convened to debate the direction of the industry—said of his panelists that they all share the aspiration for ''America's favorite retirement vehicle, a great institution, a great industry, to provide the best service it can for America's investors.'' That aspiration permeates the Mutual Fund Reform Act of 2004. And central to that aspiration is the recognition that scandal, cynicism, and revolt are inevitable consequences of confusing and opaque cost schemes.

Time magazine notes, for example, that investors have been flocking to ''separately managed accounts''—customized investment vehicles with minimum investment requirements. One noteworthy virtue, writes Time, of separately managed accounts: ''fee transparency. Typically, separate-account mangers charge a flat annual fee of 1.5% to 2.5% of assets. In most cases there are none of the loads, redemption fees, 12b–1 marketing fees, trading commissions, or soft-dollar costs that proliferate in the mutual-fund world and drive annual expenses far higher than disclosed levels.'' The vexation here is not merely with the ''hiddenness'' of many of these costs—but with the very existence of such a confusing and cynical welter of ways to siphon investors' money. MFRA is a decisive answer to that vexation—and an answer that well serves all Americans, not only the ones who can afford the minimum investment requirements of separately managed accounts and hedge funds.

Asset-based distribution expenses (Rule 12b–1)

A sales load was once an honest sales load. Then came Rule 12b–1. Designed in 1980 by the SEC, Rule 12b–1 permitted funds to use fund assets, temporarily, for distribution and market—to (1) stimulate purchases and thus redress temporary net redemptions, and (2) increase the size of the fund so that cost savings from economies of scale could be passed along to investors. The theory was sound. But Rule 12b–1 has wandered far from its original moorings. It has become a permanent fixture of most fee schedules, and can cost investors up to 1% of their investment every year. Over the life of a retirement plan, that 1% can cost an investor 35% to 40% of his or her retirement income. And it does not appear that investors have benefited from economies of scale.

Nearly two-thirds of 12b–1 fees end up in the hands of brokers. In other words, 12b–1 fees have become disguised loads.

Fund management properly includes fund distribution. MFRA accordingly places the distribution duty where it belongs. MFRA gets funds out of the distribution business by prohibiting asset-based distribution fees (such as 12b–1 fees)—but, importantly, amends the Investment Company Act of 1940 to make clear that fund advisers may use their adviser fees for distribution expenses. What happens when fund advisers use their own profits—instead of tapping directly into investors' money—for distribution expenses? Distribution expenses become very reasonable.

In negotiating their fees with an empowered and independent board, advisers will now have to make the case that their costs necessarily include specified distribution expenses. And once advisers receive their fee, distribution expenses will, dollar for dollar, reduce adviser profits. That dynamic locates the incentive to keep distribution expenses reasonable precisely where it belongs. And MFRA incorporates one additional structural check on unreasonable distribution expenses—one that goes to the heart of the inherent conflict between fund managers and fund shareholders. If the board of directors determines that certain distribution expenses are not in the best interests of existing shareholders, then the board may stipulate that no part of the adviser's fee may be used for that expense. A distribution expense designed solely to pump up the asset base of an already large fund, for example, and not otherwise necessary to meet net redemptions, would obviously well-serve the adviser, who collects a percentage of net assets, but not necessarily existing shareholders.

Importantly, MFRA does not prohibit distribution expenses or sales charges. Charging a load (subject to NASD rules) is fully justified—but call it a load, make it account-based and don't disguise it in a permanent asset-based distribution fee.

Indefensible brokerage practices

There is a reflexive preference in approaching our markets for demanding ''disclosure'' as a total solution—and sometimes as a total substitute for clear ethical and practical judgments. But some practices cannot be rationally defended. And some clear rules enrich and enliven our markets. We do not tell football players that they can clip, hold, or jump offside as long as they do so openly. We should not tell fund advisers and broker-dealers that they may misuse investor money with soft-dollar arrangements, revenue sharing and directed brokerage as long as they file reports. ''Disclosure'' of these practices merely precipitates an even more confusing blizzard of incomprehensible information—and even further alienates average investors from meaningful participation in the mutual fund market. As former SEC Chairman Arthur Levitt aptly remarked, ''[t]he law of unintended results has come into play: Our passion for full disclosure has created fact-bloated reports, and prospectuses that are more redundant than revealing.'' Three practices—soft dollar arrangements, revenue sharing, and directed brokerage—ought not clutter any mutual fund prospectus. And neither funds nor fund advisers should be spending time and money crafting elaborate disclosures and justifications of ultimately indefensible practices. By simply prohibiting these practices, MFRA vastly simplifies the disclosure regime, and benefits all stakeholders.

Revenue sharing

Kiplinger.com commentator Steven Goldberg calls revenue sharing ''the fund industry's most insidious practice . . . It sounds benign, but it boils down to mutual fund payola, giving brokers, financial planners or other financial advisers a little extra compensation if they sell a load fund to you. That is, a little something extra over and above the load you're already paying.'' A ''little something''? Annual revenue sharing payments to brokerage firms total an estimated $2 billion. And investors listening to a broker's ''advice'' may not realize that the broker's ''Preferred List'' of mutual funds is a function of this payola.

Moreover, revenue-sharing, like nearly two-thirds of 12b–1 money, goes to brokers, as a presumptive ''distribution'' expense—yet revenue sharing effectively circumvents the elaborate rules capping 12b–1 fees at no more than 1% of assets. The only difference is that revenue sharing payments are made by the fund adviser, out of the adviser's fee—which of course comes from the fund assets. Consumer Federation of America, along with several consumer groups that have endorsed MFRA, note the negative impact of revenue sharing, despite the fact that such payments come from the adviser rather than directly

from fund assets: ''At best, by eating into the manager's bottom line, the payments may reduce the likelihood that the management fee will be reduced in response to economies of scale. At worst, fund managers will pass along those costs to shareholders in a form that is even less transparent than directed brokerage payments.''

Revenue sharing aggravates the conflicted interests of both brokers and fund advisers at the expense of fund shareholders. On the one hand, brokers get payola out of the fund adviser's management fee—and peddle funds they're paid to peddle without the requisite regard for the investor's best interests. On the other hand, fund advisers collectively give away $2 billion of their evidently abundant fees to promote yet further sales of fund shares, which increases fund assets, which increases the adviser's fee, which makes more money available for payola. MFRA breaks this investor-hostile circular enrichment, and restores rational solicitude for investors' money.

Soft dollar arrangements

Under soft dollar arrangements, brokers inflate their commissions on portfolio trades and give credits to fund managers in return. These credits are then used for research services, software, hardware, and other manager ''overhead''—which directly and immediately benefit fund managers, but only indirectly, if at all, benefit the shareholders who pay for them. Moreover, these direct costs to shareholders are not even reflected in the expense ratio, because commissions—as with all transaction costs—are excluded from the expense ratio. Thus, by using surreptitious soft dollars, instead of honest hard dollars, the industry effectively hides yet another significant cost of mutual fund investment.

Soft dollars also effectively suppress entire markets. Soft dollar arrangements distort the markets in both trade executions and products and services ''purchased'' with soft dollars—because there is little or no meaningful price negotiation or competition in these markets. Why would there be? Fund advisers use investors' money, through artificially inflated brokerage commissions, and competition inevitably and severely suffers when demand is driven by someone else's money.

Managers should pay for their overhead out of their management fee instead of forcing shareholders to pick up the tab through artificially inflated brokerage commissions. MFRA effectively ''unbundles'' the commission dollar. All stakeholders can then more readily assess the true cost of trade execution. And industry research and other unbundled services, now purchased with hard dollars through traditional negotiation, will acquire more authentic market values. Some services will thrive; others will crater. That happens when the market is healthy and transparent, and the demand side cannot spend someone else's money.

MFRA's treatment of soft dollar arrangements, like its treatment of 12b–1 fees, is inspired not by intent to regulate private transactions—but to label such transactions honestly. Just as a load is a load, and should be charged as such, so research expense should be the fruit of competitive negotiation for research—not the backdoor largesse of forcing investors to pay inflated brokerage commissions.

John Montgomery of Bridgeway Funds perfectly summarized the justification for banning soft dollars (as opposed to mandating yet more elaborate ''disclosures'') when he testified before the House Capital Markets Subcommittee in March 2003: ''The bottom lines: Congress should not work to improve disclosure of soft dollars; it should simply stop the practice altogether. Ultimately, this will improve the quality of decisions made on things soft dollars buy, save shareholders some money, and greatly reduce the time that advisers, auditors, regulators, and lawyers spend trying to document the fairness of a firm's practice.''

Directed brokerage

Directed brokerage is the practice by a customer (such as a mutual fund or affiliated person) of directing brokerage business to a particular broker or dealer in exchange for services other than trade executions. Examples of such services include sales support (as with revenue sharing), or administrative services. Directed brokerage seems benign—but the effect is yet a further hidden cost to investors, in the form of higher brokerage costs. Once brokerage is ''directed'' by a customer, the manager's ability to obtain better or less expensive execution from a different broker is disabled.

Last December, Louis Harvey, president of Dalbar Inc., a Boston-based research company, told Investment News that the practice of directed commissions obscures what best execution actually costs. Thus, funds pay more than retail investors to buy and sell stock. ''If the practice is done away with, it will be replaced by competitive forces.''

In recognition of the indefensibility of the practice, several funds announced recently that they are ceasing directed brokerage arrangements. The industry's leading trade association, the Investment Company Institute, likewise recently advocated prohibiting directed brokerage.

Late trading

Late trading is already illegal. The policy problem with late trading is not with the law, but with the practice of processing some orders after the calculation of ''net asset value'' (NAV), and thus share price, for that day. Typically, mutual funds calculate their NAVs as of 4:00 p.m. EST, the closing time of the major U.S. stock exchanges. The SEC's Rule 22c–1 requires funds to calculate NAV at least once a day. All orders to buy or sell mutual fund shares received on a particular day are executed at the same price. Under Rule 22c–1, orders to buy or sell mutual fund shares must be executed at a price based on the NAV next calculated after receipt of the order. The Rule therefore requires that orders for most funds received after 4:00 p.m. be executed using the next day's price.

''Late trading'' refers to the practice of submitting an order to buy or redeem fund shares after the 4:00 p.m. pricing time yet receiving that day's price rather than the price set at 4:00 p.m. the following day, or placing a conditional order prior to 4:00 p.m. that is either confirmed or canceled after 4:00 p.m. A late trader typically seeks to trade profitably on developments after 4:00 p.m., such as earnings announcements or events in overseas markets. As noted, late trading is already illegal.

But when is an order to buy or sell ''received'' under Rule 22c–1—when the fund receives the order, or when an intermediary (such as a retail broker or a 401k administrator) receives the order? To date, the SEC has interpreted ''receipt'' as used in Rule 22c–1 to include receipt of an order to buy or sell mutual fund shares by retail brokers and other intermediaries. Investors may thus place orders to buy or sell fund shares through broker-dealers, through retirement accounts and through variable insurance carriers, confident that they will receive that day's price for the shares. According to some estimates, mutual funds receive over half of their orders in the form of aggregated orders provided by intermediaries after 4:00 p.m. The SEC is currently reexamining its rules.

MFRA directs the SEC to enforce the current strict terms of Rule 22c–1—but gives the SEC the authority to fashion rules that accommodate investors transacting through their preferred intermediaries. For example, if it can be verified that intermediaries received their orders from their customers before 4:00 p.m.—and the intermediaries have systems in place that ensure compliance and permit independent verification—then the rules developed by the SEC may permit processing of such orders by the mutual fund after the 4:00 p.m. close. MFRA's ultimate purpose is two-fold: (1) preserve the appeal of mutual funds as a flexible and investor-friendly vehicle for long-term investment; and (2) prevent the unfair dilution of mutual fund value by short-term predators.

Market timing

''I have no interest in building a business around market timers, but at the same time I do not want to turn away $10–20m,'' wrote Richard Garland, then head of Janus Capital Groups international business to a colleague. Thus did Mr. Garland succinctly describe the sirenic tug that triggered the current industry scandals.

''Market timing'' refers to a form of trading mutual fund shares in which short-term investors seek to exploit a perceived difference between the fund's calculated NAV and the actual underlying value of the fund's portfolio holdings. As earlier noted, funds must calculate their NAV and set their share price at least once a day—typically at 4 p.m. EST. Sometimes, the closing price of a portfolio security at 4:00 p.m. EST may not reflect its current market value. For example, an event may occur or news may be released after 4:00 p.m. that can reasonably be expected to have an impact on a security's price when trading resumes. Securities that trade overseas are especially fertile ground for market timers, because many hours may elapse between the close of trading in an overseas market and the calculation of the fund's NAV.

Market timers seek to reap quick profits in mutual fund shares from these arbitrage opportunities. A market timer seeks to purchase a fund's shares based on events occurring before the fund's NAV calculation. For example, a market timer might guess that rising prices in the U.S. securities markets indicate likely higher prices in overseas markets the next day. The market timer would purchase mutual fund shares that reflect stale closing prices in overseas markets. The market timer would then redeem the fund's shares the next day, when the fund's next NAV calculation would reflect the presumably higher prices in overseas markets. The market timer seeks to make a quick and relatively risk-free profit.

Market timing is not specifically illegal—hence the conundrum facing many fund advisers and other industry players. But many mutual funds discourage market timing, often resolutely, because timers take their profits directly out of the value of shares held by long-term investors—i.e., the very category of the 95 million American mutual fund investors most likely to have entrusted retirement and college savings to mutual funds. Sale of fund shares at an artificially low price based on stale information dilutes the ownership interest of existing shareholders. Similarly, redemption of fund shares at an artificially high price dilutes the interest of remaining shareholders.

Some question whether market timing strategies really work. Importantly, however, merely the perception that market timing works, and is available, encourages rapid trading, which burdens funds regardless of whether the underlying timing strategy works. A fund forced to meet multiple redemptions from rapid trading activity may be obliged to keep more fund assets in cash

or sell more portfolio securities to meet such redemptions—which increases the fund's transactions costs at the expense of existing shareholders.

As noted earlier, MFRA's overriding purpose with respect to trading abuses is twofold: (1) preserve the appeal of mutual funds as a flexible and investor-friendly vehicle for long-term investment; and (2) prevent the unfair dilution of mutual fund value by short-term predators. MFRA thus addresses the problem of market timing with solicitude for the long-term investor, and steers market timing away from the mutual funds. MFRA provisions include:

Requiring explicit disclosure in fund offering documents of market timing policies and specific procedures to enforce policies—and requiring that such a policy be deemed a ''fundamental investment policy'' (which cannot, under the Investment Company Act of 1940, be changed without a shareholder vote).

Requiring that any fund that declines to adopt enforceable restrictions on market timing must so advise prospective investors in its prospectus, advertising, and otherwise as determined by the SEC.

Requiring regular fair value pricing—so that NAV more fairly reflects actual portfolio value, and opportunities for predatory arbitrage are diminished.

Requiring mandatory redemption fees for short-term trading (which fees are deposited back into fund assets, thus benefiting all shareholders, while discouraging arbitrage by increasing its cost).

Permitting (but not requiring) redemption fees exceeding two percent for short-term transactions that are unfair to shareholders.

TITLE 4: STUDIES

Learning from experiences: Further study

MFRA seeks to perpetuate the dialogue and to preserve the wisdom gathered from hard experience. Several studies are directed:

A study and report by the SEC on the consequences of the inherent conflict of interest confronting fund advisers, the extent to which legislative or regulatory measures could minimize this conflict of interest, and the extent to which legislative or regulatory measures could incentivize internal management of mutual funds.

A study and report by the General Accounting Office (GAO) on coordination of enforcement efforts between SEC headquarters, SEC regional offices, and state regulatory and law enforcement entities.

A study and report by GAO on the SEC's current organizational structure with respect to investment company regulation, and whether that organizational structure sufficiently credits the importance of mutual fund oversight to the 95 million mutual fund investors in America, and whether certain features of that organizational structure, such as the separation of regulatory and enforcement functions, conduce to optimal regulatory understanding of current practices.

A study and report by the SEC on trends and causes in arbitration claims since 1995, and means to avert claims.

A study and report by the SEC on whether additional regulation of alternative investment vehicles, such as hedge funds, is appropriate to deter recurrence of trading abuses, manipulation of regulated investment companies by unregulated investment companies, or other distortion that may harm investors in shares of registered investment companies.

A study by the SEC, coupled with regulatory and acquisition initiatives as appropriate, designed to enhance the role of the internet in educating investors and providing timely information about laws, regulations, enforcement proceedings and individual funds. Further, the SEC should study the feasibility of mandating that funds have websites, and disclosure thereupon of material filings and fund information. Further, the SEC should take necessary steps to ensure that its EDGAR system is user-friendly and contains a search-engine that facilitates expeditious location of material information in the SEC's database.

By Mr. REID:

S. 2060. A bill to permit certain local law enforcement officers to carry firearms on aircraft; to the Committee on Commerce, Science, and Transportation.

Mr. REID. Mr. President, I rise today to introduce legislation to make it easier for local law enforcement officers to travel across the country. Whether on official travel or personal travel, Federal law enforcement officers are allowed to carry firearms with them throughout their travel. The legislation I am introducing today would extend the same privilege—and responsibility—to local law enforcement officers.

Ever since the horrific terrorist attacks that occurred on September 11, we have seen how our local emergency responders, including local law enforcement officers, play a vital role in protecting not just their local communities, but the entire Nation. We think of local law enforcement officers as the Nation's first responders, but they are also the Nation's early preventers. They are the first to identify local crimes that could turn into National attacks. They are the first to report suspicious behavior that could thwart a future terrorist attack. Stopping a terrorist threat before it becomes an attack is the best way to keep our Nation safe. That effort relies upon the eyes, ears and experience of our Nation's law enforcement officers.

A terrorist attack in any city is a national concern. Local law enforcement officers are a crucial element of the plan to protect our Nation. I appreciate the help of Detective David Kallas and General Counsel John Dean Harper for bringing this issue to my attention. This bill will help give them and their law enforcement colleagues the standing they deserve as they continue to protect our hometowns and the Nation.

By Mr. CONRAD (for himself, Mr. GRAHAM of Florida, Mr. ROCKEFELLER, Mr. AKAKA, and Mr. JOHNSON):

S. 2063. A bill to require the Secretary of Veterans Affairs to carry out a demonstration projects on priorities in the scheduling of appointments of veterans for health care through the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

Mr. CONRAD. Mr. President, as I visit with veterans in North Dakota and here in Washington, too often I hear that waiting periods for medical care, and particularly for specialty care, are too long. We owe an unbelievable debt to American's veterans, and it is just not right that they cannot get the medical care they need when they need it. The legislation I am introducing today begins to address this problem.

Last month, as Ranking Member of the Senate Budget committee, I scheduled a field hearing in Bismarck, ND, to listen to the concerns of veterans regarding funding for the VA. Because more than fifty percent of veterans in North Dakota live in highly rural areas with limited access to VA medical facilities, I was particularly concerned about funding for VA medical care and the continuing reports from veterans regarding access to care and delays in the scheduling of appointments for medical care, especially speciality care.

Last September, I expressed similar concerns in testimony to the VA CARES Commission during field hearings in Minneapolis. I emphasized to Commission members that many North Dakota veterans have to travel hundreds of miles to access health care from the Fargo VA Medical Center or another FA facility in VISN 23 and that the VA must do more to ensure timely access for appointments and other VA medical services.

Reports in the national press make clear, however, that significant problems remain in the scheduling of appointments for medical care, particularly specialty care. Further complicating matters, there are many questions regarding the reliability of VA data on waiting list for appointments and the causes for the waiting periods according to reports in 2003 by the Department of Veterans Affairs Office of Inspector General and in 2000 by the General Accounting Office.

In North Dakota, several veterans service officers have reported a number of veterans waiting months for eye care, orthopedics and one veteran waiting almost ten months for back surgery. Another veteran, from the Bismarck area, was required to travel to Iowa for cancer treatment.

In view of these continuing concerns, I am today introducing legislation that would require the VA to undertake a two year pilot demonstration to study the implementation, cost and impact on VA services of several recent directives by the VA relating to the scheduling of medical appointments. The demonstration would be undertaken in three VISN networks, one highly rural, one rural, and one urban, that represent a cross-section of VA providers.

Under the demonstration, the VA would offer participating veterans, both new enrollees and established patients, service-connected and non-service connected, an appointment for primary care evaluation, hospitalization including specialty care or outpatient care within a 30 day period. If the VA facility is unable to provide the medical care within the designated period, the Department would make arrangements for the care at another VA facility or non-VA facility. Every effort,

however, would be made to provide the medical care for the veteran through the VA healthcare network.

Finally, because of concerns regarding the accuracy of VA data on appointment periods, the bill requires the VA to report to Congress by FY 2007 on waiting periods for health care appointments, primary care and speciality care services. The VA would be required to report on the waiting periods for appointments by VA facility and VISN, include a breakdown of waiting periods by speciality, and submit recommendations to Congress for addressing the shortages of medical personnel. Finally, the legislation requests the Secretary, on the basis of the two year demonstration, to report to Congress by FY 2007 on the costs associated with implementation of the VA directive in the three VISNs and to report on the estimated cost to fully implement the directive throughout the VA system.

I am very pleased that my distinguished colleagues, Ranking Member of the Senate Committee on Veterans Affairs, Senator BOB GRAHAM and Senators JAY ROCKEFELLER, TIM JOHNSON and DANIEL AKAKA are joining me in sponsoring this legislation. I am also honored to have the strong support of the Disabled American Veterans and the AMVETS for this legislative proposal. I want to express my appreciation to Dave Gorman, DAV Executive Director; Joseph Violante, DAV National Legislative Director; Mike Dobmeier, former National Commander of the DAV and Rick Jones, AMVETS, National Legislative Director for their support.

It is critical that Congress and the Administration address the concerns of our veterans on the issue of waiting periods for medical care before adjourning of the 108th Congress. Veterans returning from Iraq, Afghanistan and from other peacekeeping deployments around the globe should not have to wait months for needed medical care. The needs of injured military personnel are great and the VA system will play a key role in their recovery. I encourage the Senate Committee on Veterans Affairs to review this legislation carefully and to act favorably on the measure before Congressional adjournment this fall.

I ask unanimous consent that the text of this legislation along with the letters of endorsement from the Disabled American Veterans and the AMVETS be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2063

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEMONSTRATION PROJECT ON PRIORITIES IN SCHEDULING OF APPOINTMENTS OF VETERANS FOR HEALTH CARE THROUGH THE DEPARTMENT OF VETERANS AFFAIRS.

(a) PROJECT REQUIRED.—The Secretary of Veterans Affairs shall carry out a demonstration project to assess the feasibility and advisability of providing for priorities in the scheduling of appointments of veterans for health care through the Department of Veterans Affairs in accordance with the following:

(1) The Department of Veterans Affairs Waiting Time for Appointments goals (30–30–20) of 2000.

(2) The provisions of the Veterans Health Administration directive entitled ''Priority For Outpatient Medical Services and Inpatient Hospital Care'' (VHA Directive 2002–059).

(3) The provisions of the Veterans Health Administration directive entitled ''Priority Scheduling for Outpatient Medical Services and Inpatient Hospital Care for Service Connected Veterans'' (VHA Directive 2003–062), dated October 23, 2003.

(b) PERIOD OF PROJECT.—The Secretary shall carry out the demonstration project during the two-year period beginning on October 1, 2004.

(c) LOCATIONS OF PROJECT.—(1) The Secretary shall carry out the demonstration project throughout each of three Veterans Integrated Service Networks (VISNs) selected by the Secretary for purposes of the project.

(2) In selecting Veterans Integrated Service Networks under paragraph (1), the Secretary shall ensure that the project is carried out in urban, rural, and highly rural areas.

(d) PROJECT REQUIREMENTS AND AUTHORITIES.—(1) Except as provided in paragraphs (2) and (3), in carrying out the demonstration project the Secretary shall schedule appointments for veterans for outpatient medical services and inpatient hospital care through the Department in accordance with the goals and directives referred to in subsection (a).

(2) The veterans covered by the demonstration project shall include any veterans residing in a Veterans Integrated Service Network covered by the project, whether new or current enrollees with the Department and including veterans with service-connected disabilities and veterans with non-service-connected disabilities.

(3) The Secretary shall schedule each appointment under the demonstration project in a Department facility unless, as determined by the Secretary—

(A) the cost of scheduling the appointment in a Department facility exceeds the cost of scheduling the appointment in a non-Department facility to an unreasonable degree; or

(B) the scheduling of the appointment in a non-Department facility is required for medical or other reasons.

(4) In carrying out the demonstration project, the Secretary may utilize the Preferred Pricing Program (PPP) of the Department, or similar programs or authorities, in the locations covered by the project.

(5) In this subsection, the terms ''Department facility'' and ''non-Department facility'' have the meaning given such terms in section 1701 of title 38, United States Code.

(e) ANNUAL REPORTS ON WAITING TIMES FOR APPOINTMENTS FOR CARE AND SERVICES.—(1) Not later than January 31 each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the waiting times of veterans for appointments for health care and services from the Department during the preceding year.

(2) Each report under paragraph (1) shall specify, for the year covered by the report, the following:

(A) A tabulation of the waiting time of veterans for appointments with the Department for each category of primary or specialty care or services furnished by the Department, broken out by particular Department facility and by Veterans Integrated Service Network.

(B) An identification of the categories of specialty care or services for which there are lengthy delays for appointments at particular Department facilities or throughout particular Veterans Integrated Service Networks, and, for each category so identified, recommendations for the reallocation of personnel, financial, and other resources to address such delays.

(f) REPORT ON PROJECT.—The report under subsection (e) in 2007 shall also include information on the demonstration project under this section. That information shall include—

(1) a description of the project, including the Veterans Integrated Service Networks selected for the project, the number of veterans covered by the project, the number and timeliness of appointments scheduled under the project, and the costs of carrying out the project;

(2) an assessment of the feasibility and advisability of implementing the project nationwide; and

(3) such other information with respect to the project as the Secretary considers appropriate.

DISABLED AMERICAN VETERANS,
Washington, DC, February 4, 2004.

Hon. KENT CONRAD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR CONRAD: On behalf of the more than one million members of the Disabled American Veterans (DAV), we are pleased to support your proposed legislation to assess the feasibility and advisability of providing priorities in the scheduling of appointments through the Department of Veterans Affairs (VA) in accordance with VA's own access directives and goals.

The highest priority for VA health care must always be the core group of veterans the system was designed to treat: service-connected disabled veterans, the medically indigent, and those with special needs and catastrophic disabilities. As you are aware, in the past year, the Secretary of Veterans Affairs has issued two directives relating to priority care and the scheduling of appointments for service-connected veterans. In addition, VA has set access standards for patient appointments and struggled with improving its access goals of 30–30–20 for primary and specialty care appointments; specifically, access to non-urgent primary care appointments within 30 days, non-urgent appointments with a specialist within 30 days of the date of referral, and being seen by a provider at VA health care facilities within 20 minutes of a patient's scheduled appointment. Despite VA's efforts, we continue to hear reports from veterans of lengthy delays in getting appointments for both primary and specialty health care and services.

Through a pilot project in three Veterans Integrated Service Networks representing urban, rural, and highly rural areas, your bill seeks to improve access for veterans seeking VA health care and to evaluate the personnel, cost, and other resources necessary for VA to meet its own access goals. The annual reporting requirements about delay times for primary and specialty care appointments nationwide, and recommendations for the allocation of personnel, financial, and other resources needed to address such delays are essential and will help Congress and VA better understand the actual resources necessary to meet veterans health care needs in a timely manner.

It has been abundantly clear for some time that our government needs to develop long-term solutions to the funding problems facing the veterans health care system. This

proposed measure will help begin to address this issue. The DAV and the other major veterans groups are united in our support for legislation that would guarantee an adequate level of funding for the VA medical system as the key to ensuring timely access to quality health care for our nation's veterans. The Congress and the Administration must make the commitment to provide the necessary resources to fulfill the obligation to care for America's sick and disabled vetrans—now and in the future.

Thank you for your continued interest in this issue, and for sponsoring this important legislation. We greatly appreciate your efforts on behalf of our nation's sick and disabled veterans.

Sincerely,

ALAN W. BOWERS,
National Commander.

AMVETS,
Lantham, MD, February 9, 2004.

Hon. KENT CONRAD,
Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR CONRAD: It is our understanding that you plan to offer legislation that would help reduce the time veterans must wait for a VA doctor's appointment. AMVETS, a nationwide veterans service organization, is pleased to support your proposal.

The need for reducing the time veterans wait for medical exams is well documented. A report issued last year by the President's task force on improving veterans health care delivery said there were nearly 300,000 veterans waiting for medical services at the start of 2003.

While progress is being made to gain more timely care for veterans, the Secretary's decision to halt enrollment of certain veterans for the remainder of the year and into the next fiscal year is another clear indicator that VA cannot meet its own standard for scheduling and appointment within 30 days.

Your proposal would establish a two-year pilot program in three Veterans Integrated Service Networks—a highly rural VISN, a rural VISN, and an urban VISN—to improve access for veterans seeking care and determine how much such standards would cost in terms of resources and impact on other VA medical services.

In effect, the bill provides a valuable tool to use for reducing waiting times and responding to the healthcare needs of veterans. Moreover, it would provide vital information on the actual resource needs necessary to ensure veterans earned benefits are provided in a timely manner.

We are grateful for your leadership in proposing this legislation, and we thank you for supporting the men and women who have served America's Armed Forces.

Sincerely,

RICHARD A. JONES,
National Legislative Director.

Mr. GRAHAM. Mr. President, I rise today with my friend, Senator CONRAD, in support of legislation to ensure that the Department of Veterans Affairs meets appropriate health care access standards.

With more than 60,000 veterans nationwide still on waiting lists to see a doctor—in some cases for more than a year—we must take measures to combat this problem. Right now, at the Gainesville VA Hospital in my home State of Florida, there are 1,085 veterans that have been waiting 6 months or longer to see a primary care doctor. And at the Fort Myers Outpatient Clinic, almost 600 veterans must wait at least a year to see an eye doctor. While VA has made improvements over the past year, I remain skeptical of their ability to rectify the problem. My concerns were exacerbated by a May 2003 Inspector General report which concluded that VA needed to improve their accuracy in tracking patients on waiting lists.

The legislation Senator CONRAD and I are introducing today would establish three pilot programs that seek to improve the timeliness of veterans' access to VA health care services. The programs would first require VA to meet the access standards they set for themselves at 30 days for a primary care appointment and 30 days for a specialty care appointment. If VA cannot schedule an appointment for a patient within this timeline, then they must provide for the service elsewhere, such as through contracts with local private health care facilities.

This initiative would merely put VA's already existing access standards into law, reinforcing VA's own targets and sending a message that we are willing to work with VA to help combat this problem. It has been over a year now that the Department has dealt with waiting lists and has yet to eliminate them. We cannot continue to sit back and criticize—we have provided the funding VA needs, and now we must also try to assist them in other ways.

Most importantly, the pilot program would be cost-neutral because it grants the Secretary discretion to defer from the access requirements if the cost of outside care exceeds that of VA's. Therefore, there will be no detriment to the VA system for providing timely access to needed health care services. I know my colleagues agree that our Nation's veterans deserve quality health care within a reasonable time frame, and I urge them to support this legislation.

AMENDMENTS SUBMITTED & PROPOSED

SA 2281. Mr. DEWINE submitted an amendment intended to be proposed by him to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table.

SA 2282. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2283. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2284. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2285. Mr. INHOFE proposed an amendment to the bill S. 1072, supra.

SA 2286. Mr. WARNER (for himself, Mrs. CLINTON, Mr. DEWINE, and Mrs. MURRAY) proposed an amendment to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra.

SA 2287. Mr. FEINGOLD (for himself and Mr. CORZINE) submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2288. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2289. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2290. Mr. LAUTENBERG submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2291. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2292. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2293. Mr. BURNS submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2294. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2295. Mr. BURNS submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2296. Mr. FITZGERALD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2281. Mr. DEWINE submitted an amendment intended to be proposed by him to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 756, between lines 3 and 4, insert the following:

SEC. 1409. STUDY ON INCREASED SPEED LIMITS.

(a) STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall conduct a study to examine the effects of increased speed limits enacted by States after 1995.

(2) REQUIREMENTS.—The study shall collect empirical data regarding—

(A) increases or decreases in driving speeds on Interstate highways since 1995;

(B) correlations between changes in driving speeds and accident, injury, and fatality rates;

(C) correlations between posted speed limits and observed driving speeds;

(D) the overall impact on motor vehicle safety resulting from the repeal of the national maximum speed limit in 1995; and

(E) such other matters as the Secretary determines to be appropriate.

(b) REPORT.—Not later than 1 year after the date of completion of the study under subsection (a), the Secretary shall submit to Congress a report that describes the results of the study.

SA 2282. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 5507 and insert the following:

SEC. 5507. UNIFORM DOLLAR LIMITATION FOR ALL TYPES OF TRANSPORTATION FRINGE BENEFITS; CLARIFICATION OF FEDERAL EMPLOYEE BENEFITS.

(a) UNIFORM DOLLAR LIMITATION FOR ALL TYPES OF TRANSPORTATION FRINGE BENEFITS.—

(1) IN GENERAL.—Section 132(f)(2) of the Internal Revenue Code of 1986 (relating to limitation on exclusion) is amended—

(A) by striking ''$100'' in subparagraph (A) and inserting ''$190'', and

(B) by striking ''$175'' in subparagraph (B) and inserting ''$190''.

(2) INFLATION ADJUSTMENT CONFORMING AMENDMENTS.—Subparagraph (A) of section 132(f)(6) of the Internal Revenue Code of 1986 (relating to inflation adjustment) is amended—

(A) by striking the last sentence,

(B) by striking ''1999'' and inserting ''2003'', and

(C) by striking ''1998'' and inserting ''2002''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2003.

(b) CLARIFICATION OF FEDERAL EMPLOYEE BENEFITS.—Section 7905 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)(C) by inserting ''and'' after the semicolon;

(B) in paragraph (3) by striking ''; and'' and inserting a period; and

(C) by striking paragraph (4); and

(2) in subsection (b)(2)(A) by amending subparagraph (A) to read as follows:

''(A) a qualified transportation fringe as defined in section 132(f)(1) of the Internal Revenue Code of 1986;''.

SA 2283. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . TERMINATION OF DETERMINATIONS OF GRANDFATHER RIGHTS.

(a) IN GENERAL.—Section 127 of title 23, United States Code, is amended by adding at the end the following:

''(h) GRANDFATHER RIGHTS.—

''(1) GENERAL RULE.—After the 270th day following the date of enactment of this subsection, a State may not allow, on a segment of the Interstate System, the operation of a vehicle or combination (other than a longer combination vehicle) exceeding an Interstate weight limit unless the operation is specified on the list published under paragraph (2).

''(2) LIST OF VEHICLES AND COMBINATIONS.—

''(A) PROCEEDING.—Not later than 60 days after the date of enactment of this subsection, the Secretary shall initiate a proceeding to determine and publish a list of vehicles and combinations (other than longer combination vehicles), otherwise exceeding an Interstate weight limit, that the Department of Transportation, any other Federal agency, or a State has determined on or before June 1, 2003, could be lawfully operated within such State—

''(i) on July 1, 1956;

''(ii) in the case of the overall gross weight of any group of 2 or more consecutive axles, on the date of enactment of the Federal-Aid Highway Amendments of 1974; or

''(iii) under a special rule applicable to a State under subsection (a).

''(B) LIMITATIONS.—

''(i) ACTUAL AND LAWFUL OPERATIONS REQUIRED.—An operation of a vehicle or combination may be included on the list published under subparagraph (A) only if the vehicle or combination was in actual and lawful operation in the State on a regular or periodic basis on or before June 1, 2003.

''(ii) STATE AUTHORITY NOT SUFFICIENT.—An operation of a vehicle or combination may not be included on the list published under subparagraph (A) on the basis that a State law or regulation could have authorized the operation of the vehicle or combination at some prior date by permit or otherwise.

''(C) PUBLICATION OF FINAL LIST.—Not later than 270 days after the date of enactment of this subsection, the Secretary shall publish a final list of vehicles and combinations described in subparagraph (A).

''(3) LIMITATION ON STATUTORY CONSTRUCTION.—This subsection does not prevent a State from reducing the gross vehicle weight limitation, the single and tandem axle weight limitations, or the overall maximum gross weight on a group of 2 or more consecutive axles applicable to portions of the Interstate System in the State for operations on the list published under paragraph (2)(C) but in no event may any such reduction result in a limitation that is less than an Interstate weight limit.

''(4) APPLICABILITY OF EXISTING REQUIREMENTS.—All vehicles and combinations included on the list published under paragraph (2) shall be subject to all routing-specific, commodity-specific, and weight-specific designations in force in a State on June 1, 2003.

''(5) INTERSTATE WEIGHT LIMIT DEFINED.—In this subsection, the term 'Interstate weight limit' means the 80,000 pound gross vehicle weight limitation, the 20,000 pound single axle weight limitation (including enforcement tolerances), the 34,000 pound tandem axle weight limitation (including enforcement tolerances), and the overall maximum gross weight (including enforcement tolerances) on a group of 2 or more consecutive axles produced by application of the formula in subsection (a).''.

(b) CONFORMING AMENDMENT.—The fourth sentence of section 127(a) of title 23, United States Code, is amended by striking ''the State determines''.

SEC. . NONDIVISIBLE LOAD PROCEEDING.

Section 127 of title 23, United States Code, is further amended by adding at the end the following:

''(i) NONDIVISIBLE LOADS.—

''(1) PROCEEDING.—Not later than 60 days after the date of enactment of this subsection, the Secretary shall initiate a proceeding to define the term 'vehicles and loads which cannot be easily dismantled or divided' as used in subsection (a) and section 31112 of title 49.

''(2) LIST OF COMMODITIES.—

''(A) IN GENERAL.—The definition developed under paragraph (1) shall include a list of commodities (or classes or types of commodities) that do not qualify as nondivisible loads.

''(B) LIMITATION.—The list of commodities developed under paragraph (1) shall not be interpreted to be a comprehensive list of commodities that do not qualify as nondivisible loads.

''(3) REGULATIONS.—Not later than 270 days after the date of enactment of this subsection, the Secretary shall issue final regulations setting forth the determination of the Secretary made under paragraph (1). The Secretary shall update the regulations as necessary.

''(4) APPLICABILITY.—Regulations issued under paragraph (2) shall apply to all vehicles and loads operating on the National Highway System.

''(5) STATE REQUIREMENTS.—A State may establish any requirement that is not inconsistent with regulations issued under paragraph (2).

''(6) STATEMENT OF POLICY.—The purpose of this subsection is to promote conformity with Interstate weight limits to preserve publicly funded infrastructure and protect motorists by limiting maximum vehicle weight on key portions of the Federal-aid highway system.''.

SEC. . WAIVERS OF WEIGHT LIMITATIONS DURING PERIODS OF NATIONAL EMERGENCY.

Section 127 of title 23, United States Code, is further amended by adding at the end the following:

''(j) WAIVERS DURING PERIODS OF NATIONAL EMERGENCY.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section or section 126, the Secretary, in consultation with the Secretary of Defense, may waive or limit the application of any vehicle weight limit established under this section or section 126 with respect to a highway route during a period of national emergency in order to respond to the effects of the national emergency.

''(2) APPLICABILITY.—Emergency limits established under paragraph (1) shall preempt any inconsistent State vehicle weight limits.''.

SEC. . VEHICLE WEIGHT LIMITATIONS—NATIONAL HIGHWAY SYSTEM.

(a) IN GENERAL.—Title 23, United States Code, is amended by inserting after section 125 the following:

''§ 126. Vehicle weight limitations—National Highway System

''(a) NON-INTERSTATE HIGHWAYS ON NHS.—

''(1) IN GENERAL.—After the 270th day following the date of enactment of this section, any Interstate weight limit that applies to vehicles and combinations (other than longer combination vehicles) operating on the Interstate System in a State under section 127 shall also apply to vehicles and combinations (other than longer combination vehicles) operating on non-Interstate segments of the National Highway System in such State, unless such segments are subject to lower State weight limits as provided for in subsection (d).

''(2) EXISTING HIGHWAYS.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), in the case of a non-Interstate segment of the National Highway System that is open to traffic on June 1, 2003, a State may allow the operation of any vehicle or combination (other than a longer combination vehicle) on such segment that the Secretary determines under subsection (b) could be lawfully operated on such segment on June 1, 2003.

''(B) APPLICABILITY OF STATE LAWS AND REGULATIONS.—All operations described in subparagraph (A) shall continue to be subject to all State statutes, regulations, limitations and conditions, including routing-specific, commodity-specific, and configuration-specific designations and all other restrictions, in force on June 1, 2003.

''(3) NEW HIGHWAYS.—Subject to subsection (d)(1), the gross vehicle weight limitations and axle loading limitations applicable to all vehicles and combinations (other than longer combination vehicles) on a non-Interstate segment of the National Highway System

that is not open to traffic on June 1, 2003, shall be the Interstate weight limit.

''(b) LISTING OF VEHICLES AND COMBINATIONS.—

''(1) IN GENERAL.—The Secretary shall initiate a proceeding to determine and publish a list of vehicles and combinations (other than longer combination vehicles), otherwise exceeding an Interstate weight limit, that could be lawfully operated on a non-Interstate segment of the National Highway System on June 1, 2003.

''(2) REQUIREMENTS.—In publishing a list of vehicles and combinations under paragraph (1), the Secretary shall identify—

''(A) the gross vehicle weight limitations and axle loading limitations in each State applicable, on June 1, 2003, to vehicles and combinations (other than longer combination vehicles) on non-Interstate segments of the National Highway System; and

''(B) operations of vehicles and combinations (other than longer combination vehicles), exceeding State gross vehicle weight limitations and axle loading limitations identified under subparagraph (A), which were in actual and lawful operation on a regular or periodic basis (including seasonal operations) on June 1, 2003.

''(3) LIMITATION.—An operation of a vehicle or combination may not be included on the list published under paragraph (1) on the basis that a State law or regulation could have authorized such operation at some prior date by permit or otherwise.

''(4) PUBLICATION OF FINAL LIST.—Not later than 270 days after the date of enactment of this section, the Secretary shall publish a final list of vehicles and combinations described in paragraph (1).

''(5) UPDATES.—The Secretary shall update the list published under paragraph (1) as necessary to reflect new designations made to the National Highway System.

''(c) APPLICABILITY OF LIMITATIONS.—The limitations established by subsection (a) shall apply to any new designation made to the National Highway System and remain in effect on those non-Interstate highways that cease to be designated as part of the National Highway System.

''(d) LIMITATIONS ON STATUTORY CONSTRUCTION.—

''(1) STATE ENFORCEMENT OF MORE RESTRICTIVE WEIGHT LIMITS.—This section does not prevent a State from maintaining or imposing a weight limitation that is more restrictive than the Interstate weight limit on vehicles or combinations (other than longer combination vehicles) operating on a non-Interstate segment of the National Highway System.

''(2) STATE ACTIONS TO REDUCE WEIGHT LIMITS.—This section does not prevent a State from reducing the State's gross vehicle weight limitation, single or tandem axle weight limitations, or the overall maximum gross weight on 2 or more consecutive axles on any non-Interstate segment of the National Highway System.

''(e) LONGER COMBINATION VEHICLES.—

''(1) PROHIBITION.—

''(A) IN GENERAL.—After the 270th day following the date of enactment of this section, a longer combination vehicle may continue to operate on a non-Interstate segment of the National Highway System only if the operation of the longer combination vehicle configuration type was authorized by State officials pursuant to State statute or regulation on June 1, 2003, and in actual and lawful operation on a regular or periodic basis (including seasonal operations) on or before June 1, 2003.

''(B) APPLICABILITY OF STATE LAWS AND REGULATIONS.—All operations described in subparagraph (A) shall continue to be subject to all State statutes, regulations, limitations and conditions, including routing-specific, commodity-specific, and configuration-specific designations and all other restrictions, in force on June 1, 2003.

''(2) LISTING OF VEHICLES AND COMBINATIONS.—

''(A) IN GENERAL.—Not later than 60 days after the date of enactment of this section, the Secretary shall initiate a proceeding to determine and publish a list of longer combination vehicles that could be lawfully operated on non-Interstate segments of the National Highway System on June 1, 2003.

''(B) LIMITATION.—A longer combination vehicle may not be included on the list published under subparagraph (A) on the basis that a State law or regulation could have authorized the operation of such vehicle at some prior date by permit or otherwise.

''(C) PUBLICATION OF FINAL LIST.—Not later than 270 days after the date of enactment of this section, the Secretary shall publish a final list of longer combination vehicles described in subparagraph (A).

''(D) UPDATES.—The Secretary shall update the list published under subparagraph (A) as necessary to reflect new designations made to the National Highway System.

''(3) LIMITATION ON STATUTORY CONSTRUCTION.—This subsection does not prevent a State from further restricting in any manner or prohibiting the operation of a longer combination vehicle; except that such restrictions or prohibitions shall be consistent with the requirements of section 127 of this title and sections 31112 through 31114 of title 49, United States Code.

''(f) MODEL SCHEDULE OF FINES.—

''(1) IN GENERAL.—The Secretary, in consultation with the States, shall establish a model schedule of fines to be assessed for violations of this section.

''(2) PURPOSE.—The purpose of the schedule of fines shall be to ensure that fines are sufficient to deter violations of the requirements of this section and to permit States to recover costs associated with damages caused to the National Highway System by the operation of such vehicles.

''(3) ADOPTION BY STATES.—The Secretary shall encourage but not require States to adopt the schedule of fines.

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

''(1) INTERSTATE WEIGHT LIMIT.—The term 'Interstate weight limit' has the meaning given such term in section 127(h).

''(2) LONGER COMBINATION VEHICLE.—The term 'longer combination vehicle' has the meaning given such term in section 127(d).''.

(b) ENFORCEMENT OF REQUIREMENTS.—Section 141(a) of title 23, United States Code, is amended—

(1) by striking ''the Federal-aid primary system, the Federal-aid urban system, and the Federal-aid secondary system, including the Interstate System'' and inserting ''the National Highway System, including the Interstate System,''; and

(2) by striking ''section 127'' and inserting ''sections 126 and 127''.

(c) CONFORMING AMENDMENT.—The analysis for title 23, United States Code, is amended by inserting after the item relating to section 125 the following:

''126. Vehicle weight limitations—National Highway System.''.

SA 2284. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 1072 to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 748, strike line 3 and insert the following:

SEC. 1403. HIGHER-RISK IMPAIRED DRIVERS.

On page 748, line 4, insert ''(a) LICENSE SUSPENSION DEFINITION.—'' BEFORE ''SECTION''.

On page 748, between lines 19 and 20, insert the following:

(b) OTHER DEFINITIONS.—Section 164 of title 23, United States Code, is further amended—

(1) by striking subsection (a)(5) and inserting the following:

''(5) HIGHER-RISK IMPAIRED DRIVER LAW.—

''(A) IN GENERAL.—The term 'higher-risk impaired driver law' means a State law that provides, as a minimum penalty, that an individual described in subparagraph (B) shall—

''(i) receive a driver's license suspension for not less than 1 year, including a complete ban on driving for not less than 90 days and for the remainder of the license suspension period and prior to the issuance of a probational hardship or work permit license, be required to install a certified alcohol ignition interlock device;

''(ii) have the motor vehicle driven at the time of arrest impounded or immobilized for not less than 90 days and for the remainder of the license suspension period require the installation of a certified alcohol ignition interlock device on the vehicle;

''(iii) be subject to an assessment by a certified substance abuse official of the State that assesses the individual's degree of abuse of alcohol and assigned to a treatment program or impaired driving education program as determined by the assessment;

''(iv) be imprisoned for not less than 10 days, have an electronic monitoring device for not less than 100 days, or be as signed to a DUI/DWI specialty facility for not less than 30 days;

''(v) be fined a minimum of $1,000, with the proceeds of such funds to be used by the State or local jurisdiction for impaired driving related prevention, enforcement, and prosecution programs, or for the development or maintenance of a tracking system of offenders driving while impaired;

''(vi) if the arrest resulted from involvement in a crash, pay court-mandated restitution to the victims of the crash;

''(vii) be placed on probation by the court for a period of not less than 2 years;

''(viii) if diagnosed with a substance abuse problem, during the first year of the probation period referred to in clause (vii), attend a treatment program for a period of 12 consecutive months sponsored by a State certified substance abuse treatment agency and meet with a case manager at least once each month; and

''(ix) be required by the court to attend a victim impact panel, if such a panel is available.

''(B) INDIVIDUALS TO WHOM PENALTIES APPLY.—An individual is described in this subparagraph if that individual—

''(i) is convicted of a second or subsequent offense for driving while intoxicated or driving under the influence within a minimum of 10 consecutive years;

''(ii) is convicted of a driving while intoxicated or driving under the influence with a blood alcohol concentration of 0.15 percent or greater; or

''(iii) is convicted of a driving-while-suspended offense if the suspension was the result of a conviction for driving under the influence.'';

(2) by adding at the end of subsection (a) the following:

''(6) SPECIAL DUI/DWI FACILITY.—The term 'special DUI/DWI facility' means a facility that houses and treats offenders arrested for driving while impaired and allows such offenders to work or attend school.

''(7) VICTIM IMPACT PANEL.—The term 'victim impact panel' means a group of impaired driving victims who speak to offenders about

impaired driving for the purpose of trying to change attitudes and behaviors in order to deter impaired driving recidivism.''; and

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

''(b) IMPOSITION OF HIGHER-RISK IMPAIRED DRIVER LAW REQUIREMENT.—

''(1) IN GENERAL.—Notwithstanding any provision of section 104 to the contrary, as a condition of receiving the full amount of funds apportioned to a State under paragraphs (1), (3), and (4) of section 104(b), a State shall enact and enforce a higher-risk impaired driver law.

''(2) ENFORCEMENT BY WITHHOLDING FUNDS.—On October 1st of the following fiscal years, the Secretary shall withhold the applicable percentage of the amount required to be apportioned for Federal-aid highways to a State on that date under each of paragraphs (1), (3), and (4) of section 104(b) if the State has not enacted or is not enforcing a higher-risk impaired driver law:

''(A) For fiscal year 2008, the applicable percentage is 2 percent.

''(B) For fiscal year 2009, the applicable percentage is 4 percent.

''(C) For fiscal year 2010, the applicable percentage is 6 percent.

''(D) For fiscal years 2011 and thereafter, the applicable percentage is 8 percent.''.

SA 2285. Mr. INHOFE proposed an amendment to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; as follows:

Strike all after the enacting clause.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. General definitions.
Sec. 3. Definitions for title 23.

TITLE I—FEDERAL-AID HIGHWAYS

Subtitle A—Funding

Sec. 1101. Authorization of appropriations.
Sec. 1102. Obligation ceiling.
Sec. 1103. Apportionments.
Sec. 1104. Minimum guarantee.
Sec. 1105. Revenue aligned budget authority.

Subtitle B—New Programs

Sec. 1201. Infrastructure performance and maintenance program.
Sec. 1202. Future of surface transportation system.
Sec. 1203. Freight transportation gateways; freight intermodal connections.
Sec. 1204. Construction of ferry boats and ferry terminal facilities.
Sec. 1205. Designation of Daniel Patrick Moynihan Interstate Highway.
Sec. 1206. State-by-State comparison of highway construction costs.

Subtitle C—Finance

Sec. 1301. Federal share.
Sec. 1302. Transfer of highway and transit funds.
Sec. 1303. Transportation Infrastructure Finance and Innovation Act Amendments.
Sec. 1304. Facilitation of international registration plans and international fuel tax agreements.
Sec. 1305. National Commission on Future Revenue Sources to Support the Highway Trust Fund and Finance the Needs of the Surface Transportation System.
Sec. 1306. State infrastructure banks.
Sec. 1307. Public-private partnerships pilot program.
Sec. 1308. Wagering.

Subtitle D—Safety

Sec. 1401. Highway safety improvement program.
Sec. 1402. Operation lifesaver.
Sec. 1403. License suspension.
Sec. 1404. Bus axle weight exemption.
Sec. 1405. Safe routes to schools program.
Sec. 1406. Purchases of equipment.
Sec. 1407. Workzone safety.
Sec. 1408. Worker injury prevention and free flow of vehicular traffic.
Sec. 1409. Identity authentication standards.

Subtitle E—Environmental Planning and Review

CHAPTER 1—TRANSPORTATION PLANNING

Sec. 1501. Integration of natural resource concerns into State and metropolitan transportation planning.
Sec. 1502. Consultation between transportation agencies and resource agencies in transportation planning.
Sec. 1503. Integration of natural resource concerns into transportation project planning.
Sec. 1504. Public involvement in transportation planning and projects.
Sec. 1505. Project mitigation.

CHAPTER 2—TRANSPORTATION PROJECT DEVELOPMENT PROCESS

Sec. 1511. Transportation project development process.
Sec. 1512. Assumption of responsibility for categorical exclusions.
Sec. 1513. Surface transportation project delivery pilot program.
Sec. 1514. Regulations.

CHAPTER 3—MISCELLANEOUS

Sec. 1521. Critical real property acquisition.
Sec. 1522. Planning capacity building initiative.

Subtitle F—Environment

Sec. 1601. Environmental restoration and pollution abatement; control of invasive plant species and establishment of native species.
Sec. 1602. National scenic byways program.
Sec. 1603. Recreational trails program.
Sec. 1604. Exemption of Interstate System.
Sec. 1605. Standards.
Sec. 1606. Use of high occupancy vehicle lanes.
Sec. 1607. Bicycle transportation and pedestrian walkways.
Sec. 1608. Idling reduction facilities in Interstate rights-of-way.
Sec. 1609. Toll programs.
Sec. 1610. Federal reference method.
Sec. 1611. Addition of particulate matter areas to CMAQ.
Sec. 1612. Addition to CMAQ-eligible projects.
Sec. 1613. Improved interagency consultation.
Sec. 1614. Evaluation and assessment of CMAQ projects.
Sec. 1615. Synchronized planning and conformity timelines, requirements, and horizon.
Sec. 1616. Transition to new air quality standards.
Sec. 1617. Reduced barriers to air quality improvements.
Sec. 1618. Air quality monitoring data influenced by exceptional events.
Sec. 1619. Conforming amendments.
Sec. 1620. Highway stormwater discharge mitigation program.
Sec. 1621. Exemption from certain hazardous materials transportation requirements.

Subtitle G—Operations

Sec. 1701. Transportation systems management and operations.
Sec. 1702. Real-time system management information program.
Sec. 1703. Contracting for engineering and design services.
Sec. 1704. Off-duty time for drivers of commercial vehicles.
Sec. 1705. Designation of transportation management areas.

Subtitle H—Federal-Aid Stewardship

Sec. 1801. Future Interstate System routes.
Sec. 1802. Stewardship and oversight.
Sec. 1803. Design-build contracting.
Sec. 1804. Program efficiencies—finance.
Sec. 1805. Set-asides for interstate discretionary projects.
Sec. 1806. Federal lands highways program.
Sec. 1807. Highway bridge program.
Sec. 1808. Appalachian development highway system.
Sec. 1809. Multistate corridor program.
Sec. 1810. Border planning, operations, technology, and capacity program.
Sec. 1811. Puerto Rico highway program.
Sec. 1812. National historic covered bridge preservation.
Sec. 1813. Transportation and community and system preservation program.
Sec. 1814. Parking pilot programs.
Sec. 1815. Interstate oasis program.
Sec. 1816. Tribal-State road maintenance agreements.
Sec. 1817. National forest system roads.
Sec. 1818. Territorial highway program.
Sec. 1819. Magnetic levitation transportation technology deployment program.
Sec. 1820. Donations and credits.
Sec. 1821. Disadvantaged business enterprises.
Sec. 1822. Emergency relief.

Subtitle I—Technical Corrections

Sec. 1901. Repeal or update of obsolete text.
Sec. 1902. Clarification of date.
Sec. 1903. Inclusion of requirements for signs identifying funding sources in title 23.
Sec. 1904. Inclusion of Buy America requirements in title 23.
Sec. 1905. Technical amendments to nondiscrimination section.

TITLE II—TRANSPORTATION RESEARCH

Subtitle A—Funding

Sec. 2001. Authorization of appropriations.
Sec. 2002. Obligation ceiling.
Sec. 2003. Notice.

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SEC. 2. GENERAL DEFINITIONS.

In this Act:

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

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

SEC. 3. DEFINITIONS FOR TITLE 23.

Section 101 of title 23, United States Code, is amended by striking subsection (a) and inserting the following:

''(a) DEFINITIONS.—In this title:

''(1) APPORTIONMENT.—The term 'apportionment' includes an unexpended apportionment made under a law enacted before the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004.

''(2) CARPOOL PROJECT.—

''(A) IN GENERAL.—The term 'carpool project' means any project to encourage the use of carpools and vanpools.

''(B) INCLUSIONS.—The term 'carpool project' includes a project—

''(i) to provide carpooling opportunities to the elderly and individuals with disabilities;

''(ii) to develop and implement a system for locating potential riders and informing the riders of carpool opportunities;

''(iii) to acquire vehicles for carpool use;

''(iv) to designate highway lanes as preferential carpool highway lanes;

''(v) to provide carpool-related traffic control devices; and

''(vi) to designate facilities for use for preferential parking for carpools.

''(3) CONSTRUCTION.—

''(A) IN GENERAL.—The term 'construction' means the supervision, inspection, and actual building of, and incurring 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.

''(B) INCLUSIONS.—The term 'construction' includes—

''(i) locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the National Oceanic and Atmospheric Administration);

''(ii) resurfacing, restoration, and rehabilitation;

''(iii) acquisition of rights-of-way;

''(iv) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

''(v) elimination of hazards of railway grade crossings;

''(vi) elimination of roadside obstacles;

''(vii) improvements that directly facilitate and control traffic flow, such as—

''(I) grade separation of intersections;

''(II) widening of lanes;

''(III) channelization of traffic;

''(IV) traffic control systems; and

''(V) passenger loading and unloading areas;

''(viii) capital improvements that directly facilitate an effective vehicle weight enforcement program, such as—

''(I) scales (fixed and portable);

''(II) scale pits;

''(III) scale installation; and

''(IV) scale houses;

''(ix) improvements directly relating to securing transportation infrastructures for detection, preparedness, response, and recovery;

''(x) operating costs relating to traffic monitoring, management, and control;

''(xi) operational improvements; and

''(xii) transportation system management and operations.

''(4) COUNTY.—The term 'county' includes—

''(A) a corresponding unit of government under any other name in a State that does not have county organizations; and

''(B) in those States in which the county government does not have jurisdiction over highways, any local government unit vested with jurisdiction over local highways.

''(5) FEDERAL-AID HIGHWAY.—

''(A) IN GENERAL.—The term 'Federal-aid highway' means a highway eligible for assistance under this chapter.

''(B) EXCLUSIONS.—The term 'Federal-aid highway' does not include a highway classified as a local road or rural minor collector.

''(6) FEDERAL-AID SYSTEM.—The term 'Federal-aid system' means any of the Federal-aid highway systems described in section 103.

''(7) FEDERAL LANDS HIGHWAY.—The term 'Federal lands highway' means—

''(A) a forest highway;

''(B) a recreation road;

''(C) a public Forest Service road;

''(D) a park road;

''(E) a parkway;

''(F) a refuge road;

''(G) an Indian reservation road; and

''(H) a public lands highway.

''(8) FOREST HIGHWAY.—The term 'forest highway' means a forest road that is—

''(A) under the jurisdiction of, and maintained by, a public authority; and

''(B) is open to public travel.

''(9) FOREST ROAD OR TRAIL.—

''(A) IN GENERAL.—The term 'forest road or trail' means a road or trail wholly or partly within, or adjacent to, and serving National Forest System land that is necessary for the protection, administration, use, and development of the resources of that land.

''(B) INCLUSIONS.—The term 'forest road or trail' includes—

''(i) a classified forest road;

''(ii) an unclassified forest road;

''(iii) a temporary forest road; and

''(iv) a public forest service road.

''(10) FREIGHT TRANSPORTATION GATEWAY.—

''(A) IN GENERAL.—The term 'freight transportation gateway' means a nationally or regionally significant transportation port of entry or hub for domestic and global trade or military mobilization.

''(B) INCLUSIONS.—The term 'freight transportation gateway' includes freight intermodal and Strategic Highway Network connections that provide access to and from a port or hub described in subparagraph (A).

''(11) HIGHWAY.—The term 'highway' includes—

''(A) a road, street, and parkway;

''(B) a right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure, sign, guardrail, and protective structure, in connection with a highway; and

''(C) a portion of any interstate or international bridge or tunnel (including the approaches to the interstate or international bridge or tunnel, and such transportation facilities as may be required by the United States Customs Service and the Bureau of Citizenship and Immigration Services in connection with the operation of an international bridge or tunnel), the cost of which is assumed by a State transportation department.

''(12) HIGHWAY SAFETY IMPROVEMENT PROJECT.—The term 'highway safety improvement project' means a project that meets the requirements of section 148.

''(13) INDIAN RESERVATION ROAD.—

''(A) IN GENERAL.—The term 'Indian reservation road' means a public road that is located within or provides access to an area described in subparagraph (B) on which or in which reside Indians or Alaskan Natives that, as determined by the Secretary of the Interior, are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

''(B) AREAS.—The areas referred to in subparagraph (A) are—

''(i) an Indian reservation;

''(ii) Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government; and

''(iii) an Indian or Alaska Native village, group, or community.

''(14) INTERSTATE SYSTEM.—The term 'Interstate System' means the Dwight D. Eisenhower National System of Interstate and Defense Highways described in section 103(c).

''(15) MAINTENANCE.—

''(A) IN GENERAL.—The term 'maintenance' means the preservation of a highway.

''(B) INCLUSIONS.—The term 'maintenance' includes the preservation of—

''(i) the surface, shoulders, roadsides, and structures of a highway; and

''(ii) such traffic-control devices as are necessary for safe, secure, and efficient use of a highway.

''(16) MAINTENANCE AREA.—The term 'maintenance area' means an area that was designated as a nonattainment area, but was later redesignated by the Administrator of the Environmental Protection Agency as an attainment area, under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

''(17) NATIONAL FOREST SYSTEM ROAD OR TRAIL.—The term 'National Forest System road or trail' means a forest road or trail that is under the jurisdiction of the Forest Service.

''(18) NATIONAL HIGHWAY SYSTEM.—The term 'National Highway System' means the Federal-aid highway system described in section 103(b).

''(19) OPERATING COSTS FOR TRAFFIC MONITORING, MANAGEMENT, AND CONTROL.—The term 'operating costs for traffic monitoring, management, and control' includes—

''(A) labor costs;

''(B) administrative costs;

''(C) costs of utilities and rent;

''(D) costs incurred by transportation agencies for technology to monitor critical transportation infrastructure for security purposes; and

''(E) other costs associated with transportation systems management and operations and the continuous operation of traffic control, such as—

''(i) an integrated traffic control system;

''(ii) an incident management program; and

''(iii) a traffic control center.

''(20) OPERATIONAL IMPROVEMENT.—

''(A) IN GENERAL.—The term 'operational improvement' means—

''(i) a capital improvement for installation or implementation of—

''(I) a transportation system management and operations program;

''(II) traffic and transportation security surveillance and control equipment;

''(III) a computerized signal system;

''(IV) a motorist information system;

''(V) an integrated traffic control system;

''(VI) an incident management program;

''(VII) equipment and programs for transportation response to manmade and natural disasters; or

''(VIII) a transportation demand management facility, strategy, or program; and

''(ii) such other capital improvements to a public road as the Secretary may designate by regulation.

''(B) EXCLUSIONS.—The term 'operational improvement' does not include—

''(i) a resurfacing, restorative, or rehabilitative improvement;

''(ii) construction of an additional lane, interchange, or grade separation; or

''(iii) construction of a new facility on a new location.

''(21) PARK ROAD.—The term 'park road' means a public road (including a bridge built primarily for pedestrian use, but with capacity for use by emergency vehicles) that is located within, or provides access to, an area in the National Park System with title and maintenance responsibilities vested in the United States.

''(22) PARKWAY.—The term 'parkway' means a parkway authorized by an Act of Congress on land to which title is vested in the United States.

''(23) PROJECT.—The term 'project' means—

''(A)(i) an undertaking to construct a particular portion of a highway; or

''(ii) if the context so implies, a particular portion of a highway so constructed; and

''(B) any other undertaking eligible for assistance under this title.

''(24) PROJECT AGREEMENT.—The term 'project agreement' means the formal instrument to be executed by the Secretary and recipient of funds under this title.

''(25) PUBLIC AUTHORITY.—The term 'public authority' means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

''(26) PUBLIC FOREST SERVICE ROAD.—The term 'public Forest Service road' means a classified forest road—

''(A) that is open to public travel;

''(B) for which title and maintenance responsibility is vested in the Federal Government; and

''(C) that has been designated a public road by the Forest Service.

''(27) PUBLIC LANDS DEVELOPMENT ROADS AND TRAILS.—The term 'public lands development roads and trails' means roads and trails that the Secretary of the Interior determines are of primary importance for the development, protection, administration, and use of public lands and resources under the control of the Secretary of the Interior.

''(28) PUBLIC LANDS HIGHWAY.—The term 'public lands highway' means—

''(A) a forest road that is—

''(i) under the jurisdiction of, and maintained by, a public authority; and

''(ii) open to public travel; and

''(B) any highway through unappropriated or unreserved public land, nontaxable Indian land, or any other Federal reservation (including a main highway through such land or reservation that is on the Federal-aid system) that is—

''(i) under the jurisdiction of, and maintained by, a public authority; and

''(ii) open to public travel.

''(29) PUBLIC ROAD.—The term 'public road' means any road or street that is—

''(A) under the jurisdiction of, and maintained by, a public authority; and

''(B) open to public travel.

''(30) RECREATIONAL ROAD.—The term 'recreational road' means a public road—

''(A) that provides access to a museum, lake, reservoir, visitors center, gateway to a major wilderness area, public use area, or recreational or historic site; and

''(B) for which title is vested in the Federal Government.

''(31) REFUGE ROAD.—The term 'refuge road' means a public road—

''(A) that provides access to or within a unit of the National Wildlife Refuge System or a national fish hatchery; and

''(B) for which title and maintenance responsibility is vested in the United States Government.

''(32) RURAL AREA.—The term 'rural area' means an area of a State that is not included in an urban area.

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

''(34) STATE.—The term 'State' means—

''(A) a State;

''(B) the District of Columbia; and

''(C) the Commonwealth of Puerto Rico.

''(35) STATE FUNDS.—The term 'State funds' includes funds that are—

''(A) raised under the authority of the State (or any political or other subdivision of a State); and

''(B) made available for expenditure under the direct control of the State transportation department.

''(36) STATE TRANSPORTATION DEPARTMENT.—The term 'State transportation department' means the department, agency, commission, board, or official of any State charged by the laws of the State with the responsibility for highway construction.

''(37) TERRITORIAL HIGHWAY SYSTEM.—The term 'territorial highway system' means the system of arterial highways, collector roads, and necessary interisland connectors in American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands that have been designated by the appropriate Governor or chief executive officer of a territory, and approved by the Secretary, in accordance with section 215.

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

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

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

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

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

''(E) Landscaping and other scenic beautification.

''(F) Historic preservation.

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

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

''(I) Control and removal of outdoor advertising.

''(J) Archaeological planning and research.

''(K) Environmental mitigation—

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

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

''(L) Establishment of transportation museums.

''(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 security, safety, and reliability of the transportation system.

''(B) INCLUSIONS.—The term 'transportation systems management and operations' includes—

''(i) regional operations collaboration and coordination activities between transportation and public safety agencies; and

''(ii) improvements to the transportation system such as traffic detection and surveillance, arterial management, freeway management, demand management, work zone management, emergency management, electronic toll collection, automated enforcement, 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.

''(40) URBAN AREA.—The term 'urban area' means—

''(A) an urbanized area (or, in the case of an urbanized area encompassing more than 1 State, the portion of the urbanized area in each State); and

''(B) an urban place designated by the Bureau of the Census that—

''(i) has a population of 5,000 or more;

''(ii) is not located within any urbanized area; and

''(iii) is located within boundaries that—

''(I) are fixed cooperatively by responsible State and local officials, subject to approval by the Secretary; and

''(II) encompass, at a minimum, the entire urban place designated by the Bureau of the Census (except in the case of cities in the State of Maine and in the State of New Hampshire).

''(41) URBANIZED AREA.—The term 'urbanized area' means an area that—

''(A) has a population of 50,000 or more;

''(B) is designated by the Bureau of the Census; and

''(C) is located within boundaries that—

''(i) are fixed cooperatively by responsible State and local officials, subject to approval by the Secretary; and

''(ii) encompass, at a minimum, the entire urbanized area within a State as designated by the Bureau of the Census.''.

TITLE I—FEDERAL-AID HIGHWAYS

Subtitle A—Funding

SEC. 1101. AUTHORIZATION OF APPROPRIATIONS.

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

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

(A) $5,442,371,792 for fiscal year 2004;

(B) $6,425,168,342 for fiscal year 2005;

(C) $6,683,176,289 for fiscal year 2006;

(D) $6,702,365,186 for fiscal year 2007;

(E) $7,036,621,314 for fiscal year 2008; and

(F) $7,139,130,081 for fiscal year 2009.

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

(A) $6,593,922,257 for fiscal year 2004;

(B) $7,815,590,130 for fiscal year 2005;

(C) $8,125,241,450 for fiscal year 2006;

(D) $8,148,531,791 for fiscal year 2007;

(E) $8,554,231,977 for fiscal year 2008; and

(F) $8,678,591,297 for fiscal year 2009.

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

(A) $4,650,754,076 for fiscal year 2004;

(B) $5,507,287,150 for fiscal year 2005;

(C) $5,713,860,644 for fiscal year 2006;

(D) $5,730,266,418 for fiscal year 2007;

(E) $6,016,042,650 for fiscal year 2008; and

(F) $6,103,714,622 for fiscal year 2009.

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

(A) $6,877,178,900 for fiscal year 2004;

(B) $8,107,950,527 for fiscal year 2005;

(C) $8,417,741,127 for fiscal year 2006;

(D) $8,441,910,349 for fiscal year 2007;

(E) $8,862,919,976 for fiscal year 2008; and

(F) $8,992,134,975 for fiscal year 2009.

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

(A) $1,880,092,073 for fiscal year 2004;

(B) $2,192,716,180 for fiscal year 2005;

(C) $2,270,239,273 for fiscal year 2006;

(D) $2,276,757,639 for fiscal year 2007;

(E) $2,390,302,660 for fiscal year 2008; and

(F) $2,425,236,569 for fiscal year 2009.

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

(A) $1,187,426,572 for fiscal year 2004;

(B) $1,325,828,388 for fiscal year 2005;

(C) $1,377,448,548 for fiscal year 2006;

(D) $1,381,403,511 for fiscal year 2007;

(E) $1,450,295,996 for fiscal year 2008; and

(F) $1,471,607,029 for fiscal year 2009.

(7) APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM PROGRAM.—For the Appalachian development highway system program under section 170 of that title, $590,000,000 for each of fiscal years 2004 through 2009.

(8) RECREATIONAL TRAILS PROGRAM.—For the recreational trails program under section 206 of that title, $60,000,000 for each of fiscal years 2004 through 2009.

(9) FEDERAL LANDS HIGHWAYS PROGRAM.—

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

(i) $300,000,000 for fiscal year 2004;

(ii) $325,000,000 for fiscal year 2005;

(iii) $350,000,000 for fiscal year 2006;

(iv) $375,000,000 for fiscal year 2007;

(v) $400,000,000 for fiscal year 2008; and

(vi) $425,000,000 for fiscal year 2009.

(B) RECREATION ROADS.—For recreation roads under section 204 of that title, $50,000,000 for each of fiscal years 2004 through 2009.

(C) PARK ROADS AND PARKWAYS.—For park roads and parkways under section 204 of that title—

(i) $300,000,000 for fiscal year 2004;

(ii) $310,000,000 for fiscal year 2005; and

(iii) $320,000,000 for each of fiscal years 2006 through 2009.

(D) REFUGE ROADS.—For refuge roads under section 204 of that title, $30,000,000 for each of fiscal years 2004 through 2009.

(E) PUBLIC LANDS HIGHWAYS.—For Federal lands highways under section 204 of that title, $300,000,000 for each of fiscal years 2004 through 2009.

(F) SAFETY.—For safety under section 204 of that title, $40,000,000 for each of fiscal years 2004 through 2009.

(10) MULTISTATE CORRIDOR PROGRAM.—For the multistate corridor program under section 171 of that title—

(A) $112,500,000 for fiscal year 2004;

(B) $135,000,000 for fiscal year 2005;

(C) $157,500,000 for fiscal year 2006;

(D) $180,000,000 for fiscal year 2007;

(E) $202,500,000 for fiscal year 2008; and

(F) $225,000,000 for fiscal year 2009.

(11) BORDER PLANNING, OPERATIONS, AND TECHNOLOGY PROGRAM.—For the border planning, operations, and technology program under section 172 of that title—

(A) $112,500,000 for fiscal year 2004;

(B) $135,000,000 for fiscal year 2005;

(C) $157,500,000 for fiscal year 2006;

(D) $180,000,000 for fiscal year 2007;

(E) $202,500,000 for fiscal year 2008; and

(F) $225,000,000 for fiscal year 2009.

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

(A) $34,000,000 for fiscal year 2004;

(B) $35,000,000 for fiscal year 2005;

(C) $36,000,000 for fiscal year 2006;

(D) $37,000,000 for fiscal year 2007; and

(E) $39,000,000 for each of fiscal years 2008 and 2009.

(13) INFRASTRUCTURE PERFORMANCE AND MAINTENANCE PROGRAM.—For carrying out the infrastructure performance and maintenance program under section 139 of that title $2,000,000,000 for fiscal year 2004.

(14) CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.—For construction of ferry boats and ferry terminal facilities under section 147 of that title, $38,000,000 for each of fiscal years 2004 through 2009.

(15) COMMONWEALTH OF PUERTO RICO HIGHWAY PROGRAM.—For the Commonwealth of Puerto Rico highway program under section 173 of that title—

(A) $140,000,000 for fiscal year 2004;

(B) $145,000,000 for fiscal year 2005;

(C) $149,000,000 for fiscal year 2006;

(D) $154,000,000 for fiscal year 2007;

(E) $160,000,000 for fiscal year 2008; and

(F) $163,000,000 for fiscal year 2009.

(16) PUBLIC-PRIVATE PARTNERSHIPS PILOT PROGRAM.—For the public-private partnerships pilot program under section 109(c)(3) of that title, $10,000,000 for each of fiscal years 2004 through 2009.

SEC. 1102. OBLIGATION CEILING.

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

(1) $33,643,326,300 for fiscal year 2004;

(2) $37,900,000,000 for fiscal year 2005;

(3) $39,100,000,000 for each of fiscal years 2006 and 2007;

(4) $39,400,000,000 for fiscal year 2008; and

(5) $44,400,000,000 for fiscal year 2009.

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

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

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

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

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

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

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

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

(8) section 105 of title 23, United States Code (as in effect for fiscal years 1998 through 2003, but only in an amount equal to $639,000,000 for each of those fiscal years);

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

(10) section 105 of title 23, United States Code (but, for each of fiscal years 2004 through 2009, only in an amount equal to $439,000,000 per fiscal year).

(c) DISTRIBUTION OF OBLIGATION AUTHORITY.—For each of fiscal years 2004 through 2009, the Secretary—

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

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

(B) programs funded from the administrative takedown authorized by section 104(a)(1) of title 23, United States Code; and

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

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

(3) shall determine the ratio that—

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

(B) the total of the sums authorized to be appropriated for the Federal-aid highway and highway safety construction programs (other than sums authorized to be appropriated for provisions of law described in paragraphs (1) through (9) of subsection (b) and sums authorized to be appropriated for section 105 of title 23, United States Code, equal to the amount referred to in subsection (b)(10) for the fiscal year), less the aggregate of the amounts not distributed under paragraphs (1) and (2);

(4) shall distribute the obligation authority provided by subsection (a) less the aggregate amounts not distributed under paragraphs (1) and (2), for section 14501 of title 40, United States Code, so that the amount of obligation authority available for that section is equal to the amount determined by multiplying—

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

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

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

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

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

(6) shall distribute the obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2) and the amounts distributed under paragraphs (4) and (5), for Federal-aid highway and highway safety construction programs (other than the amounts apportioned for the equity bonus program, but only to the extent that the amounts apportioned for the equity bonus program for the fiscal year are greater than $439,000,000, and the Appalachian development highway system program) that are apportioned by the Secretary under this Act and title 23, United States Code, in the ratio that—

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

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

(d) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Notwithstanding subsection (c), the Secretary shall, after August 1 of each of fiscal years 2004 through 2009—

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

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

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

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

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

(B) title II of this Act.

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

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

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

(f) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.—

(1) IN GENERAL.—Not later than 30 days after the date of distribution of obligation authority under subsection (c) for each of fiscal years 2004 through 2009, the Secretary shall distribute to the States any funds that—

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

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

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

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

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

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

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

(h) ADJUSTMENT IN OBLIGATION LIMIT.—

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

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

(i) LIMITATIONS ON OBLIGATIONS FOR ADMINISTRATIVE EXPENSES.—Notwithstanding any other provision of law, the total amount of all obligations under section 104(a) of title 23, United States Code, shall not exceed—

(1) $450,000,000 for fiscal year 2004;

(2) $465,000,000 for fiscal year 2005;

(3) $480,000,000 for fiscal year 2006;

(4) $495,000,000 for fiscal year 2007;

(5) $510,000,000 for fiscal year 2008; and

(6) $525,000,000 for fiscal year 2009.

(j) NATIONAL HIGHWAY SYSTEM COMPONENT.—Section 104(b)(1) of title 23, United States Code, is amended by striking ''$36,400,000'' and insert ''$50,000,000''.

SEC. 1103. APPORTIONMENTS.

(a) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—Section 104 of title 23, United States Code, is amended by striking subsection (a) and inserting the following:

''(a) ADMINISTRATIVE EXPENSES.—

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

''(A) $450,000,000 for fiscal year 2004;

''(B) $465,000,000 for fiscal year 2005;

''(C) $480,000,000 for fiscal year 2006;

''(D) $495,000,000 for fiscal year 2007;

''(E) $510,000,000 for fiscal year 2008; and

''(F) $525,000,000 for fiscal year 2009.

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

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

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

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

(2) CONFORMING AMENDMENTS.—Section 104 of title 23, United States Code, is amended—

(A) in the matter preceding paragraph (1) of subsection (b), by striking ''the deduction authorized by subsection (a) and'';

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

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

(b) METROPOLITAN PLANNING.—Section 104(f) of title 23, United States Code, is amended—

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

''(1) SET-ASIDE.—On October 1 of each fiscal year, the Secretary shall set aside 1.5 percent of the funds authorized to be appropriated for the Interstate maintenance, national highway system, surface transportation, congestion mitigation and air quality improvement, highway safety improvement, and highway bridge programs authorized under this title to carry out the requirements of section 134.'';

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

(3) in paragraph (3)—

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

''(A) IN GENERAL.—The funds''; and

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

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

(4) by adding at the end the following:

''(6) FEDERAL SHARE.—Funds apportioned to a State under this subsection shall be matched in accordance with section 120(b) unless the Secretary determines that the interests of the Federal-aid highway program would be best served without the match.''.

(c) ALASKA HIGHWAY.—Section 104(b)(1)(A) of title 23, United States Code, is amended by striking ''1998 through 2002'' and inserting ''2004 through 2009''.

SEC. 1104. EQUITY BONUS PROGRAM.

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

''§ 105. Equity bonus program

''(a) PROGRAM.—

''(1) IN GENERAL.—Subject to subsections (c) and (d), for each of fiscal years 2004 through 2009, the Secretary shall allocate among the States amounts sufficient to ensure that no State receives a percentage of the total apportionments for the fiscal year for the programs specified in paragraph (2) that is less than the percentage calculated under subsection (b).

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

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

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

''(C) the bridge program under section 144;

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

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

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

''(G) metropolitan planning programs under section 104(f) (other than planning programs funded by amounts provided under the equity bonus program under this section);

''(H) the infrastructure performance and maintenance program under section 139;

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

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

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

''(L) the safe routes to schools program under section 150; and

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

''(b) STATE PERCENTAGE.—

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

''(A) 95 percent of the quotient obtained by dividing—

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

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

''(B) for a State with a total population density of less than 20 persons per square mile, as reported in the decennial census conducted by the Federal Government in 2000, a total population of less than 1,000,000, as reported in that decennial census, or a median household income of less than $35,000, as reported in that decennial census, the greater of—

''(i) the percentage under paragraph (1); or

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

''(2) SPECIFIC PROGRAMS.—The programs referred to in paragraph (1)(B)(ii) are (as in effect on the day before the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004)—

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

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

''(C) the bridge program under section 144;

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

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

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

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

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

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

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

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

''(c) SPECIAL RULES.—

''(1) MINIMUM COMBINED ALLOCATION.—For each fiscal year, before making the allocations under subsection (a)(1), the Secretary shall allocate among the States amounts sufficient to ensure that no State receives a combined total of amounts allocated under subsection (a)(1), apportionments for the programs specified in subsection (a)(2), and amounts allocated under this subsection, that is less than 110 percent of the average for fiscal years 1998 through 2003 of the annual apportionments for the State for all programs specified in subsection (b)(2).

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

''(3) MINIMUM SHARE OF TAX PAYMENTS.—Notwithstanding subsection (d), for each fiscal year, the Secretary shall allocate among the States amounts sufficient to ensure that no State receives a percentage of apportionments for the fiscal year for the programs specified in subsection (a)(2) that is less than 90.5 percent of the percentage share of the State of estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund (other than the Mass Transit Account) in the most recent fiscal year for which data are available.

''(d) LIMITATION ON ADJUSTMENTS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3) of subsection (c), no State shall receive, for any fiscal year, additional amounts under subsection (a)(1) if—

''(A) the total apportionments of the State for the fiscal year for the programs specified in subsection (a)(2); exceed

''(B) the percentage of the average, for the period of fiscal years 1998 through 2003, of the annual apportionments of the State for all programs specified in subsection (b)(2), as specified in paragraph (2).

''(2) PERCENTAGES.—The percentages referred to in paragraph (1)(B) are—

''(A) for fiscal year 2004, 120 percent;

''(B) for fiscal year 2005, 130 percent;

''(C) for fiscal year 2006, 134 percent;

''(D) for fiscal year 2007, 137 percent;

''(E) for fiscal year 2008, 145 percent; and

''(F) for fiscal year 2009, 250 percent.

''(e) PROGRAMMATIC DISTRIBUTION OF FUNDS.—The Secretary shall apportion the amounts made available under this section so that the amount apportioned to each State under this section for each program referred to in subparagraphs (A) through (G) of subsection (a)(2) is equal to the amount determined by multiplying the amount to be apportioned under this section by the proportion that—

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

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

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

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to carry out this section for each of fiscal years 2004 through 2009.''

(b) CONFORMING AMENDMENTS.—

(1) The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by striking the item relating to section 105 and inserting the following:

''105. Equity bonus program.''

(2) Section 104(a)(1) of title 23, United States Code, is amended by striking ''minimum guarantee'' and inserting ''equity bonus''.

SEC. 1105. REVENUE ALIGNED BUDGET AUTHORITY.

Section 110 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraphs (1) and (2), by striking ''2000'' and inserting ''2006'';

(B) in paragraph (1), by inserting ''(as in effect on September 30, 2002)'' after ''(2 U.S.C. 901(b)(2)(B)(ii)(I)(cc))''; and

(C) in paragraph (2)—

(i) by striking ''If the amount'' and inserting the following:

''(A) IN GENERAL.—Except as provided in subparagraph (B), if the amount'';

(ii) by inserting ''(as in effect on September 30, 2002)'' after ''(2 U.S.C. 901(b)(1)(B)(ii)(I)(cc)'';

(iii) by striking ''the succeeding'' and inserting ''that'';

(iv) by striking ''and the motor carrier safety grant program''; and

(v) by adding at the end the following:

''(B) LIMITATION.—No reduction under subparagraph (A) shall be made for a fiscal year if, as of October 1 of the fiscal year, the cash balance in the Highway Trust Fund (other than the Mass Transit Account) exceeds $6,000,000,000.'';

(2) in subsection (b)(1), by striking subparagraph (A) and inserting the following:

''(A) the sums authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for each of the Federal-aid highway and highway safety construction programs (other than the equity bonus program) and for which funds are allocated from the Highway Trust Fund by the Secretary under this title and the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004; bears to'';

(3) in subsection (c), by inserting ''the highway safety improvement program,'' after ''the surface transportation program,''; and

(4) by striking subsections (e), (f), and (g).

Subtitle B—New Programs

SEC. 1201. INFRASTRUCTURE PERFORMANCE AND MAINTENANCE PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code, is amended by inserting after section 138 the following:

"§ 139. Infrastructure performance and maintenance program

''(a) ESTABLISHMENT.—The Secretary shall establish and implement an infrastructure performance and maintenance program in accordance with this section.

''(b) ELIGIBLE PROJECTS.—A State may obligate funds allocated to the State under this section only for projects eligible under the Interstate maintenance program under section 119, the National Highway System program under section 103, the surface transportation program under section 133, the highway safety improvement program under section 148, the highway bridge program under section 144, and the congestion mitigation and air quality improvement program under section 149 that will—

''(1) preserve, maintain, or otherwise extend, in a cost-effective manner, the useful life of existing highway infrastructure elements; or

''(2) provide operational improvements (including traffic management and intelligent transportation system strategies and limited capacity enhancements) at points of recurring highway congestion.

''(c) PERIOD OF AVAILABILITY.—

''(1) OBLIGATION WITHIN 180 DAYS.—

''(A) IN GENERAL.—Funds allocated to a State under this section shall be obligated by the State not later than 180 days after the date of apportionment.

''(B) UNOBLIGATED FUNDS.—Any amounts that remain unobligated at the end of that period shall be allocated in accordance with subsection (d).

''(2) OBLIGATION BY END OF FISCAL YEAR.—

''(A) IN GENERAL.—All funds allocated or reallocated under this section shall remain available for obligation until the last day of the fiscal year for which the funds are apportioned.

''(B) UNOBLIGATED FUNDS.—Any amounts allocated that remain unobligated at the end of the fiscal year shall lapse.

''(d) REDISTRIBUTION OF ALLOCATED FUNDS AND OBLIGATION AUTHORITY.—

''(1) IN GENERAL.—On the date that is 180 days after the date of allocation, or as soon thereafter as practicable, for each fiscal year, the Secretary shall—

''(A) withdraw—

''(i) any funds allocated to a State under this section that remain unobligated; and

''(ii) an equal amount of obligation authority provided for the use of the funds in accordance with section 1101(13) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004; and

''(B) reallocate the funds and redistribute the obligation authority to those States that—

''(i) have fully obligated all amounts allocated under this section for the fiscal year; and

''(ii) demonstrate that the State is able to obligate additional amounts for projects eligible under this section before the end of the fiscal year.

''(2) EQUITY BONUS.—The calculation and distribution of funds under section 105 shall be adjusted as a result of the allocation of funds under this subsection.

''(e) FEDERAL SHARE PAYABLE.—The Federal share payable for a project funded under this section shall be determined in accordance with section 120.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by adding after the item relating to section 138 the following:

''139. Infrastructure performance and maintenance program.''.

SEC. 1202. FUTURE OF SURFACE TRANSPORTATION SYSTEM.

(a) DECLARATION OF POLICY.—Section 101 of title 23, United States Code, is amended—

(1) by striking ''(b) It is hereby declared to be'' and inserting the following:

''(b) DECLARATION OF POLICY.—

''(1) ACCELERATION OF CONSTRUCTION OF FEDERAL-AID HIGHWAY SYSTEMS.—Congress declares that it is'';

(2) in the second paragraph, by striking ''It is hereby declared'' and inserting the following:

''(2) COMPLETION OF INTERSTATE SYSTEM.—Congress declares''; and

(3) by striking the last paragraph and inserting the following:

''(3) TRANSPORTATION NEEDS OF 21ST CENTURY.—Congress declares that—

''(A) it is in the national interest to preserve and enhance the surface transportation system to meet the needs of the United States for the 21st Century;

''(B) the current urban and long distance personal travel and freight movement demands have surpassed the original forecasts and travel demand patterns are expected to change;

''(C) continued planning for and investment in surface transportation is critical to ensure the surface transportation system adequately meets the changing travel demands of the future;

''(D) among the foremost needs that the surface transportation system must meet to provide for a strong and vigorous national economy are safe, efficient, and reliable—

''(i) national and interregional personal mobility (including personal mobility in rural and urban areas) and reduced congestion;

''(ii) flow of interstate and international commerce and freight transportation; and

''(iii) travel movements essential for national security;

''(E) special emphasis should be devoted to providing safe and efficient access for the type and size of commercial and military vehicles that access designated National Highway System intermodal freight terminals;

''(F) it is in the national interest to seek ways to eliminate barriers to transportation investment created by the current modal structure of transportation financing;

''(G) the connection between land use and infrastructure is significant;

''(H) transportation should play a significant role in promoting economic growth, improving the environment, and sustaining the quality of life; and

''(I) the Secretary should take appropriate actions to preserve and enhance the Interstate System to meet the needs of the 21st Century.''.

(b) NATIONAL SURFACE TRANSPORTATION SYSTEM STUDY.—

(1) IN GENERAL.—The Secretary shall—

(A) conduct a complete investigation and study of the current condition and future needs of the surface transportation system of the United States, including—

(i) the National Highway System;

(ii) the Interstate System;

(iii) the strategic highway network;

(iv) congressional high priority corridors;

(v) intermodal connectors;

(vi) freight facilities;

(vii) navigable waterways;

(viii) mass transportation;

(ix) freight and intercity passenger rail infrastructure and facilities; and

(x) surface access to airports; and

(B) develop a conceptual plan, with alternative approaches, for the future to ensure that the surface transportation system will continue to serve the needs of the United States, including specific recommendations regarding design and operational standards, Federal policies, and legislative changes.

(2) SPECIFIC ISSUES.—In conducting the investigation and study, the Secretary shall specifically address—

(A) the current condition and performance of the Interstate System (including the physical condition of bridges and pavements and operational characteristics and performance), relying primarily on existing data sources;

(B) the future of the Interstate System, based on a range of legislative and policy approaches for 15-, 30-, and 50-year time periods;

(C) the expected demographics and business uses that impact the surface transportation system;

(D) the expected use of the surface transportation system, including the effects of changing vehicle types, modes of transportation, fleet size and weights, and traffic volumes;

(E) desirable design policies and standards for future improvements of the surface transportation system, including additional access points;

(F) the identification of urban, rural, national, and interregional needs for the surface transportation system;

(G) the potential for expansion, upgrades, or other changes to the surface transportation system, including—

(i) deployment of advanced materials and intelligent technologies;

(ii) critical multistate, urban, and rural corridors needing capacity, safety, and operational enhancements;

(iii) improvements to intermodal linkages;

(iv) security and military deployment enhancements;

(v) strategies to enhance asset preservation; and

(vi) implementation strategies;

(H) the improvement of emergency preparedness and evacuation using the surface transportation system, including—

(i) examination of the potential use of all modes of the surface transportation system in the safe and efficient evacuation of citizens during times of emergency;

(ii) identification of the location of critical bottlenecks; and

(iii) development of strategies to improve system redundancy, especially in areas with a high potential for terrorist attacks;

(I) alternatives for addressing environmental concerns associated with the future development of the surface transportation system;

(J) the evaluation and assessment of the current and future capabilities for conducting system-wide real-time performance data collection and analysis, traffic monitoring, and transportation systems operations and management; and

(K) a range of policy and legislative alternatives for addressing future needs for the surface transportation system, including funding needs and potential approaches to provide funds.

(3) TECHNICAL ADVISORY COMMITTEE.—The Secretary shall establish a technical advisory committee, in a manner consistent with the Federal Advisory Committee Act (5 U.S.C. App.), to collect and evaluate technical input from—

(A) the Department of Defense;

(B) appropriate Federal, State, and local officials with responsibility for transportation;

(C) appropriate State and local elected officials;

(D) transportation and trade associations;

(E) emergency management officials;

(F) freight providers;

(G) the general public; and

(H) other entities and persons determined appropriate by the Secretary to ensure a diverse range of views.

(4) REPORT.—Not later than 4 years after the date of enactment of this Act, 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, and make readily available to the public, a report on the results of the investigation and study conducted under this subsection.

SEC. 1203. FREIGHT TRANSPORTATION GATEWAYS; FREIGHT INTERMODAL CONNECTIONS.

(a) FREIGHT TRANSPORTATION GATEWAYS.—Chapter 3 of title 23, United States Code, is amended by adding at the end the following:

"§ 325. Freight transportation gateways

''(a) IN GENERAL.—

''(1) ESTABLISHMENT.—The Secretary shall establish a freight transportation gateways program to improve productivity, security, and safety of freight transportation gateways, while mitigating congestion and community impacts in the area of the gateways.

''(2) PURPOSES.—The purposes of the freight transportation gateways program shall be—

''(A) to facilitate and support multimodal freight transportation initiatives at the State and local levels in order to improve freight transportation gateways and mitigate the impact of congestion on the environment in the area of the gateways;

''(B) to provide capital funding to address infrastructure and freight operational needs at freight transportation gateways;

''(C) to encourage adoption of new financing strategies to leverage State, local, and private investment in freight transportation gateways;

''(D) to facilitate access to intermodal freight transfer facilities; and

''(E) to increase economic efficiency by facilitating the movement of goods.

''(b) STATE RESPONSIBILITIES.—

''(1) PROJECT DEVELOPMENT PROCESS.—Each State, in coordination with metropolitan planning organizations, shall ensure that intermodal freight transportation, trade facilitation, and economic development needs are adequately considered and fully integrated into the project development process, including transportation planning through final design and construction of freight-related transportation projects.

''(2) FREIGHT TRANSPORTATION COORDINATOR.—

''(A) IN GENERAL.—Each State shall designate a freight transportation coordinator.

''(B) DUTIES.—The coordinator shall—

''(i) foster public and private sector collaboration needed to implement complex solutions to freight transportation and freight transportation gateway problems, including—

''(I) coordination of metropolitan and statewide transportation activities with trade and economic interests;

''(II) coordination with other States, agencies, and organizations to find regional solutions to freight transportation problems; and

''(III) coordination with local officials of the Department of Defense and the Department of Homeland Security, and with other organizations, to develop regional solutions to military and homeland security transportation needs; and

''(ii) promote programs that build professional capacity to better plan, coordinate, integrate, and understand freight transportation needs for the State.

''(c) INNOVATIVE FINANCE STRATEGIES.—

''(1) IN GENERAL.—States and localities are encouraged to adopt innovative financing strategies for freight transportation gateway improvements, including—

''(A) new user fees;

''(B) modifications to existing user fees, including trade facilitation charges;

''(C) revenue options that incorporate private sector investment; and

''(D) a blending of Federal-aid and innovative finance programs.

''(2) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to States and localities with respect to the strategies.

''(d) INTERMODAL FREIGHT TRANSPORTATION PROJECTS.—

''(1) USE OF SURFACE TRANSPORTATION PROGRAM FUNDS.—A State may obligate funds apportioned to the State under section 104(b)(3) for publicly-owned intermodal freight transportation projects that provide community and highway benefits by addressing economic, congestion, system reliability, security, safety, or environmental issues associated with freight transportation gateways.

''(2) ELIGIBLE PROJECTS.—A project eligible for funding under this section—

''(A) may include publicly-owned intermodal freight transfer facilities, access to the facilities, and operational improvements for the facilities (including capital investment for intelligent transportation systems), except that projects located within the boundaries of port terminals shall only include the surface transportation infrastructure modifications necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port; and

''(B) may involve the combining of private and public funds.''.

(b) ELIGIBILITY FOR SURFACE TRANSPORTATION PROGRAM FUNDS.—Section 133(b) of title 23, United States Code, is amended by inserting after paragraph (11) the following:

''(12) Intermodal freight transportation projects in accordance with section 325(d)(2).''.

(c) FREIGHT INTERMODAL CONNECTIONS TO NHS.—Section 103(b) of title 23, United States Code, is amended by adding at the end the following:

''(7) FREIGHT INTERMODAL CONNECTIONS TO THE NHS.—

''(A) FUNDING SET-ASIDE.—Of the funds apportioned to a State for each fiscal year under section 104(b)(1), an amount determined in accordance with subparagraph (B) shall only be available to the State to be obligated for projects on—

''(i) National Highway System routes connecting to intermodal freight terminals identified according to criteria specified in the report to Congress entitled 'Pulling Together: The National Highway System and its Connections to Major Intermodal Terminals' dated May 24, 1996, referred to in paragraph (1), and any modifications to the connections that are consistent with paragraph (4);

''(ii) strategic highway network connectors to strategic military deployment ports; and

''(iii) projects to eliminate railroad crossings or make railroad crossing improvements.

''(B) DETERMINATION OF AMOUNT.—The amount of funds for each State for a fiscal year that shall be set aside under subparagraph (A) shall be equal to the greater of—

''(i) the product obtained by multiplying—

''(I) the total amount of funds apportioned to the State under section 104(b)(1); by

''(II) the percentage of miles that routes specified in subparagraph (A) constitute of the total miles on the National Highway System in the State; or

''(ii) 2 percent of the annual apportionment to the State of funds under 104(b)(1).

''(C) EXEMPTION FROM SET-ASIDE.—For any fiscal year, a State may obligate the funds otherwise set aside by this paragraph for any project that is eligible under paragraph (6) and is located in the State on a segment of the National Highway System specified in paragraph (2), if the State certifies and the Secretary concurs that—

''(i) the designated National Highway System intermodal connectors described in subparagraph (A) are in good condition and provide an adequate level of service for military vehicle and civilian commercial vehicle use; and

''(ii) significant needs on the designated National Highway System intermodal connectors are being met or do not exist.''.

(d) FEDERAL SHARE PAYABLE.—Section 120 of title 23, United States Code, is amended by adding at the end the following:

''(m) INCREASED FEDERAL SHARE FOR CONNECTORS.—In the case of a project to support a National Highway System intermodal freight connection or strategic highway network connector to a strategic military deployment port described in section 103(b)(7), except as otherwise provided in section 120, the Federal share of the total cost of the project shall be 90 percent.''.

(e) LENGTH LIMITATIONS.—Section 31111(e) of title 49, United States Code, is amended—

(1) by striking ''The'' and inserting the following:

''(1) IN GENERAL.—The''; and

(2) by adding at the end the following:

''(2) LENGTH LIMITATIONS.—In the interests of economic competitiveness, security, and intermodal connectivity, not later than 3 years after the date of enactment of this paragraph, States shall update the list of those qualifying highways to include—

''(A) strategic highway network connectors to strategic military deployment ports; and

''(B) National Highway System intermodal freight connections serving military and commercial truck traffic going to major intermodal terminals as described in section 103(b)(7)(A)(i).''.

(f) CONFORMING AMENDMENT.—The analysis of chapter 3 of title 23, United States Code, is amended by adding at the end the following:

''325. Freight transportation gateways.''.

SEC. 1204. CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.

(a) IN GENERAL.—Section 147 of title 23, United States Code, is amended to read as follows:

"§ 147. Construction of ferry boats and ferry terminal facilities

''(a) IN GENERAL.—The Secretary shall carry out a program for construction of ferry boats and ferry terminal facilities in accordance with section 129(c).

''(b) FEDERAL SHARE.—Except as provided in section 120, the Federal share of the cost of construction of ferry boats and ferry terminals under this section shall be 80 percent.''.

(b) CONFORMING AMENDMENTS.—

(1) The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by striking the item relating to section 147 and inserting the following:

''147. Construction of ferry boats and ferry terminal facilities.''.

(2) Section 1064 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2005) is repealed.

SEC. 1205. DESIGNATION OF DANIEL PATRICK MOYNIHAN INTERSTATE HIGHWAY.

(a) DESIGNATION.—Interstate Highway 86 in the State of New York, extending from the Pennsylvania border near Lake Erie through Orange County, New York, shall be known and designated as the ''Daniel Patrick Moynihan Interstate Highway''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the highway referred to in subsection (a) shall be deemed

to be a reference to the Daniel Patrick Moynihan Interstate Highway.

SEC. 1206. STATE-BY-STATE COMPARISON OF HIGHWAY CONSTRUCTION COSTS.

(a) COLLECTION OF DATA.—

(1) IN GENERAL.—The Administrator of the Federal Highway Administration (referred to in this section as the ''Administrator'') shall collect from States any bid price data that is necessary to make State-by-State comparisons of highway construction costs.

(2) DATA REQUIRED.—In determining which data to collect and the procedures for collecting data, the Administrator shall take into account the data collection deficiencies identified in the report prepared by the General Accounting Office numbered GAO–04–113R.

(b) REPORT.—

(1) IN GENERAL.—The Administrator shall submit to Congress an annual report on the bid price data collected under subsection (a).

(2) INCLUSIONS.—The report shall include—

(A) State-by-State comparisons of highway construction costs for the previous fiscal year (including the cost to construct a 1-mile road segment of a standard design, as determined by the Administrator);

(B) a description of the competitive bidding procedures used in each State; and

(C) a determination by Administrator as to whether the competitive bidding procedures described under subparagraph (B) are effective.

Subtitle C—Finance

SEC. 1301. FEDERAL SHARE.

Section 120 of title 23, United States Code, is amended—

(1) in subsection (a), by striking paragraph (1) and inserting the following:

''(a) INTERSTATE SYSTEM PROJECTS.—

''(1) IN GENERAL.—Except as otherwise provided in this chapter, the Federal share payable on account of any project on the Interstate System (including a project to add high occupancy vehicle lanes and a project to add auxiliary lanes but excluding a project to add any other lanes) shall be 90 percent of the total cost of the project.'';

(2) in subsection (b)—

(A) by striking ''Except as otherwise'' and inserting the following:

''(1) IN GENERAL.—Except as otherwise'';

(B) by striking ''shall be—'' and all that follows and inserting ''shall be 80 percent of the cost of the project.''; and

(C) by adding at the end the following:

''(2) STATE-DETERMINED LOWER FEDERAL SHARE.—In the case of any project subject to this subsection, a State may determine a lower Federal share than the Federal share determined under paragraph (1).'';

(3) by striking subsection (d) and inserting the following:

''(d) INCREASED FEDERAL SHARE.—

''(1) IN GENERAL.—The Federal share payable under subsection (a) or (b) may be increased for projects and activities in each State in which is located—

''(A) nontaxable Indian land;

''(B) public land (reserved or unreserved);

''(C) a national forest; or

''(D) a national park or monument.

''(2) AMOUNT.—

''(A) IN GENERAL.—The Federal share for States described in paragraph (1) shall be increased by a percentage of the remaining cost that—

''(i) is equal to the percentage that—

''(I) the area of all land described in paragraph (1) in a State; bears to

''(II) the total area of the State; but

''(ii) does not exceed 95 percent of the total cost of the project or activity for which the Federal share is provided.

''(B) ADJUSTMENT.—The Secretary shall adjust the Federal share for States under subparagraph (A) as the Secretary determines necessary, on the basis of data provided by the Federal agencies that are responsible for maintaining the data.''.

SEC. 1302. TRANSFER OF HIGHWAY AND TRANSIT FUNDS.

Section 104 of title 23, United States Code, is amended by striking subsection (k) and inserting the following:

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

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

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

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

''(2) TRANSFER OF TRANSIT FUNDS FOR HIGHWAY PROJECTS.—Funds made available for highway projects or transportation planning under chapter 53 of title 49 may be transferred to and administered by the Secretary in accordance with this title.

''(3) TRANSFER OF HIGHWAY FUNDS TO OTHER FEDERAL AGENCIES.—

''(A) IN GENERAL.—Except as provided in clauses (i) and (ii) and subparagraph (B), funds made available under this title or any other Act that are derived from Highway Trust Fund (other than the Mass Transit account) may be transferred to another Federal agency if—

''(i)(I) an expenditure is specifically authorized in Federal-aid highway legislation or as a line item in an appropriation act; or

''(II) a State transportation department consents to the transfer of funds;

''(ii) the Secretary determines, after consultation with the State transportation department (as appropriate), that the Federal agency should carry out a project with the funds; and

''(iii) the other Federal agency agrees to accept the transfer of funds and to administer the project.

''(B) ADMINISTRATION.—

''(i) PROCEDURES.—A project carried out with funds transferred to a Federal agency under subparagraph (A) shall be administered by the Federal agency under the procedures of the Federal agency.

''(ii) APPROPRIATIONS.—Funds transferred to a Federal agency under subparagraph (A) shall not be considered an augmentation of the appropriations of the Federal agency.

''(iii) NON-FEDERAL SHARE.—The provisions of this title, or an Act described in subparagraph (A), relating to the non-Federal share shall apply to a project carried out with the transferred funds, unless the Secretary determines that it is in the best interest of the United States that the non-Federal share be waived.

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

''(A) IN GENERAL.—Subject to subparagraphs (B) through (D), the Secretary may, at the request of a State, transfer funds apportioned or allocated to the State to another State, or to the Federal Highway Administration, for the purpose of funding 1 or more specific projects.

''(B) ADMINISTRATION.—The transferred funds shall be used for the same purpose and in the same manner for which the transferred funds were authorized.

''(C) APPORTIONMENT.—The transfer shall have no effect on any apportionment formula used to distribute funds to States under this section or section 105 or 144.

''(D) SURFACE TRANSPORTATION PROGRAM.—Funds that are apportioned or allocated to a State under subsection (b)(3) and attributed to an urbanized area of a State with a population of over 200,000 individuals under section 133(d)(2) may be transferred under this paragraph only if the metropolitan planning organization designated for the area concurs, in writing, with the transfer request.

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

SEC. 1303. TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT AMENDMENTS.

(a) DEFINITIONS.—Section 181 of title 23, United States Code, is amended—

(1) in paragraph (3), by striking ''category'' and ''offered into the capital markets'';

(2) by striking paragraph (7) and redesignating paragraphs (8) through (15) as paragraphs (7) through (14) respectively;

(3) in paragraph (8) (as redesignated by paragraph (2))—

(A) in subparagraph (B), by striking the period at the end and inserting a semicolon; and

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

''(D) a project that—

''(i)(I) is a project for—

''(aa) a public freight rail facility or a private facility providing public benefit;

''(bb) an intermodal freight transfer facility;

''(cc) a means of access to a facility described in item (aa) or (bb);

''(dd) a service improvement for a facility described in item (aa) or (bb) (including a capital investment for an intelligent transportation system); or

''(II) comprises a series of projects described in subclause (I) with the common objective of improving the flow of goods;

''(ii) may involve the combining of private and public sector funds, including investment of public funds in private sector facility improvements; and

''(iii) if located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port.''; and

(4) in paragraph (10) (as redesignated by paragraph (2)) by striking ''bond'' and inserting ''credit''.

(b) DETERMINATION OF ELIGIBILITY AND PROJECT SELECTION.—Section 182 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraphs (1) and (2) and inserting the following:

''(1) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—The project shall satisfy the applicable planning and programming requirements of sections 134 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under this subchapter.

''(2) APPLICATION.—A State, local government, public authority, public-private partnership, or any other legal entity undertaking the project and authorized by the Secretary shall submit a project application to the Secretary.'';

(B) in paragraph (3)(A)—

(i) in clause (i), by striking ''$100,000,000'' and inserting ''$50,000,000''; and

(ii) in clause (ii), by striking ''50'' and inserting ''20''; and

(C) in paragraph (4)—

(i) by striking ''Project financing'' and inserting ''The Federal credit instrument''; and

(ii) by inserting before the period at the end the following: ''that also secure the project obligations''; and

(2) in subsection (b)—

(A) in paragraph (1), by striking ''criteria'' the second place it appears and inserting ''requirements''; and

(B) in paragraph (2)(B), by inserting ''(which may be the Federal credit instrument)'' after ''obligations''.

(c) SECURED LOANS.—Section 183 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''of any project selected under section 182.'' at the end;

(ii) in subparagraphs (A) and (B), by inserting ''of any project selected under section 182'' after ''costs'' ; and

(iii) in subparagraph (B), by striking the semicolon at the end and inserting a period; and

(B) in paragraph (4)—

(i) by striking ''funding'' and inserting ''execution''; and

(ii) by striking ''rating,'' and all that follows and inserting a period;

(2) in subsection (b)—

(A) by striking paragraph (2) and inserting the following:

''(2) MAXIMUM AMOUNT.—The amount of the secured loan shall not exceed the lesser of—

''(A) 33 percent of the reasonably anticipated eligible project costs; or

''(B) the amount of the senior project obligations.'';

(B) in paragraph (3)(A)(i), by inserting ''that also secure the senior project obligations'' after ''sources''; and

(C) in paragraph (4), by striking ''marketable''; and

(3) in subsection (c)—

(A) by striking paragraph (3);

(B) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively; and

(C) in paragraph (3) (as redesignated by subparagraph (B))—

(i) in subparagraph (A), by striking ''during the 10 years''; and

(ii) in subparagraph (B)(ii), by striking ''loan'' and all that follows and inserting ''loan.''.

(d) LINES OF CREDIT.—Section 184 of title 23, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (3), by striking ''interest, any debt service reserve fund, and any other available reserve'' and inserting ''interest (but not including reasonably required financing reserves)'';

(B) in paragraph (4), by striking ''marketable United States Treasury securities as of the date on which the line of credit is obligated'' and inserting ''United States Treasury securities as of the date of execution of the line of credit agreement''; and

(C) in paragraph (5)(A)(i), by inserting ''that also secure the senior project obligations'' after ''sources''; and

(2) in subsection (c)—

(A) in paragraph (2)—

(i) by striking ''scheduled'';

(ii) by inserting ''be scheduled to'' after ''shall''; and

(iii) by striking ''be fully repaid, with interest,'' and inserting ''to conclude, with full repayment of principal and interest,''; and

(B) by striking paragraph (3).

(e) PROGRAM ADMINISTRATION.—Section 185 of title 23, United States Code, is amended to read as follows:

''§ 185. Program administration

''(a) REQUIREMENT.—The Secretary shall establish a uniform system to service the Federal credit instruments made available under this subchapter.

''(b) FEES.—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 instruments.

''(c) SERVICER.—

''(1) IN GENERAL.—The Secretary may appoint a financial entity to assist the Secretary in servicing the Federal credit instruments.

''(2) DUTIES.—The servicer shall act as the agent for the Secretary.

''(3) FEE.—The servicer shall receive a servicing fee, subject to approval by the Secretary.

''(d) ASSISTANCE FROM EXPERT FIRMS.—The Secretary may retain the services of expert firms, including counsel, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments.''.

(f) FUNDING.—Section 188 of title 23, United States Code, is amended to read as follows:

''§ 188. Funding

''(a) FUNDING.—

''(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subchapter $130,000,000 for each of fiscal years 2004 through 2009.

''(2) ADMINISTRATIVE COSTS.—Of amounts 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 2004 through 2009.

''(3) COLLECTED FEES AND SERVICES.—In addition to funds provided under paragraph (2)—

''(A) all fees collected under this subchapter shall be made available without further appropriation to the Secretary until expended, for use in administering this subchapter; and

''(B) the Secretary may accept and use payment or services provided by transaction participants, or third parties that are paid by participants from transaction proceeds, for due diligence, legal, financial, or technical services.

''(4) 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 investment.

''(2) AVAILABILITY.—Amounts authorized under this section for a fiscal year shall be available for obligation on October 1 of the fiscal year.''.

(g) REPEAL.—Section 189 of title 23, United States code, is repealed.

(h) CONFORMING AMENDMENTS.—The analysis for chapter 1 of title 23, United States Code, is amended—

(1) by striking the item relating to section 185 and inserting the following:

''185. Program administration.'';

and

(2) by striking the item relating to section 189.

SEC. 1304. FACILITATION OF INTERNATIONAL REGISTRATION PLANS AND INTERNATIONAL FUEL TAX AGREEMENTS.

(a) IN GENERAL.—Chapter 317 of title 49, United States Code, is amended by adding at the end the following:

''§ 31708. Facilitation of international registration plans and international fuel tax agreements

''The Secretary may provide assistance to any State that is participating in the International Registration Plan and International Fuel Tax Agreement, as provided in sections 31704 and 31705, respectively, and that serves as a base jurisdiction for motor carriers that are domiciled in Mexico, to assist the State with administrative costs resulting from serving as a base jurisdiction for motor carriers from Mexico.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 317 of title 49, United States Code, is amended by adding at the end the following:

''31708. Facilitation of international registration plans and international fuel tax agreements.''.

SEC. 1305. NATIONAL COMMISSION ON FUTURE REVENUE SOURCES TO SUPPORT THE HIGHWAY TRUST FUND AND FINANCE THE NEEDS OF THE SURFACE TRANSPORTATION SYSTEM.

(a) ESTABLISHMENT.—There is established a commission to be known as the ''National Commission on Future Revenue Sources to Support the Highway Trust Fund and Finance the Needs of the Surface Transportation System'' (referred to in this section as the ''Commission'').

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 11 members, of whom—

(A) 3 members shall be appointed by the President;

(B) 2 members shall be appointed by the Speaker of the House of Representatives;

(C) 2 members shall be appointed by the minority leader of the House of Representatives;

(D) 2 members shall be appointed by the majority leader of the Senate; and

(E) 2 members shall be appointed by the minority leader of the Senate.

(2) QUALIFICATIONS.—Members appointed under paragraph (1) shall have experience in or represent the interests of—

(A) public finance, including experience in developing State and local revenue resources;

(B) surface transportation program administration;

(C) organizations that use surface transportation facilities;

(D) academic research into related issues; or

(E) other activities that provide unique perspectives on current and future requirements for revenue sources to support the Highway Trust Fund.

(3) DATE OF APPOINTMENTS.—The appointment of a member of the Commission shall be made not later than 120 days after the date of establishment of the Commission.

(4) TERMS.—A member shall be appointed for the life of the Commission.

(5) VACANCIES.—A vacancy on the Commission—

(A) shall not affect the powers of the Commission; and

(B) shall be filled in the same manner as the original appointment was made.

(6) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold the initial meeting of the Commission.

(7) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(8) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(9) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall select a Chairperson and Vice Chairperson from among the members of the Commission.

(c) DUTIES.—

(1) IN GENERAL.—The Commission shall—

(A) conduct a comprehensive study of alternatives to replace or to supplement the fuel tax as the principal revenue source to support the Highway Trust Fund and suggest new or alternative sources of revenue to fund the needs of the surface transportation system over at least the next 30 years;

(B) conduct the study in a manner that builds on—

(i) findings, conclusions, and recommendations of the recent study conducted by the Transportation Research Board on alternatives to the fuel tax to support highway program financing; and

(ii) other relevant prior research;

(C) consult with the Secretary and the Secretary of the Treasury in conducting the study to ensure that the views of the Secretaries concerning essential attributes of Highway Trust Fund revenue alternatives are considered;

(D) consult with representatives of State Departments of Transportation and metropolitan planning organizations and other key interested stakeholders in conducting the study to ensure that—

(i) the views of the stakeholders on alternative revenue sources to support State transportation improvement programs are considered; and

(ii) any recommended Federal financing strategy takes into account State financial requirements; and

(E) based on the study, make specific recommendations regarding—

(i) actions that should be taken to develop alternative revenue sources to support the Highway Trust Fund; and

(ii) the time frame for taking those actions.

(2) SPECIFIC MATTERS.—The study shall address specifically—

(A) the advantages and disadvantages of alternative revenue sources to meet anticipated Federal surface transportation financial requirements;

(B) recommendations concerning the most promising revenue sources to support long-term Federal surface transportation financing requirements;

(C) development of a broad transition strategy to move from the current tax base to new funding mechanisms, including the time frame for various components of the transition strategy;

(D) recommendations for additional research that may be needed to implement recommended alternatives; and

(E) the extent to which revenues should reflect the relative use of the highway system.

(3) RELATED WORK.—To the maximum extent practicable, the study shall build on related work that has been done by—

(A) the Secretary of Transportation;

(B) the Secretary of Energy;

(C) the Transportation Research Board; and

(D) other entities and persons.

(4) FACTORS.—In developing recommendations under this subsection, the Commission shall consider—

(A) the ability to generate sufficient revenues from all modes to meet anticipated long-term surface transportation financing needs;

(B) the roles of the various levels of government and the private sector in meeting future surface transportation financing needs;

(C) administrative costs (including enforcement costs) to implement each option;

(D) the expected increase in non-taxed fuels and the impact of taxing those fuels;

(E) the likely technological advances that could ease implementation of each option;

(F) the equity and economic efficiency of each option;

(G) the flexibility of different options to allow various pricing alternatives to be implemented; and

(H) potential compatibility issues with State and local tax mechanisms under each alternative.

(5) REPORT AND RECOMMENDATIONS.—Not later than September 30, 2007, the Commission shall submit to Congress a final report that contains—

(A) a detailed statement of the findings and conclusions of the Commission; and

(B) the recommendations of the Commission for such legislation and administrative actions as the Commission considers appropriate.

(d) POWERS.—

(1) HEARINGS.—The Commission may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this section.

(2) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—The Commission may secure directly from a Federal agency such information as the Commission considers necessary to carry out this section.

(B) PROVISION OF INFORMATION.—On request of the Chairperson of the Commission, the head of the agency shall provide the information to the Commission.

(3) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government.

(4) DONATIONS.—The Commission may accept, use, and dispose of donations of services or property.

(e) COMMISSION PERSONNEL MATTERS.—

(1) MEMBERS.—A member of the Commission shall serve without pay but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.

(2) CONTRACTOR.—The Commission may contract with an appropriate organization, agency, or entity to conduct the study required under this section, under the strategic guidance of the Commission.

(3) ADMINISTRATIVE SUPPORT.—On the request of the Commission, the Administrator of the Federal Highway Administration shall provide to the Commission, on a reimbursable basis, the administrative support and services necessary for the Commission to carry out the duties of the Commission under this section.

(4) DETAIL OF DEPARTMENT PERSONNEL.—

(A) IN GENERAL.—On the request of the Commission, the Secretary may detail, on a reimbursable basis, any of the personnel of the Department to the Commission to assist the Commission in carrying out the duties of the Commission under this section.

(B) CIVIL SERVICE STATUS.—The detail of the employee shall be without interruption or loss of civil service status or privilege.

(5) COOPERATION.—The staff of the Secretary shall cooperate with the Commission in the study required under this section, including providing such nonconfidential data and information as are necessary to conduct the study.

(f) RELATIONSHIP TO OTHER LAWS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), funds made available to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code.

(2) FEDERAL SHARE.—The Federal share of the cost of the study and the Commission under this section shall be 100 percent.

(3) AVAILABILITY.—Funds made available to carry out this section shall remain available until expended.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $3,000,000 for fiscal year 2004.

(h) TERMINATION.—

(1) IN GENERAL.—The Commission shall terminate on the date that is 180 days after the date on which the Commission submits the report of the Commission under subsection (c)(5).

(2) RECORDS.—Not later than the termination date for the Commission, all records and papers of the Commission shall be delivered to the Archivist of the United States for deposit in the National Archives.

SEC. 1306. STATE INFRASTRUCTURE BANKS.

Section 1511(b)(1)(A) of the Transportation Equity Act for the 21st Century (23 U.S.C. 181 note; 112 Stat. 251) is amended by striking ''Missouri,'' and all that follows through ''for the establishment'' and inserting ''Missouri, Rhode Island, Texas, and any other State that seeks such an agreement for the establishment''.

SEC. 1307. PUBLIC-PRIVATE PARTNERSHIPS PILOT PROGRAM.

Section 109(c) of title 23, United States Code, is amended by adding at the end the following:

''(3) PUBLIC-PRIVATE PARTNERSHIPS PILOT PROGRAM.—

''(A) IN GENERAL.—The Secretary may undertake a pilot program to demonstrate the advantages of public-private partnerships for critical capital development projects, including highway, bridge, and freight intermodal connector projects authorized under this title.

''(B) PROJECTS.—In carrying out the program, the Secretary shall—

''(i) select not less than 10 qualified public-private partnership projects that are authorized under applicable State and local laws; and

''(ii) use funds made available to carry out the program to provide to sponsors of the projects assistance for development phase activities described in section 181(1)(A), to enhance project delivery and reduce overall costs.''.

SEC. 1308. WAGERING.

(a) IN GENERAL.—Chapter 35 of the Internal Revenue Code of 1986 is repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 4901 of the Internal Revenue Code is amended to read as follows:

''SEC. 4901. PAYMENT OF TAX.

''All special taxes shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.''.

(2) Section 4903 of such Code is amended by striking '', other than the tax imposed by section 4411,''.

(3) Section 4905 of such Code is amended to read as follows:

''SEC. 4905. LIABILITY IN CASE OF DEATH OR CHANGE OF LOCATION.

''When any person who has paid the special tax for any trade or business dies, his spouse or child, or executors or administrators or other legal representatives, may occupy the house or premises, and in like manner carry on, for the residue of the term for which the tax is paid, the same trade or business as the deceased before carried on, in the same house and upon the same premises, without the payment of any additional tax. When any person removes from the house or premises for which any trade or business was taxed to any other place, he may carry on the trade or business specified in the register kept in the office of the official in charge of the internal revenue district at the place to which he removes, without the payment of any additional tax: *Provided*, That all cases of death, change, or removal, as aforesaid, with

the name of the successor to any person deceased, or of the person making such change or removal, shall be registered with the Secretary, under regulations to be prescribed by the Secretary.''.

(4) Section 4907 of such Code is amended by striking '', except the tax imposed by section 4411,''.

(5) Section 6103(i)(8)(A) of such Code is amended—

(A) by striking '', except to the extent authorized by subsection (f) or (p)(6), disclose to any person, other than another officer or employee of such office whose official duties require such disclosure, any return or return information described in section 4424(a) in a form which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, nor shall such officer or employee disclose any other'' and inserting ''disclose any'', and

(B) by striking ''such other officer'' and inserting ''such officer''.

(6) Section 6103(o) of such Code is amended to read as follows:

''(o) DISCLOSURE OF RETURNS AND RETURN INFORMATION WITH RESPECT TO TAXES IMPOSED BY SUBTITLE E.—Returns and return information with respect to taxes imposed by subtitle E (relating to taxes on alcohol, tobacco, and firearms) shall be open to inspection by or disclosure to officers and employees of a Federal agency whose official duties require such inspection or disclosure.''.

(7)(A) Subchapter B of chapter 65 of such Code is amended by striking section 6419 (relating to excise tax on wagering).

(B) The table of section of subchapter B of chapter 65 of such Code is amended by striking the item relating to section 6419.

(8) Section 6806 of such Code is amended by striking ''under subchapter B of chapter 35, under subchapter B of chapter 36,'' and inserting ''under subchapter B of chapter 36''.

(9) Section 7012 of such Code is amended by striking paragraph (2) and by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.

(10)(A) Subchapter B of chapter 75 of such Code is amended by striking section 7262 (relating to violation of occupational tax laws relating to wagering-failure to pay special tax).

(B) The table of sections of subchapter B of chapter 75 of such Code is amended by striking the item relating to section 7262.

(11) Section 7272 of such Code, as amended by section 5244 of this Act, is amended to read as follows:

''SEC. 7272. PENALTY FOR FAILURE TO REGISTER.

''Any person (other than persons required to register under subtitle E, or persons engaging in a trade or business on which a special tax is imposed by such subtitle) who fails to register with the Secretary as required by this title or by regulations issued thereunder shall be liable to a penalty of $50 ($10,000 in the case of a failure to register under section 4101).''.

(12) Section 7613(a) is amended by striking ''or other data in the case of'' and all that follows and inserting ''or other data in the case of alcohol, tobacco, and firearms taxes, see subtitle E.''.

(13) The table of chapters of subtitle D of such Code is amended by striking the item relating to chapter 35.

(c) EFFECTIVE DATE.—

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

(2) SPECIAL TAXES.—In the case of amendments made by this section relating to special taxes imposed by subchapter B of chapter 35, the amendments made by this section shall take effect on July 1, 2004.

Subtitle D—Safety

SEC. 1401. HIGHWAY SAFETY IMPROVEMENT PROGRAM.

(a) SAFETY IMPROVEMENT.—

(1) IN GENERAL.—Section 148 of title 23, United States Code, is amended to read as follows:

''§ 148. Highway safety improvement program

''(a) DEFINITIONS.—In this section:

''(1) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term 'highway safety improvement program' means the program carried out under this section.

''(2) HIGHWAY SAFETY IMPROVEMENT PROJECT.—

''(A) IN GENERAL.—The term 'highway safety improvement project' means a project described in the State strategic highway safety plan that—

''(i) corrects or improves a hazardous road location or feature; or

''(ii) addresses a highway safety problem.

''(B) INCLUSIONS.—The term 'highway safety improvement project' includes a project for—

''(i) an intersection safety improvement;

''(ii) pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition);

''(iii) installation of rumble strips or another warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists and pedestrians;

''(iv) installation of a skid-resistant surface at an intersection or other location with a high frequency of accidents;

''(v) an improvement for pedestrian or bicyclist safety;

''(vi)(I) construction of any project for the elimination of hazards at a railway-highway crossing that is eligible for funding under section 130, including the separation or protection of grades at railway-highway crossings;

''(II) construction of a railway-highway crossing safety feature; or

''(III) the conduct of a model traffic enforcement activity at a railway-highway crossing;

''(vii) construction of a traffic calming feature;

''(viii) elimination of a roadside obstacle;

''(ix) improvement of highway signage and pavement markings;

''(x) installation of a priority control system for emergency vehicles at signalized intersections;

''(xi) installation of a traffic control or other warning device at a location with high accident potential;

''(xii) safety-conscious planning;

''(xiii) improvement in the collection and analysis of crash data;

''(xiv) planning, equipment, operational activities, or traffic enforcement activities (including police assistance) relating to workzone safety;

''(xv) installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of motorists and workers), and crash attenuators;

''(xvi) the addition or retrofitting of structures or other measures to eliminate or reduce accidents involving vehicles and wildlife; or

''(xvii) installation and maintenance of signs (including fluorescent, yellow-green signs) at pedestrian-bicycle crossings and in school zones.

''(3) SAFETY PROJECT UNDER ANY OTHER SECTION.—

''(A) IN GENERAL.—The term 'safety project under any other section' means a project carried out for the purpose of safety under any other section of this title.

''(B) INCLUSION.—The term 'safety project under any other section' includes a project to—

''(i) promote the awareness of the public and educate the public concerning highway safety matters; or

''(ii) enforce highway safety laws.

''(4) STATE HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term 'State highway safety improvement program' means projects or strategies included in the State strategic highway safety plan carried out as part of the State transportation improvement program under section 135(f).

''(5) STATE STRATEGIC HIGHWAY SAFETY PLAN.—The term 'State strategic highway safety plan' means a plan developed by the State transportation department that—

''(A) is developed after consultation with—

''(i) a highway safety representative of the Governor of the State;

''(ii) regional transportation planning organizations and metropolitan planning organizations, if any;

''(iii) representatives of major modes of transportation;

''(iv) State and local traffic enforcement officials;

''(v) persons responsible for administering section 130 at the State level;

''(vi) representatives conducting Operation Lifesaver;

''(vii) representatives conducting a motor carrier safety program under section 31104 or 31107 of title 49;

''(viii) motor vehicle administration agencies; and

''(ix) other major State and local safety stakeholders;

''(B) analyzes and makes effective use of State, regional, or local crash data;

''(C) addresses engineering, management, operation, education, enforcement, and emergency services elements of highway safety as key factors in evaluating highway projects;

''(D) considers safety needs of, and high-fatality segments of, public roads;

''(E) considers the results of State, regional, or local transportation and highway safety planning processes;

''(F) describes a program of projects or strategies to reduce or eliminate safety hazards;

''(G) is approved by the Governor of the State or a responsible State agency; and

''(H) is consistent with the requirements of section 135(f).

''(b) PROGRAM.—

''(1) IN GENERAL.—The Secretary shall carry out a highway safety improvement program.

''(2) PURPOSE.—The purpose of the highway safety improvement program shall be to achieve a significant reduction in traffic fatalities and serious injuries on public roads.

''(c) ELIGIBILITY.—

''(1) IN GENERAL.—To obligate funds apportioned under section 104(b)(5) to carry out this section, a State shall have in effect a State highway safety improvement program under which the State—

''(A) develops and implements a State strategic highway safety plan that identifies and analyzes highway safety problems and opportunities as provided in paragraph (2);

''(B) produces a program of projects or strategies to reduce identified safety problems;

''(C) evaluates the plan on a regular basis to ensure the accuracy of the data and priority of proposed improvements; and

''(D) submits to the Secretary an annual report that—

''(i) describes, in a clearly understandable fashion, not less than 5 percent of locations determined by the State, using criteria established in accordance with paragraph

(2)(B)(ii), as exhibiting the most severe safety needs; and

''(ii) contains an assessment of—

''(I) potential remedies to hazardous locations identified;

''(II) estimated costs associated with those remedies; and

''(III) impediments to implementation other than cost associated with those remedies.

''(2) IDENTIFICATION AND ANALYSIS OF HIGHWAY SAFETY PROBLEMS AND OPPORTUNITIES.—As part of the State strategic highway safety plan, a State shall—

''(A) have in place a crash data system with the ability to perform safety problem identification and countermeasure analysis;

''(B) based on the analysis required by subparagraph (A)—

''(i) identify hazardous locations, sections, and elements (including roadside obstacles, railway-highway crossing needs, and unmarked or poorly marked roads) that constitute a danger to motorists, bicyclists, pedestrians, and other highway users; and

''(ii) using such criteria as the State determines to be appropriate, establish the relative severity of those locations, in terms of accidents, injuries, deaths, traffic volume levels, and other relevant data;

''(C) adopt strategic and performance-based goals that—

''(i) address traffic safety, including behavioral and infrastructure problems and opportunities on all public roads;

''(ii) focus resources on areas of greatest need; and

''(iii) are coordinated with other State highway safety programs;

''(D) advance the capabilities of the State for traffic records data collection, analysis, and integration with other sources of safety data (such as road inventories) in a manner that—

''(i) complements the State highway safety program under chapter 4 and the commercial vehicle safety plan under section 31102 of title 49;

''(ii) includes all public roads;

''(iii) identifies hazardous locations, sections, and elements on public roads that constitute a danger to motorists, bicyclists, pedestrians, and other highway users; and

''(iv) includes a means of identifying the relative severity of hazardous locations described in clause (iii) in terms of accidents, injuries, deaths, and traffic volume levels;

''(E)(i) determine priorities for the correction of hazardous road locations, sections, and elements (including railway-highway crossing improvements), as identified through crash data analysis;

''(ii) identify opportunities for preventing the development of such hazardous conditions; and

''(iii) establish and implement a schedule of highway safety improvement projects for hazard correction and hazard prevention; and

''(F)(i) establish an evaluation process to analyze and assess results achieved by highway safety improvement projects carried out in accordance with procedures and criteria established by this section; and

''(ii) use the information obtained under clause (i) in setting priorities for highway safety improvement projects.

''(d) ELIGIBLE PROJECTS.—

''(1) IN GENERAL.—A State may obligate funds apportioned to the State under section 104(b)(5) to carry out—

''(A) any highway safety improvement project on any public road or publicly owned bicycle or pedestrian pathway or trail; or

''(B) as provided in subsection (e), for other safety projects.

''(2) USE OF OTHER FUNDING FOR SAFETY.—

''(A) EFFECT OF SECTION.—Nothing in this section prohibits the use of funds made available under other provisions of this title for highway safety improvement projects.

''(B) USE OF OTHER FUNDS.—States are encouraged to address the full scope of their safety needs and opportunities by using funds made available under other provisions of this title (except a provision that specifically prohibits that use).

''(e) FLEXIBLE FUNDING FOR STATES WITH A STRATEGIC HIGHWAY SAFETY PLAN.—

''(1) IN GENERAL.—To further the implementation of a State strategic highway safety plan, a State may use up to 25 percent of the amount of funds made available under this section for a fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan.

''(2) OTHER TRANSPORTATION AND HIGHWAY SAFETY PLANS.—Nothing in this subsection requires a State to revise any State process, plan, or program in effect on the date of enactment of this section.

''(f) REPORTS.—

''(1) IN GENERAL.—A State shall submit to the Secretary a report that—

''(A) describes progress being made to implement highway safety improvement projects under this section;

''(B) assesses the effectiveness of those improvements; and

''(C) describes the extent to which the improvements funded under this section contribute to the goals of—

''(i) reducing the number of fatalities on roadways;

''(ii) reducing the number of roadway-related injuries;

''(iii) reducing the occurrences of roadway-related crashes;

''(iv) mitigating the consequences of roadway-related crashes; and

''(v) reducing the occurrences of roadway-railroad grade crossing crashes.

''(2) CONTENTS; SCHEDULE.—The Secretary shall establish the content and schedule for a report under paragraph (1).

''(3) TRANSPARENCY.—The Secretary shall make reports under paragraph (1) available to the public through—

''(A) the Internet site of the Department; and

''(B) such other means as the Secretary determines to be appropriate.

''(4) DISCOVERY AND ADMISSION INTO EVIDENCE OF CERTAIN REPORTS, SURVEYS, AND INFORMATION.—Notwithstanding any other provision of law, no report, survey, schedule, list, or other data compiled or collected for any purpose directly relating to paragraph (1) or subsection (c)(1)(D), or published by the Secretary in accordance with paragraph (3), shall be—

''(A) subject to discovery or admitted into evidence in any Federal or State judicial proceeding; or

''(B) considered for any other purpose in any action for damages arising from an occurrence at a location identified or addressed in the report, survey, schedule, list, or other collection of data.

''(g) FEDERAL SHARE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS.—Except as provided in sections 120 and 130, the Federal share of the cost of a highway safety improvement project carried out with funds made available under this section shall be 90 percent.

''(h) FUNDS FOR BICYCLE AND PEDESTRIAN SAFETY.—A State shall allocate for bicycle and pedestrian improvements in the State a percentage of the funds remaining after implementation of sections 130(e) and 150, in an amount that is equal to or greater than the percentage of all fatal crashes in the States involving bicyclists and pedestrians.

''(i) ROADWAY SAFETY IMPROVEMENTS FOR OLDER DRIVERS AND PEDESTRIANS.—For each of fiscal years 2004 through 2009, $25,000,000 is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for projects in all States to improve traffic signs and pavement markings in a manner consistent with the recommendations included in the publication of the Federal Highway Administration entitled 'Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians (FHWA-RD-01-103)' and dated October 2001.''.

(2) ALLOCATIONS OF APPORTIONED FUNDS.—Section 133(d) of title 23, United States Code, is amended—

(A) by striking paragraph (1);

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

(C) in paragraph (2) (as redesignated by subparagraph (B))—

(i) in the first sentence of subparagraph (A)—

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

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

(ii) in subparagraph (B), by striking ''tobe'' and inserting ''to be'';

(iii) by striking subparagraph (C);

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

(v) in subparagraph (C) (as redesignated by clause (iv)), by adding a period at the end; and

(D) in paragraph (4)(A) (as redesignated by subparagraph (B)), by striking ''paragraph (2)'' and inserting ''paragraph (1)''.

(3) ADMINISTRATION.—Section 133(e) of title 23, United States Code, is amended in each of paragraphs (3)(B)(i), (5)(A), and (5)(B) of subsection (e), by striking ''(d)(2)'' each place it appears and inserting ''(d)(1)''.

(4) CONFORMING AMENDMENTS.—

(A) The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 148 and inserting the following:

''148. Highway safety improvement program.''.

(B) Section 104(g) of title 23, United States Code, is amended in the first sentence by striking ''sections 130, 144, and 152 of this title'' and inserting ''sections 130 and 144''.

(C) Section 126 of title 23, United States Code, is amended—

(i) in subsection (a), by inserting ''under'' after ''State's apportionment''; and

(ii) in subsection (b)—

(I) in the first sentence, by striking ''the last sentence of section 133(d)(1) or to section 104(f) or to section 133(d)(3)'' and inserting ''section 104(f) or 133(d)(2)''; and

(II) in the second sentence, by striking ''or 133(d)(2)''.

(D) Sections 154, 164, and 409 of title 23, United States Code, are amended by striking ''152'' each place it appears and inserting ''148''.

(b) APPORTIONMENT OF HIGHWAY SAFETY IMPROVEMENT PROGRAM FUNDS.—Section 104(b) of title 23, United States Code, is amended—

(1) in the matter preceding paragraph (1), by inserting after ''Improvement program,'' the following: ''the highway safety improvement program,''; and

(2) by adding at the end the following:

''(5) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—

''(A) IN GENERAL.—For the highway safety improvement program, in accordance with the following formula:

''(i) 25 percent of the apportionments in the ratio that—

''(I) the total lane miles of Federal-aid highways in each State; bears to

''(II) the total lane miles of Federal-aid highways in all States.

''(ii) 40 percent of the apportionments in the ratio that—

''(I) the total vehicle miles traveled on lanes on Federal-aid highways in each State; bears to

''(II) the total vehicle miles traveled on lanes on Federal-aid highways in all States.

''(iii) 35 percent of the apportionments in the ratio that—

''(I) the 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 are available; bears to

''(II) the estimated tax payments attributable to highway users in all States paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available.

''(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), each State shall receive a minimum of ½ of 1 percent of the funds apportioned under this paragraph.''.

(c) ELIMINATION OF HAZARDS RELATING TO RAILWAY-HIGHWAY CROSSINGS.—

(1) FUNDS FOR RAILWAY-HIGHWAY CROSSINGS.—Section 130(e) of title 23, United States Code, is amended by inserting before ''At least'' the following: ''For each fiscal year, at least $200,000,000 of the funds authorized and expended under section 148 shall be available for the elimination of hazards and the installation of protective devices at railway-highway crossings.''.

(2) BIENNIAL REPORTS TO CONGRESS.—Section 130(g) of title 23, United States Code, is amended in the third sentence—

(A) by inserting ''and the Committee on Commerce, Science, and Transportation,'' after ''Public Works''; and

(B) by striking ''not later than April 1 of each year'' and inserting ''every other year''.

(3) EXPENDITURE OF FUNDS.—Section 130 of title 23, United States Code, is amended by adding at the end the following:

''(k) EXPENDITURE OF FUNDS.—Funds made available to carry out this section shall be available for expenditure on compilation and analysis of data in support of activities carried out under subsection (g).''.

(d) TRANSITION.—

(1) IMPLEMENTATION.—Except as provided in paragraph (2), the Secretary shall approve obligations of funds apportioned under section 104(b)(5) of title 23, United States Code (as added by subsection (b)) to carry out section 148 of that title, only if, not later than October 1 of the second fiscal year after the date of enactment of this Act, a State has developed and implemented a State strategic highway safety plan as required under section 148(c) of that title.

(2) INTERIM PERIOD.—

(A) IN GENERAL.—Before October 1 of the second fiscal year after the date of enactment of this Act and until the date on which a State develops and implements a State strategic highway safety plan, the Secretary shall apportion funds to a State for the highway safety improvement program and the State may obligate funds apportioned to the State for the highway safety improvement program under section 148 for projects that were eligible for funding under sections 130 and 152 of that title, as in effect on the day before the date of enactment of this Act.

(B) NO STRATEGIC HIGHWAY SAFETY PLAN.—If a State has not developed a strategic highway safety plan by October 1 of the second fiscal year after the date of enactment of this Act, but demonstrates to the satisfaction of the Secretary that progress is being made toward developing and implementing such a plan, the Secretary shall continue to apportion funds for 1 additional fiscal year for the highway safety improvement program under section 148 of title 23, United States Code, to the State, and the State may continue to obligate funds apportioned to the State under this section for projects that were eligible for funding under sections 130 and 152 of that title, as in effect on the day before the date of enactment of this Act.

(C) PENALTY.—If a State has not adopted a strategic highway safety plan by the date that is 2 years after the date of enactment of this Act, funds made available to the State under section 1101(6) shall be redistributed to other States in accordance with section 104(b)(3) of title 23, United States Code.

SEC. 1402. OPERATION LIFESAVER.

Section 104(d)(1) of title 23, United States Code, is amended—

(1) by striking ''subsection (b)(3)'' and inserting ''subsection (b)(5)''; and

(2) by striking ''$500,000'' and inserting ''$600,000''.

SEC. 1403. LICENSE SUSPENSION.

Section 164(a) of title 23, United States Code, is amended by striking paragraph (3) and inserting the following:

''(3) LICENSE SUSPENSION.—The term 'license suspension' means—

''(A) the suspension of all driving privileges of an individual for the duration of the suspension period; or

''(B) a combination of suspension of all driving privileges of an individual for the first 90 days of the suspension period, followed by reinstatement of limited driving privileges requiring the individual to operate only motor vehicles equipped with an ignition interlock system or other device approved by the Secretary during the remainder of the suspension period.''.

SEC. 1404. BUS AXLE WEIGHT EXEMPTION.

Section 1023 of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 127 note; 105 Stat. 1951) is amended by striking subsection (h) and inserting the following:

''(h) OVER-THE-ROAD BUS AND PUBLIC TRANSIT VEHICLE EXEMPTION.—

''(1) IN GENERAL.—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 to—

''(A) any over-the-road bus (as defined in section 301 of the Americans With Disabilities Act of 1990 (42 U.S.C. 12181)); or

''(B) any vehicle that is regularly and exclusively used as an intrastate public agency transit passenger bus.

''(2) STATE ACTION.—No State or political subdivision of a State, or any political authority of 2 or more States, shall impose any axle weight limitation on any vehicle described in paragraph (1) in any case in which such a vehicle is using the Dwight D. Eisenhower System of Interstate and Defense Highways.''.

SEC. 1405. SAFE ROUTES TO SCHOOLS PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter I of title 23, United States Code, is amended by inserting after section 149 the following:

''§ 150. Safe routes to schools program

''(a) DEFINITIONS.—In this section:

''(1) PRIMARY AND SECONDARY SCHOOL.—The term 'primary and secondary school' means a school that provides education to children in any of grades kindergarten through 12.

''(2) PROGRAM.—The term 'program' means the safe routes to schools program established under subsection (b).

''(3) VICINITY OF A SCHOOL.—The term 'vicinity of a school' means the area within 2 miles of a primary or secondary school.

''(b) ESTABLISHMENT.—The Secretary shall establish and carry out a safe routes to school program for the benefit of children in primary and secondary schools in accordance with this section.

''(c) PURPOSES.—The purposes of the program shall be—

''(1) to enable and to encourage children to walk and bicycle to school;

''(2) to encourage a healthy and active lifestyle by making walking and bicycling to school safer and more appealing transportation alternatives; and

''(3) to facilitate the planning, development, and implementation of projects and activities that will improve safety in the vicinity of schools.

''(d) ELIGIBLE RECIPIENTS.—A State shall use amounts apportioned under this section to provide financial assistance to State, regional, and local agencies that demonstrate an ability to meet the requirements of this section.

''(e) ELIGIBLE PROJECTS AND ACTIVITIES.—

''(1) INFRASTRUCTURE-RELATED PROJECTS.—

''(A) IN GENERAL.—Amounts apportioned to a State under this section may be used for the planning, design, and construction of infrastructure-related projects to encourage walking and bicycling to school, including—

''(i) sidewalk improvements;

''(ii) traffic calming and speed reduction improvements;

''(iii) pedestrian and bicycle crossing improvements;

''(iv) on-street bicycle facilities;

''(v) off-street bicycle and pedestrian facilities;

''(vi) secure bicycle parking facilities;

''(vii) traffic signal improvements; and

''(viii) pedestrian-railroad grade crossing improvements.

''(B) LOCATION OF PROJECTS.—Infrastructure-related projects under subparagraph (A) may be carried out on—

''(i) any public road in the vicinity of a school; or

''(ii) any bicycle or pedestrian pathway or trail in the vicinity of a school.

''(2) BEHAVIORAL ACTIVITIES.—

''(A) IN GENERAL.—In addition to projects described in paragraph (1), amounts apportioned to a State under this section may be used for behavioral activities to encourage walking and bicycling to school, including—

''(i) public awareness campaigns and outreach to press and community leaders;

''(ii) traffic education and enforcement in the vicinity of schools; and

''(iii) student sessions on bicycle and pedestrian safety, health, and environment.

''(B) ALLOCATION.—Of the amounts apportioned to a State under this section for a fiscal year, not less than 10 percent shall be used for behavioral activities under this paragraph.

''(f) FUNDING.—

''(1) SET ASIDE.—Before apportioning amounts to carry out section 148 for a fiscal year, the Secretary shall set aside and use $70,000,000 to carry out this section.

''(2) APPORTIONMENT.—Amounts made available to carry out this section shall be apportioned to States in accordance with section 104(b)(5).

''(3) ADMINISTRATION OF AMOUNTS.—Amounts apportioned to a State under this section shall be administered by the State transportation department.

''(4) FEDERAL SHARE.—Except as provided in sections 120 and 130, the Federal share of the cost of a project or activity funded under this section shall be 90 percent.

''(5) PERIOD OF AVAILABILITY.—Notwithstanding section 118(b)(2), amounts apportioned under this section shall remain available until expended.''.

(b) CONFORMING AMENDMENTS.—The analysis for subchapter I of chapter 1 of title 23, United States Code is amended by inserting after the item relating to section 149 the following:

''150. Safe routes to school program.''.

SEC. 1406. PURCHASES OF EQUIPMENT.

(a) IN GENERAL.—Section 152 of title 23, United States Code is amended to read as follows:

"§ 152. Purchases of equipment

''(a) IN GENERAL.—Subject to subsection (b), a State carrying out a project under this chapter shall purchase device, tool or other equipment needed for the project only after completing and providing a written analysis demonstrating the cost savings associated with purchasing the equipment compared with renting the equipment from a qualified equipment rental provider before the project commences.

''(b) APPLICABILITY.—This section shall apply to—

''(1) earth moving, road machinery, and material handling equipment, or any other item, with a purchase price in excess of $75,000; and

''(2) aerial work platforms with a purchase price in excess of $25,000.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by striking the item relating to section 152 and inserting the following:

''152. Purchases of equipment.''.

SEC. 1407. WORKZONE SAFETY.

Section 358(b) of the National Highway System Designation Act of 1995 (109 Stat. 625) is amended by adding at the end the following:

''(7) Recommending all federally-assisted projects in excess of $15,000,000 to enter into contracts only with work zone safety services contractors, traffic control contractors, and trench safety and shoring contractors that carry general liability insurance in an amount not less than $15,000,000.

''(8) Recommending federally-assisted projects the costs of which exceed $15,000,000 to include work zone intelligent transportation systems that are—

''(A) provided by a qualified vendor; and

''(B) monitored continuously.

''(9) Recommending federally-assisted projects to fully fund not less than 5 percent of project costs for work zone safety and temporary traffic control measures, in addition to the cost of the project, which measures shall be provided by a qualified work zone safety or traffic control provider.

''(10) Ensuring that any recommendation made under any of paragraphs (7) through (9) provides for an exemption for applicability to a State, with respect to a project or class of projects, to the extent that a State notifies the Secretary in writing that safety is not expected to be adversely affected by non-application of the requirement to the project or class of projects.''.

SEC. 1408. WORKER INJURY PREVENTION AND FREE FLOW OF VEHICULAR TRAFFIC.

Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations—

(1) to decrease the probability of worker injury;

(2) to maintain the free flow of vehicular traffic by requiring workers whose duties place the workers on, or in close proximity to, a Federal-aid highway (as defined in section 101 of title 23, United States Code) to wear high-visibility clothing; and

(3) to require such other worker-safety measures for workers described in paragraph (2) as the Secretary determines appropriate.

SEC. 1409. IDENTITY AUTHENTICATION STANDARDS.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1815(a)), is amended by adding at the end the following:

"§ 178. Identity authentication standards

''(a) DEFINITION OF INFORMATION-BASED IDENTITY AUTHENTICATION.—In this section, the term 'information-based identity authentication' means the determination of the identity of an individual, through the comparison of information provided by a person, with other information pertaining to that individual with a system using scoring models and algorithms.

''(b) STANDARDS.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Homeland Security and the Federal Motor Carrier Safety Administration, shall promulgate regulations establishing minimum standards for State departments of motor vehicles regarding the use of information-based identity authentication to determine the identity of an applicant for a commercial driver's license, or the renewal, transfer or upgrading, of a commercial driver's license.

''(c) MINIMUM STANDARDS.—The regulations shall, at a minimum, require State departments of motor vehicles to implement, and applicants for commercial driver's licenses, (or the renewal, transfer, or upgrading of commercial driver's licenses), to comply with, reasonable procedures for operating an information-based identity authentication program before issuing, renewing, transferring, or upgrading a commercial driver's license.

''(d) KEY FACTORS.—In promulgating regulations under this section, the Secretary shall require that an information-based identity authentication program carried out under this section establish processes that—

''(1) use multiple sources of matching information;

''(2) enable the measurement of the accuracy of the determination of an applicant's identity;

''(3) support continuous auditing of compliance with applicable laws, policies, and practices governing the collection, use, and distribution of information in the operation of the program; and

''(4) incorporate industry best practices to protect significant privacy interests in the information used in the program and the appropriate safeguarding of the storage of the information.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter I of title 23, United States Code (as amended by section 1815(b)), is amended by adding at the end the following:

''178. Identity authentication standards.''.

Subtitle E—Environmental Planning and Review

CHAPTER 1—TRANSPORTATION PLANNING

SEC. 1501. INTEGRATION OF NATURAL RESOURCE CONCERNS INTO STATE AND METROPOLITAN TRANSPORTATION PLANNING.

(a) METROPOLITAN PLANNING.—Section 134(f) of title 23, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (D)—

(i) by inserting after ''environment'' the following: ''(including the protection of habitat, water quality, and agricultural and forest land, while minimizing invasive species)''; and

(ii) by inserting before the semicolon the following: ''(including minimizing adverse health effects from mobile source air pollution and promoting the linkage of the transportation and development goals of the metropolitan area)''; and

(B) in subparagraph (G), by inserting ''and efficient use'' after ''preservation'';

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following:

''(2) SELECTION OF FACTORS.—After soliciting and considering any relevant public comments, the metropolitan planning organization shall determine which of the factors described in paragraph (1) are most appropriate for the metropolitan area to consider.''.

(b) STATEWIDE PLANNING.—Section 135(c) of title 23, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (D)—

(i) by inserting after ''environment'' the following: ''(including the protection of habitat, water quality, and agricultural and forest land, while minimizing invasive species)''; and

(ii) by inserting before the semicolon the following: ''(including minimizing adverse health effects from mobile source air pollution and promoting the linkage of the transportation and development goals of the State)''; and

(B) in subparagraph (G), by inserting ''and efficient use'' after ''preservation'';

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following:

''(2) SELECTION OF PROJECTS AND STRATEGIES.—After soliciting and considering any relevant public comments, the State shall determine which of the projects and strategies described in paragraph (1) are most appropriate for the State to consider.''.

SEC. 1502. CONSULTATION BETWEEN TRANSPORTATION AGENCIES AND RESOURCE AGENCIES IN TRANSPORTATION PLANNING.

(a) IN GENERAL.—Section 134(g) of title 23, United States Code, is amended—

(1) in paragraph (2)—

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

(B) by inserting after subparagraph (A) the following:

''(B) MITIGATION ACTIVITIES.—

''(i) IN GENERAL.—A long-range transportation plan shall include a discussion of—

''(I) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetland, and other environmental functions; and

''(II) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

''(ii) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.'';

(2) by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively; and

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

''(4) CONSULTATION.—

''(A) IN GENERAL.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

''(B) ISSUES.—The consultation shall involve—

''(i) comparison of transportation plans with State conservation plans or with maps, if available;

''(ii) comparison of transportation plans to inventories of natural or historic resources, if available; or

''(iii) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkage areas.''.

(b) IMPROVED CONSULTATION DURING STATE TRANSPORTATION PLANNING.—

(1) IN GENERAL.—Section 135(e)(2) of title 23, United States Code, is amended by adding at the end the following:

''(D) CONSULTATION, COMPARISON, AND CONSIDERATION.—

''(i) IN GENERAL.—The long-range transportation plan shall be developed, as appropriate, in consultation with State and local agencies responsible for—

''(I) land use management;

''(II) natural resources;

''(III) environmental protection;

''(IV) conservation; and

''(V) historic preservation.

''(ii) COMPARISON AND CONSIDERATION.—Consultation under clause (i) shall involve—

''(I) comparison of transportation plans to State conservation plans or maps, if available;

''(II) comparison of transportation plans to inventories of natural or historic resources, if available; or

''(III) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkage areas.''.

(2) ADDITIONAL REQUIREMENTS.—Section 135(e) of title 23, United States Code, is amended—

(A) by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively; and

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

''(4) MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—A long-range transportation plan shall include a discussion of—

''(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetlands, and other environmental functions; and

''(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

''(B) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

''(5) TRANSPORTATION STRATEGIES.—A long-range transportation plan shall identify transportation strategies necessary to efficiently serve the mobility needs of people.''.

SEC. 1503. INTEGRATION OF NATURAL RESOURCE CONCERNS INTO TRANSPORTATION PROJECT PLANNING.

Section 109(c)(2) of title 23, United States Code, is amended—

(1) by striking ''consider the results'' and inserting ''consider—

''(A) the results'';

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

(3) by adding at the end the following:

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

''(C) 'Eight Characteristics of Process to Yield Excellence and the Seven Qualities of Excellence in Transportation Design' developed by the conference held during 1998 entitled 'Thinking Beyond the Pavement National Workshop on Integrating Highway Development with Communities and the Environment while Maintaining Safety and Performance'; and

''(D) any other material that the Secretary determines to be appropriate.''.

SEC. 1504. PUBLIC INVOLVEMENT IN TRANSPORTATION PLANNING AND PROJECTS.

(a) METROPOLITAN PLANNING.—

(1) PARTICIPATION BY INTERESTED PARTIES.—Section 134(g)(5) of title 23, United States Code (as redesignated by section 1502(a)(1)), is amended—

(A) by striking ''Before approving'' and inserting the following:

''(A) IN GENERAL.—Before approving''; and

(B) by adding at the end the following:

''(B) METHODS.—In carrying out subparagraph (A), the metropolitan planning organization shall, to the maximum extent practicable—

''(i) hold any public meetings at convenient and accessible locations and times;

''(ii) employ visualization techniques to describe plans; and

''(iii) make public information available in electronically accessible format and means, such as the World Wide Web.''.

(2) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Section 134(g)(6)(i) of title 23, United States Code (as redesignated by section 1502(a)(1)), is amended by inserting before the semicolon the following: '', including (to the maximum extent practicable) in electronically accessible formats and means such as the World Wide Web''.

(b) STATEWIDE PLANNING.—

(1) PARTICIPATION BY INTERESTED PARTIES.—Section 135(e)(3) of title 23, United States Code, is amended by striking subparagraph (B) and inserting the following:

''(B) METHODS.—In carrying out subparagraph (A), the State shall, to the maximum extent practicable—

''(i) hold any public meetings at convenient and accessible locations and times;

''(ii) employ visualization techniques to describe plans; and

''(iii) make public information available in electronically accessible format and means, such as the World Wide Web.''.

(2) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Section 135(e) of title 23, United States Code (as amended by section 1502(b)(2)), is amended by adding at the end the following:

''(8) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each long-range transportation plan prepared by a State shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.''.

SEC. 1505. PROJECT MITIGATION.

(a) MITIGATION FOR NATIONAL HIGHWAY SYSTEM PROJECTS.—Section 103(b)(6)(M) of title 23, United States Code, is amended—

(1) by inserting ''(i)'' after ''(M); and

(2) by adding at the end the following:

''(ii) State habitat, streams, and wetlands mitigation efforts under section 155.''.

(b) MITIGATION FOR SURFACE TRANSPORTATION PROGRAM PROJECTS.—Section 133(b)(11) of title 23, United States Code, is amended—

(1) by inserting ''(A)'' after ''(11)''; and

(2) by adding at the end the following:

''(B) State habitat, streams, and wetlands mitigation efforts under section 155.''.

(c) STATE HABITAT, STREAMS, AND WETLANDS MITIGATION FUNDS.—Section 155 of title 23, United States Code, is amended to read as follows:

''§ 155. State habitat, streams, and wetlands mitigation funds

''(a) ESTABLISHMENT.—A State should establish a habitat, streams, and wetlands mitigation fund (referred to in this section as a 'State fund').

''(b) PURPOSE.—The purpose of a State fund is to encourage efforts for habitat, streams, and wetlands mitigation in advance of or in conjunction with highway or transit projects to—

''(1) ensure that the best habitat, streams, and wetland mitigation sites now available are used; and

''(2) accelerate transportation project delivery by making high-quality habitat, streams, and wetland mitigation credits available when needed.

''(c) FUNDS.—A State may deposit into a State fund part of the funds apportioned to the State under—

''(1) section 104(b)(1) for the National Highway System; and

''(2) section 104(b)(3) for the surface transportation program.

''(d) USE.—

''(1) IN GENERAL.—Amounts deposited in a State fund shall be used (in a manner consistent with this section) for habitat, streams, or wetlands mitigation related to 1 or more projects funded under this title, including a project under the transportation improvement program of the State developed under section 135(f).

''(2) ENDANGERED SPECIES.—In carrying out this section, a State and cooperating agency shall give consideration to mitigation projects, on-site or off-site, that restore and preserve the best available sites to conserve biodiversity and habitat for—

''(A) Federal or State listed threatened or endangered species of plants and animals; and

''(B) plant or animal species warranting listing as threatened or endangered, as determined by the Secretary of the Interior in accordance with section 4(b)(3)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(3)(B)).

''(e) CONSISTENCY WITH APPLICABLE REQUIREMENTS.—Contributions from the State fund to mitigation efforts may occur in advance of project construction only if the efforts are consistent with all applicable requirements of Federal law (including regulations).''.

(d) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by striking the item relating to section 155 and inserting the following:

''155. State habitat, streams, and wetlands mitigation funds.''.

CHAPTER 2—TRANSPORTATION PROJECT DEVELOPMENT PROCESS

SEC. 1511. TRANSPORTATION PROJECT DEVELOPMENT PROCESS.

(a) IN GENERAL.—Chapter 3 of title 23, United States Code (as amended by section 1203(a)), is amended by inserting after section 325 the following:

''§ 326. Transportation project development process

''(a) DEFINITIONS.—In this section:

''(1) AGENCY.—The term 'agency' means any agency, department, or other unit of Federal, State, local, or federally recognized tribal government.

''(2) ENVIRONMENTAL IMPACT STATEMENT.—The term 'environmental impact statement' means a detailed statement of the environmental impacts of a project 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—

''(i) an environmental impact statement; or

''(ii) any other document or analysis required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

''(B) INCLUSIONS.—The term 'environmental review process' includes the process for and completion of any environmental permit, approval, review, or study required for a project under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(4) PROJECT.—The term 'project' means any highway or transit project that requires the approval of the Secretary.

''(5) PROJECT SPONSOR.—The term 'project sponsor' means an agency or other entity (including any private or public-private entity), that seeks approval of the Secretary for a project.

''(6) STATE TRANSPORTATION DEPARTMENT.—The term 'State transportation department' means any statewide agency of a State with responsibility for transportation.

''(b) PROCESS.—

''(1) LEAD AGENCY.—

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

''(B) JOINT LEAD AGENCIES.—Nothing in this section precludes another agency from being a joint lead agency in accordance with regulations under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(C) CONCURRENCE OF PROJECT SPONSOR.—The lead agency may carry out the environmental review process in accordance with this section only with the concurrence of the project sponsor.

''(2) REQUEST FOR PROCESS.—

''(A) IN GENERAL.—A project sponsor may request that the lead agency carry out the environmental review process for a project or group of projects in accordance with this section.

''(B) GRANT OF REQUEST; PUBLIC NOTICE.—The lead agency shall—

''(i) grant a request under subparagraph (A); and

''(ii) provide public notice of the request.

''(3) EFFECTIVE DATE.—The environmental review process described in this section may be applied to a project only after the date on which public notice is provided under subparagraph (B)(ii).

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

''(A) identify and invite cooperating agencies in accordance with subsection (d);

''(B) develop an agency coordination plan with review, schedule, and timelines in accordance with subsection (e);

''(C) determine the purpose and need for the project in accordance with subsection (f);

''(D) determine the range of alternatives to be considered in accordance with subsection (g);

''(E) convene dispute-avoidance and decision resolution meetings and related efforts in accordance with subsection (h);

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

''(G) prepare or ensure that any required environmental impact statement or other document required to be completed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is completed in accordance with this section and applicable Federal law.

''(d) ROLES AND RESPONSIBILITIES OF COOPERATING AGENCIES.—

''(1) IN GENERAL.—With respect to a project, each Federal agency shall carry out any obligations of the Federal agency in the environmental review process in accordance with this section and applicable Federal law.

''(2) INVITATION.—

''(A) IN GENERAL.—The lead agency shall—

''(i) identify, as early as practicable in the environmental review process for a project, any other agencies that may have an interest in the project, including—

''(I) agencies with jurisdiction over environmentally-related matters that may affect the project or may be required by law to conduct an environmental-related independent review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project; and

''(II) agencies with special expertise relevant to the project;

''(ii) invite the agencies identified in clause (i) to become participating agencies in the environmental review process for that project; and

''(iii) grant requests to become cooperating agencies from agencies not originally invited.

''(B) RESPONSES.—The deadline for receipt of a response from an agency that receives an invitation under subparagraph (A)(ii)—

''(i) shall be 30 days after the date of receipt by the agency of the invitation; but

''(ii) may be extended by the lead agency for good cause.

''(3) DECLINING OF INVITATIONS.—A Federal agency that is invited by the lead agency to participate in the environmental review process for a project shall be designated as a cooperating 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 cooperating agency under this subsection shall not imply that the cooperating agency—

''(A) supports a proposed project; or

''(B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

''(5) DESIGNATIONS FOR CATEGORIES OF PROJECTS.—

''(A) IN GENERAL.—The Secretary may invite other agencies to become cooperating agencies for a category of projects.

''(B) DESIGNATION.—An agency may be designated as a cooperating agency for a category of projects only with the consent of the agency.

''(6) CONCURRENT REVIEWS.—Each Federal agency shall, to the maximum extent practicable—

''(A) carry out obligations of the Federal agency under other applicable law concurrently, and in conjunction, with the review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), unless doing so would impair the ability of the Federal agency to carry out those obligations; and

''(B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

''(e) DEVELOPMENT OF FLEXIBLE PROCESS AND TIMELINE.—

''(1) COORDINATION PLAN.—

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

''(B) WORKPLAN.—

''(i) IN GENERAL.—The lead agency shall develop, as part of the coordination plan, a workplan for completing the collection, analysis, and evaluation of baseline data and future impacts modeling necessary to complete the environmental review process, including any data, analyses, and modeling necessary for related permits, approvals, reviews, or studies required for the project under other laws.

''(ii) CONSULTATION.—In developing the workplan under clause (i), the lead agency shall consult with—

''(I) each cooperating agency for the project;

''(II) the State in which the project is located; and

''(III) if the State is not the project sponsor, the project sponsor.

''(C) SCHEDULE.—

''(i) IN GENERAL.—The lead agency shall establish as part of the coordination plan, after consultation with each cooperating agency for the project and with the State in which the project is located (and, if the State is not the project sponsor, with the project sponsor), a schedule for completion of the environmental review process for the project.

''(ii) FACTORS FOR CONSIDERATION.—In establishing the schedule, the lead agency shall consider factors such as—

''(I) the responsibilities of cooperating agencies under applicable laws;

''(II) resources available to the cooperating agencies;

''(III) overall size and complexity of a project;

''(IV) the overall schedule for and cost of a project; and

''(V) the sensitivity of the natural and historic resources that could be affected by the project.

''(D) CONSISTENCY WITH OTHER TIME PERIODS.—A schedule under subparagraph (C) shall be consistent with any other relevant time periods established under Federal law.

''(E) MODIFICATION.—The lead agency may—

''(i) lengthen a schedule established under subparagraph (C) for good cause; and

''(ii) shorten a schedule only with the concurrence of the affected cooperating agencies.

''(F) DISSEMINATION.—A copy of a schedule under subparagraph (C), and of any modifications to the schedule, shall be—

''(i) provided to all cooperating agencies and to the State transportation department of the State in which the project is located (and, if the State is not the project sponsor, to the project sponsor); and

''(ii) made available to the public.

''(2) COMMENTS AND TIMELINES.—

''(A) IN GENERAL.—A schedule established under paragraph (1)(C) shall include—

''(i) opportunities for comment, deadline for receipt of any comments submitted, deadline for lead agency response to comments; and

''(ii) except as otherwise provided under paragraph (1)—

''(I) an opportunity to comment by agencies and the public on a draft or final environmental impact statement for a period of not more than 60 days longer than the minimum period required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

''(II) for all other comment periods established by the lead agency for agency or public comments in the environmental review process, a period of not more than the longer of—

''(aa) 30 days after the final day of the minimum period required under Federal law (including regulations), if available; or

''(bb) if a minimum period is not required under Federal law (including regulations), 30 days.

''(B) EXTENSION OF COMMENT PERIODS.—The lead agency may extend a period of comment established under this paragraph for good cause.

''(C) LATE COMMENTS.—A comment concerning a project submitted under this paragraph after the date of termination of the applicable comment period or extension of a comment period shall not be eligible for consideration by the lead agency unless the lead agency or project sponsor determines there was good cause for the delay or the lead agency is required to consider significant new circumstances or information in accordance with sections 1501.7 and 1502.9 of title 40, Code of Federal Regulations.

''(D) DEADLINES FOR DECISIONS UNDER OTHER LAWS.—In any case in which a decision under any Federal law relating to a project (including the issuance or denial of a permit or license) is required to be made by the later of the date that is 180 days after the date on which the Secretary made all final decisions of the lead agency with respect to the project, or 180 days after the date on which an application was submitted for the permit or license, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

''(i) as soon as practicable after the 180-day period, an initial notice of the failure of the Federal agency to make the decision; and

''(ii) every 60 day thereafter until such date as all decisions of the Federal agency relating to the project have been made by the Federal agency, an additional notice that describes the number of decisions of the Federal agency that remain outstanding as of the date of the additional notice.

''(3) INVOLVEMENT OF THE PUBLIC.—Nothing in this subsection shall reduce any time period provided for public comment in the environmental review process under existing Federal law (including a regulation).

''(f) DEVELOPMENT OF PROJECT PURPOSE AND NEED STATEMENT.—

''(1) IN GENERAL.—With respect to the environmental review process for a project, the purpose and need for the project shall be defined in accordance with this subsection.

''(2) AUTHORITY.—The lead agency shall define the purpose and need for a project, including the transportation objectives and any other objectives intended to be achieved by the project.

''(3) INVOLVEMENT OF COOPERATING AGENCIES AND THE PUBLIC.—Before determining the purpose and need for a project, the lead agency shall solicit for 30 days, and consider, any relevant comments on the draft statement of purpose and need for a proposed project received from the public and cooperating agencies.

''(4) EFFECT ON OTHER REVIEWS.—For the purpose of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any other law requiring an agency that is not the lead agency to determine or consider a project purpose or project need, such an agency acting, permitting, or approving under, or otherwise applying, Federal law with respect to a project shall adopt the determination of purpose and need for the project made by the lead agency.

''(5) SAVINGS.—Nothing in this subsection preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency under applicable law (including regulations) with respect to a project.

''(6) CONTENTS.—

''(A) IN GENERAL.—The statement of purpose and need shall include a clear statement of the objectives that the proposed project is intended to achieve.

''(B) EFFECT ON EXISTING STANDARDS.—Nothing in this subsection shall alter existing standards for defining the purpose and need of a project.

''(7) FACTORS TO CONSIDER.—The lead agency may determine that any of the following factors and documents are appropriate for consideration in determining the purpose of and need for a project:

''(A) Transportation plans and related planning documents developed through the statewide and metropolitan transportation planning process under sections 134 and 135.

''(B) Land use plans adopted by units of State, local, or tribal government (or, in the case of Federal land, by the applicable Federal land management agencies).

''(C) Economic development plans adopted by—

''(i) units of State, local, or tribal government; or

''(ii) established economic development planning organizations or authorities.

''(D) Environmental protection plans, including plans for the protection or treatment of—

''(i) air quality;

''(ii) water quality and runoff;

''(iii) habitat needs of plants and animals;

''(iv) threatened and endangered species;

''(v) invasive species;

''(vi) historic properties; and

''(vii) other environmental resources.

''(E) Any publicly available plans or policies relating to the national defense, national security, or foreign policy of the United States.

''(g) DEVELOPMENT OF PROJECT ALTERNATIVES.—

''(1) IN GENERAL.—With respect to the environmental review process for a project, the alternatives shall be determined in accordance with this subsection.

''(2) AUTHORITY.—The lead agency shall determine the alternatives to be considered for a project.

''(3) INVOLVEMENT OF COOPERATING AGENCIES AND THE PUBLIC.—

''(A) IN GENERAL.—Before determining the alternatives for a project, the lead agency shall solicit for 30 days and consider any relevant comments on the proposed alternatives received from the public and cooperating agencies.

''(B) ALTERNATIVES.—The lead agency shall consider—

''(i) alternatives that meet the purpose and need of the project; and

''(ii) the alternative of no action.

''(C) EFFECT ON EXISTING STANDARDS.—Nothing in this subsection shall alter the existing standards for determining the range of alternatives.

''(4) EFFECT ON OTHER REVIEWS.—Any other agency acting under or applying Federal law with respect to a project shall consider only the alternatives determined by the lead agency.

''(5) SAVINGS.—Nothing in this subsection preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency under applicable law (including regulations) with respect to a project.

''(6) FACTORS TO CONSIDER.—The lead agency may determine that any of the following factors and documents are appropriate for consideration in determining the alternatives for a project:

''(A) The overall size and complexity of the proposed action.

''(B) The sensitivity of the potentially affected resources.

''(C) The overall schedule and cost of the project.

''(D) Transportation plans and related planning documents developed through the statewide and metropolitan transportation planning process under sections 134 and 135 of title 23 of the United States Code.

''(E) Land use plans adopted by units of State, local, or tribal government (or, in the case of Federal land, by the applicable Federal land management agencies).

''(F) Economic development plans adopted by—

''(i) units of State, local, or tribal government; or

''(ii) established economic development planning organizations or authorities.

''(G) environmental protection plans, including plans for the protection or treatment of—

''(i) air quality;

''(ii) water quality and runoff;

''(iii) habitat needs of plants and animals;

''(iv) threatened and endangered species;

''(v) invasive species;

''(vi) historic properties; and

''(vii) other environmental resources.

''(H) Any publicly available plans or policies relating to the national defense, national security, or foreign policy of the United States.

''(h) PROMPT ISSUE IDENTIFICATION AND RESOLUTION PROCESS.—

''(1) IN GENERAL.—The lead agency, the project sponsor, and the cooperating agencies shall work cooperatively, in accordance with this section, to identify and resolve issues that could—

''(A) delay completion of the environmental review process; or

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

''(2) LEAD AGENCY RESPONSIBILITIES.—

''(A) IN GENERAL.—The lead agency, with the assistance of the project sponsor, shall make information available to the cooperating agencies, as early as practicable in the environmental review process, regarding—

''(i) the environmental and socioeconomic resources located within the project area; and

''(ii) the general locations of the alternatives under consideration.

''(B) BASIS FOR INFORMATION.—Information about resources in the project area may be based on existing data sources, including geographic information systems mapping.

''(3) COOPERATING AGENCY RESPONSIBILITIES.—

''(A) IN GENERAL.—Based on information received from the lead agency, cooperating agencies shall promptly identify to the lead agency any major issues of concern regarding the potential environmental or socioeconomic impacts of a project.

''(B) MAJOR ISSUES OF CONCERN.—A major issue of concern referred to in subparagraph (A) may include any issue that could substantially delay or prevent an agency from granting a permit or other approval that is needed for a project, as determined by a cooperating agency.

''(4) ISSUE RESOLUTION.—On identification of a major issue of concern under paragraph (3), or at any time upon the request of a project sponsor or the Governor of a State, the lead agency shall promptly convene a meeting with representatives of each of the relevant cooperating agencies, the project sponsor, and the Governor to address and resolve the issue.

''(5) NOTIFICATION.—If a resolution of a major issue of concern under paragraph (4) cannot be achieved by the date that is 30 days after the date on which a meeting under that paragraph is convened, the lead agency shall provide notification of the failure to resolve the major issue of concern to—

''(A) the heads of all cooperating agencies;

''(B) the project sponsor;

''(C) the Governor involved;

''(D) the Committee on Environment and Public Works of the Senate; and

''(E) the Committee on Transportation and Infrastructure of the House of Representatives.

''(i) PERFORMANCE MEASUREMENT.—

''(1) PROGRESS REPORTS.—The Secretary shall establish a program to measure and report on progress toward improving and expediting the planning and environmental review process.

''(2) MINIMUM REQUIREMENTS.—The program shall include, at a minimum—

''(A) the establishment of criteria for measuring consideration of—

''(i) State and metropolitan planning, project planning, and design criteria; and

''(ii) environmental processing times and costs;

''(B) the collection of data to assess performance based on the established criteria; and

''(C) the annual reporting of the results of the performance measurement studies.

''(3) INVOLVEMENT OF THE PUBLIC AND COOPERATING AGENCIES.—

''(A) IN GENERAL.—The Secretary shall biennially conduct a survey of agencies participating in the environmental review process under this section to assess the expectations and experiences of each surveyed agency with regard to the planning and environmental review process for projects reviewed under this section.

''(B) PUBLIC PARTICIPATION.—In conducting the survey, the Secretary shall solicit comments from the public.

''(j) ASSISTANCE TO AFFECTED FEDERAL AND STATE AGENCIES.—

''(1) IN GENERAL.—The Secretary may approve a request by a State or recipient to provide funds made available under this title for a highway project, or made available under chapter 53 of title 49 for a mass transit project, to agencies participating in the coordinated environmental review process established under this section in order 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 such additional amounts as the Secretary determines are necessary for the affected Federal and State agencies to meet the time limits for environmental review; and

''(B) if those time limits are less than the customary time necessary for that review.

''(k) JUDICIAL REVIEW AND SAVINGS CLAUSE.—

''(1) JUDICIAL REVIEW.—Nothing in this section shall affect the reviewability of any final Federal agency action in any United States district court or State court.

''(2) SAVINGS CLAUSE.—Nothing in this section shall affect—

''(A) the applicability of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or any other Federal environmental statute; or

''(B) the responsibility of any Federal officer to comply with or enforce such a statute.''.

(b) CONFORMING AMENDMENTS.—

(1) The analysis for chapter 3 of title 23, United States Code, is amended by inserting after the item relating to section 325 (as added by section 1203(f)) the following:

''326. Transportation project development process.''.

(2) Section 1309 of the Transportation Equity Act for the 21st Century (112 Stat. 232) is repealed.

SEC. 1512. ASSUMPTION OF RESPONSIBILITY FOR CATEGORICAL EXCLUSIONS.

(a) IN GENERAL.—Chapter 3 of title 23, United States Code (as amended by section 1511(a)), is amended by inserting after section 326 the following:

''§ 327. Assumption of responsibility for categorical exclusions

''(a) CATEGORICAL EXCLUSION DETERMINATIONS.—

''(1) IN GENERAL.—The Secretary may assign, and a State may assume, responsibility for determining whether certain designated activities are included within classes of action identified in regulation by the Secretary that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of Federal Regulations (as in effect on October 1, 2003).

''(2) SCOPE OF AUTHORITY.—A determination described in paragraph (1) shall be made by a State in accordance with criteria established by the Secretary and only for types of activities specifically designated by the Secretary.

''(3) CRITERIA.—The criteria under paragraph (2) shall include provisions for public availability of information consistent with section 552 of title 5 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(b) OTHER APPLICABLE FEDERAL LAWS.—

''(1) IN GENERAL.—If a State assumes responsibility under subsection (a), the Secretary may also assign and the State may assume all or part of the responsibilities of the Secretary for environmental review, consultation, or other related actions required under any Federal law applicable to activities that are classified by the Secretary as categorical exclusions, with the exception of government-to-government consultation with Indian tribes, subject to the same procedural and substantive requirements as would be required if that responsibility were carried out by the Secretary.

''(2) SOLE RESPONSIBILITY.—A State that assumes responsibility under paragraph (1) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

''(c) MEMORANDA OF UNDERSTANDING.—

''(1) IN GENERAL.—The Secretary and the State, after providing public notice and opportunity for comment, shall enter into a memorandum of understanding setting forth the responsibilities to be assigned under this section and the terms and conditions under which the assignments are made, including establishment of the circumstances under which the Secretary would reassume responsibility for categorical exclusion determinations.

''(2) TERM.—A memorandum of understanding—

''(A) shall have term of not more than 3 years; and

''(B) shall be renewable.

''(3) ACCEPTANCE OF JURISDICTION.—In a memorandum of understanding, the State shall consent to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

''(4) MONITORING.—The Secretary shall—

''(A) monitor compliance by the State with the memorandum of understanding and the provision by the State of financial resources to carry out the memorandum of understanding; and

''(B) take into account the performance by the State when considering renewal of the memorandum of understanding.

''(d) TERMINATION.—The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State.

''(e) STATE AGENCY DEEMED TO BE FEDERAL AGENCY.—A State agency that is assigned a responsibility under a memorandum of understanding shall be deemed to be a Federal agency for the purposes of the Federal law under which the responsibility is exercised.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 23, United States Code (as amended by section 1511(b)), is amended by inserting after the item relating to section 326 the following:

''327. Assumption of responsibility for categorical exclusions.''.

SEC. 1513. SURFACE TRANSPORTATION PROJECT DELIVERY PILOT PROGRAM.

(a) IN GENERAL.—Chapter 3 of title 23, United States Code (as amended by section 1512(a)), is amended by inserting after section 327 the following:

''§ 328. Surface transportation project delivery pilot program

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary shall carry out a surface transportation project delivery pilot program (referred to in this section as the 'program').

''(2) ASSUMPTION OF RESPONSIBILITY.—

''(A) IN GENERAL.—Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to 1 or more highway projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(B) ADDITIONAL RESPONSIBILITY.—If a State assumes responsibility under subparagraph (A)—

''(i) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific project; but

''(ii) the Secretary may not assign—

''(I) responsibility for any conformity determination required under section 176 of the Clean Air Act (42 U.S.C. 7506); or

''(II) any responsibility imposed on the Secretary by section 134 or 135.

''(C) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.

''(D) FEDERAL RESPONSIBILITY.—Any responsibility of the Secretary not explicitly assumed by the State by written agreement under this section shall remain the responsibility of the Secretary.

''(E) NO EFFECT ON AUTHORITY.—Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency, other than the Department of Transportation, under applicable law (including regulations) with respect to a project.

''(b) STATE PARTICIPATION.—

''(1) NUMBER OF PARTICIPATING STATES.—The Secretary may permit not more than 5 States (including the State of Oklahoma) to participate in the program.

''(2) APPLICATION.—Not later than 270 days after the date of enactment of this section, the Secretary shall promulgate regulations that establish requirements relating to information required to be contained in any application of a State to participate in the program, including, at a minimum—

''(A) the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;

''(B) verification of the financial resources necessary to carry out the authority that may be granted under the program; and

''(C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the program, including copies of comments received from that solicitation.

''(3) PUBLIC NOTICE.—

''(A) IN GENERAL.—Each State that submits an application under this subsection shall give notice of the intent of the State to participate in the program not later than 30 days before the date of submission of the application.

''(B) METHOD OF NOTICE AND SOLICITATION.—The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice law of the State.

''(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under this section only if—

''(A) the regulatory requirements under paragraph (2) have been met;

''(B) the Secretary determines that the State has the capability, including financial and personnel, to assume the responsibility; and

''(C) the head of the State agency having primary jurisdiction over highway matters enters into a written agreement with the Secretary described in subsection (c).

''(5) OTHER FEDERAL AGENCY VIEWS.—If a State applies to assume a responsibility of the Secretary that would have required the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency before approving the application.

''(c) WRITTEN AGREEMENT.—A written agreement under this section shall—

''(1) be executed by the Governor or the top-ranking transportation official in the State who is charged with responsibility for highway construction;

''(2) be in such form as the Secretary may prescribe;

''(3) provide that the State—

''(A) agrees to assume all or part of the responsibilities of the Secretary described in subsection (a);

''(B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the State;

''(C) certifies that State laws (including regulations) are in effect that—

''(i) authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

''(ii) are comparable to section 552 of title 5, including providing that any decision regarding the public availability of a document under those State laws is reviewable by a court of competent jurisdiction; and

''(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed.

''(d) JURISDICTION.—

''(1) IN GENERAL.—The United States district courts shall have exclusive jurisdiction over any civil action against a State for failure to carry out any responsibility of the State under this section.

''(2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary had the Secretary taken the actions in question.

''(3) INTERVENTION.—The Secretary shall have the right to intervene in any action described in paragraph (1).

''(e) EFFECT OF ASSUMPTION OF RESPONSIBILITY.—A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (i).

''(f) LIMITATIONS ON AGREEMENTS.—Nothing in this section permits a State to assume any rulemaking authority of the Secretary under any Federal law.

''(g) AUDITS.—

''(1) IN GENERAL.—To ensure compliance by a State with any agreement of the State under subsection (c)(1) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program under this section, the Secretary shall conduct—

''(A) semiannual audits during each of the first 2 years of State participation; and

''(B) annual audits during each subsequent year of State participation.

''(2) PUBLIC AVAILABILITY AND COMMENT.—

''(A) IN GENERAL.—An audit conducted under paragraph (1) shall be provided to the public for comment.

''(B) RESPONSE.—Not later than 60 days after the date on which the period for public comment ends, the Secretary shall respond to public comments received under subparagraph (A).

''(h) REPORT TO CONGRESS.—The Secretary shall submit to Congress an annual report that describes the administration of the program.

''(i) TERMINATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the program shall terminate on the date that is 6 years after the date of enactment of this section.

''(2) TERMINATION BY SECRETARY.—The Secretary may terminate the participation of any State in the program if—

''(A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;

''(B) the Secretary provides to the State—

''(i) notification of the determination of noncompliance; and

''(ii) a period of at least 30 days during which to take such corrective action as the Secretary determines is necessary to comply with the applicable agreement; and

''(C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by Secretary.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 23, United States Code (as amended by section 1512(b)), is amended by inserting after the item relating to section 327 the following:

''328. Surface transportation project delivery pilot program.''.

SEC. 1514. PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES.

(a) PROGRAMS AND PROJECTS WITH DE MINIMIS IMPACTS.—

(1) TITLE 23.—Section 138 of title 23, United States Code, is amended—

(A) in the first sentence, by striking ''It is hereby'' and inserting the following:

''(a) DECLARATION OF POLICY.—It is''; and

(B) by adding at the end the following:

''(b) DE MINIMIS IMPACTS.—

''(1) REQUIREMENTS.—

''(A) IN GENERAL.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) or (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

''(B) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

''(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

''(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

''(i) the transportation program or project will have no adverse effect on the historic site; or

''(ii) there will be no historic properties affected by the transportation program or project;

''(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation, if participating in the consultation); and

''(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

''(3) PARKS, RECREATION AREAS, AND WILDLIFE AND WATERFOWL REFUGES.—With respect to parks, recreation areas, and wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

''(A) the Secretary has determined, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (including public notice and opportunity for public review and comment), that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and

''(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.''.

(2) TITLE 49.—Section 303 of title 49, United States Code, is amended—

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

''(c) APPROVAL OF PROGRAMS AND PROJECTS.—Subject to subsection (d), the Secretary''; and

(B) by adding at the end the following:

''(d) DE MINIMIS IMPACTS.—

''(1) REQUIREMENTS.—

''(A) IN GENERAL.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) or (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

''(B) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

''(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

''(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

''(i) the transportation program or project will have no adverse effect on the historic site; or

''(ii) there will be no historic properties affected by the transportation program or project;

''(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation, if participating in the consultation); and

''(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

''(3) PARKS, RECREATION AREAS, AND WILDLIFE AND WATERFOWL REFUGES.—With respect to parks, recreation areas, and wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

''(A) the Secretary has determined, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (including public notice and opportunity for public review and comment), that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and

''(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.''.

(b) CLARIFICATION OF EXISTING STANDARDS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall (in consultation with affected agencies and interested parties) promulgate regulations that clarify the factors to be considered and the standards to be applied in determining the prudence and feasibility of alternatives under section 138 of title 23 and section 303 of title 49, United States Code.

(2) REQUIREMENTS.—The regulations—

(A) shall clarify the application of the legal standards to a variety of different types of transportation programs and projects depending on the circumstances of each case; and

(B) may include, as appropriate, examples to facilitate clear and consistent interpretation by agency decisionmakers.

(c) IMPLEMENTATION STUDY.—

(1) IN GENERAL.—The Secretary and the Transportation Research Board of the National Academy of Sciences shall jointly conduct a study on the implementation of this section and the amendments made by this section.

(2) COMPONENTS.—In conducting the study, the Secretary and the Transportation Research Board shall evaluate—

(A) the processes developed under this section and the amendments made by this section and the efficiencies that may result;

(B) the post-construction effectiveness of impact mitigation and avoidance commitments adopted as part of projects conducted under this section and the amendments made by this section; and

(C) the quantity of projects with impacts that are considered de minimis under this section and the amendments made by this section, including information on the location, size, and cost of the projects.

(3) REPORT REQUIREMENT.—The Secretary and the Transportation Research Board shall prepare—

(A) not earlier than the date that is 4 years after the date of enactment of this Act, a report on the results of the study conducted under this subsection; and

(B) not later than September 30, 2009, an update on the report required under subparagraph (A).

(4) REPORT RECIPIENTS.—The Secretary and the Transportation Research Board shall—

(A) submit the report and update required under paragraph (3) to—

(i) the appropriate committees of Congress;

(ii) the Secretary of the Interior; and

(iii) the Advisory Council on Historic Preservation; and

(B) make the report and update available to the public.

SEC. 1515. REGULATIONS.

Except as provided in section 1513, not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations necessary to implement the amendments made by chapter 1 and this chapter.

CHAPTER 3—MISCELLANEOUS

SEC. 1521. CRITICAL REAL PROPERTY ACQUISITION.

Section 108 of title 23, United States Code, is amended by adding at the end the following:

''(d) CRITICAL REAL PROPERTY ACQUISITION.—

''(1) IN GENERAL.—Subject to paragraph (2), funds apportioned to a State under this title may be used to pay the costs of acquiring any real property that is determined to be critical under paragraph (2) for a project proposed for funding under this title.

''(2) REIMBURSEMENT.—The Federal share of the costs referred to in paragraph (1) shall be eligible for reimbursement out of funds apportioned to a State under this title if, before the date of acquisition, the Secretary determines that—

''(A) the property is offered for sale on the open market;

''(B) in acquiring the property, the State will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.); and

''(C) immediate acquisition of the property is critical because—

''(i) based on an appraisal of the property, the value of the property is increasing significantly;

''(ii) there is an imminent threat of development or redevelopment of the property; and

''(iii) the property is necessary for the implementation of the goals stated in the proposal for the project.

''(3) APPLICABLE LAW.—An acquisition of real property under this section shall be considered to be an exempt project under section 176 of the Clean Air Act (42 U.S.C. 7506).

''(4) ENVIRONMENTAL REVIEW.—

''(A) IN GENERAL.—A project proposed to be conducted under this title shall not be conducted on property acquired under paragraph (1) until all required environmental reviews for the project have been completed.

''(B) EFFECT ON CONSIDERATION OF PROJECT ALTERNATIVES.—The number of critical acquisitions of real property associated with a project shall not affect the consideration of project alternatives during the environmental review process.

''(5) PROCEEDS FROM THE SALE OR LEASE OF REAL PROPERTY.—Section 156(c) shall not apply to the sale, use, or lease of any real property acquired under paragraph (1).''.

SEC. 1522. PLANNING CAPACITY BUILDING INITIATIVE.

Section 104 of title 23, United States Code, is amended by adding at the end the following:

''(m) PLANNING CAPACITY BUILDING INITIATIVE.—

''(1) IN GENERAL.—The Secretary shall carry out a planning capacity building initiative to support enhancements in transportation planning to—

''(A) strengthen the processes and products of metropolitan and statewide transportation planning under this title;

''(B) enhance tribal capacity to conduct joint transportation planning under chapter 2;

''(C) participate in the metropolitan and statewide transportation planning programs under this title; and

''(D) increase the knowledge and skill level of participants in metropolitan and statewide transportation.

''(2) PRIORITY.—The Secretary shall give priority to planning practices and processes that support—

''(A) the transportation elements of homeland security planning, including—

''(i) training and best practices relating to emergency evacuation;

''(ii) developing materials to assist areas in coordinating emergency management and transportation officials; and

''(iii) developing training on how planning organizations may examine security issues;

''(B) performance-based planning, including—

''(i) data and data analysis technologies to be shared with States, metropolitan planning organizations, local governments, and nongovernmental organizations that—

''(I) participate in transportation planning;

''(II) use the data and data analysis to engage in metropolitan, tribal, or statewide transportation planning;

''(III) involve the public in the development of transportation plans, projects, and alternative scenarios; and

''(IV) develop strategies to avoid, minimize, and mitigate the impacts of transportation facilities and projects; and

''(ii) improvement of the quality of congestion management systems, including the development of—

''(I) a measure of congestion;

''(II) a measure of transportation system reliability; and

''(III) a measure of induced demand;

''(C) safety planning, including—

''(i) development of State strategic safety plans consistent with section 148;

''(ii) incorporation of work zone safety into planning; and

''(iii) training in the development of data systems relating to highway safety;

''(D) operations planning, including—

''(i) developing training of the integration of transportation system operations and management into the transportation planning process; and

''(ii) training and best practices relating to regional concepts of operations;

''(E) freight planning, including—

''(i) modeling of freight at a regional and statewide level; and

''(ii) techniques for engaging the freight community with the planning process;

''(F) air quality planning, including—

''(i) assisting new and existing nonattainment and maintenance areas in developing the technical capacity to perform air quality conformity analysis;

''(ii) providing training on areas such as modeling and data collection to support air quality planning and analysis;

''(iii) developing concepts and techniques to assist areas in meeting air quality performance timeframes; and

''(iv) developing materials to explain air quality issues to decisionmakers and the public; and

''(G) integration of environment and planning.

''(3) USE OF FUNDS.—The Secretary shall use amounts made available under paragraph (4) to 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 for research, program development, information collection and dissemination, and technical assistance.

''(4) SET-ASIDE.—

''(A) IN GENERAL.—On October 1 of each fiscal year, of the funds made available under subsection (a), the Secretary shall set aside $4,000,000 to carry out this subsection.

''(B) FEDERAL SHARE.—The Federal share of the cost of an activity carried out using funds made available under subparagraph (A) shall be 100 percent.

''(C) AVAILABILITY.—Funds made available under subparagraph (A) shall remain available until expended.''.

Subtitle F—Environment

SEC. 1601. ENVIRONMENTAL RESTORATION AND POLLUTION ABATEMENT; CONTROL OF INVASIVE PLANT SPECIES AND ESTABLISHMENT OF NATIVE SPECIES.

(a) MODIFICATION TO NHS/STP FOR ENVIRONMENTAL RESTORATION, POLLUTION ABATEMENT, AND INVASIVE SPECIES.—

(1) MODIFICATIONS TO NATIONAL HIGHWAY SYSTEM.—Section 103(b)(6) of title 23, United States Code, is amended by adding at the end the following:

''(Q) Environmental restoration and pollution abatement in accordance with section 165.

''(R) Control of invasive plant species and establishment of native species in accordance with section 166.''.

(2) MODIFICATIONS TO SURFACE TRANSPORTATION PROGRAM.—Section 133(b) of title 23, is amended by striking paragraph (14) and inserting the following:

''(14) Environmental restoration and pollution abatement in accordance with section 165.

''(15) Control of invasive plant species and establishment of native species in accordance with section 166.''.

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

''§ 165. Eligibility for environmental restoration and pollution abatement

''(a) IN GENERAL.—Subject to subsection (b), environmental restoration and pollution abatement to minimize or mitigate the impacts of any transportation project funded under this title (including retrofitting and construction of storm water treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341, 1342)) may be carried out to address water pollution or environmental degradation caused wholly or partially by a transportation facility.

''(b) MAXIMUM EXPENDITURE.—In a case in which a transportation facility is undergoing reconstruction, rehabilitation, resurfacing, or restoration, the expenditure of funds under this section for environmental restoration or pollution abatement described in subsection (a) shall not exceed 20 percent of the total cost of the reconstruction, rehabilitation, resurfacing, or restoration of the facility.

''§ 166. Control of invasive plant species and establishment of native species

''(a) DEFINITIONS.—In this section:

''(1) INVASIVE PLANT SPECIES—The term 'invasive plant species' means a nonindigenous species the introduction of which causes or is likely to cause economic or environmental harm or harm to human health.

''(2) NATIVE PLANT SPECIES.—The term 'native plant species' means, with respect to a particular ecosystem, a species that, other than as result of an introduction, historically occurred or currently occurs in that ecosystem.

''(b) CONTROL OF SPECIES.—

''(1) IN GENERAL.—In accordance with all applicable Federal law (including regulations), funds made available to carry out this section may be used for—

''(A) participation in the control of invasive plant species; and

''(B) the establishment of native species.

''(2) INCLUDED ACTIVITIES.—The participation and establishment under paragraph (1) may include—

''(A) participation in statewide inventories of invasive plant species and desirable plant species;

''(B) regional native plant habitat conservation and mitigation;

''(C) native revegetation;

''(D) elimination of invasive species to create fuel breaks for the prevention and control of wildfires; and

''(E) training.

''(3) CONTRIBUTIONS.—

''(A) IN GENERAL.—Subject to subparagraph (B), an activity described in paragraph (1) may be carried out concurrently with, in advance of, or following the construction of a project funded under this title.

''(B) CONDITION FOR ACTIVITIES CONDUCTED IN ADVANCE OF PROJECT CONSTRUCTION.—An activity described in paragraph (1) may be carried out in advance of construction of a project only if the activity is carried out in accordance with all applicable requirements of Federal law (including regulations) and State transportation planning processes.''.

(c) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1406(b)), is amended by adding at the end the following:

''165. Eligibility for environmental restoration and pollution abatement.''.

''166. Control of invasive plant species and establishment of native species.''.

SEC. 1602. NATIONAL SCENIC BYWAYS PROGRAM.

(a) IN GENERAL.—Section 162 of title 23, United States Code, is amended—

(1) in subsection (a)(1), by striking ''the roads as'' and all that follows and inserting ''the roads as—

''(A) National Scenic Byways;

''(B) All-American Roads; or

''(C) America's Byways.'';

(2) in subsection (b)—

(A) in paragraph (1)(A), by striking ''designated as'' and all that follows and inserting ''designated as—

''(i) National Scenic Byways;

''(ii) All-American Roads; or

''(iii) America's Byways; and'';

(B) in paragraph (2)—

(i) in subparagraph (A), by striking ''Byway or All-American Road'' and inserting ''Byway, All-American Road, or 1 of America's Byways''; and

(ii) in subparagraph (B), by striking ''designation as a'' and all that follows and inserting ''designation as—

''(i) a National Scenic Byway;

''(ii) an All-American Road; or

''(iii) 1 of America's Byways; and''; and

(3) in subsection (c)(4), by striking ''passing lane,''.

(b) RESEARCH, TECHNICAL ASSISTANCE, MARKETING, AND PROMOTION.—Section 162 of title 23, United States Code, is amended—

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

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

''(d) RESEARCH, TECHNICAL ASSISTANCE, MARKETING, AND PROMOTION.—

''(1) IN GENERAL.—The Secretary may carry out technical assistance, marketing, market research, and promotion with respect to State Scenic Byways, National Scenic Byways, All-American Roads, and America's Byways.

''(2) COOPERATION, GRANTS, AND CONTRACTS.—The Secretary may make grants to, or enter into contracts, cooperative agreements, and other transactions with, any Federal agency, State agency, authority, association, institution, for-profit or nonprofit corporation, organization, or person, to carry out projects and activities under this subsection.

''(3) FUNDS.—The Secretary may use not more than $2,000,000 for each fiscal year of funds made available for the National Scenic Byways Program to carry out projects and activities under this subsection.

''(4) PRIORITY.—The Secretary shall give priority under this subsection to partnerships that leverage Federal funds for research, technical assistance, marketing and promotion.''; and

(3) in subsection (g) (as redesignated by paragraph (1)), by striking ''80 percent'' and inserting ''the share applicable under section 120, as adjusted under subsection (d) of that section''.

SEC. 1603. RECREATIONAL TRAILS PROGRAM.

(a) RECREATIONAL TRAILS PROGRAM FORMULA.—Section 104(h)(1) of title 23, United States Code, is amended—

(1) by striking ''Whenever'' and inserting the following:

''(A) IN GENERAL.—In any case in which'';

(2) by striking ''research and technical assistance under the recreational trails program and for the administration of the National Recreational Trails Advisory Committee'' and inserting ''research, technical assistance, and training under the recreational trails program''; and

(3) by striking ''The Secretary'' and inserting the following:

''(B) CONTRACTS AND AGREEMENTS.—The Secretary''.

(b) RECREATIONAL TRAILS PROGRAM ADMINISTRATION.—Section 206 of title 23, United States Code, is amended—

(1) in subsection (d)—

(A) by striking paragraph (2) and inserting the following:

''(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 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 land, construction of the trails shall be—

''(i) permissible under other law;

''(ii) necessary and recommended by a statewide comprehensive outdoor recreation plan that is—

''(I) required under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–4 et seq.); and

''(II) in effect;

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

''(iv) approved by each Federal agency having jurisdiction over the affected land, 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—

''(I) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

''(II) the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.); and

''(III) 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) use of trail crews, youth conservation or service corps, or other appropriate means to carry out activities under this section;

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

''(I) 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

(B) in paragraph (3)—

(i) in subparagraph (D), by striking ''(2)(F)'' and inserting ''(2)(I)''; and

(ii) by adding at the end the following:

''(E) USE OF YOUTH CONSERVATION OR SERVICE CORPS.—A State shall make available not less than 10 percent of the apportionments of the State to provide grants to, or to enter into cooperative agreements or contracts with, qualified youth conservation or service corps to perform recreational trails program activities.''; and

(2) in subsection (f)—

(A) in paragraph (1)—

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

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

(B) in paragraph (2)—

(i) in subparagraph (A), by striking ''80 percent of'' and inserting ''the amount determined in accordance with section 120 for''; and

(ii) in subparagraph (B), by inserting ''sponsoring the project'' after ''Federal agency'';

(C) by striking paragraph (5);

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

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

''(4) USE OF RECREATIONAL TRAILS PROGRAM FUNDS TO MATCH OTHER FEDERAL PROGRAM FUNDS.—Notwithstanding any other provision of law, funds made available under this section may be used to pay 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.''; and

(F) in paragraph (5) (as redesignated by subparagraph (D)), by striking ''80 percent'' and inserting ''the Federal share as determined in accordance with section 120''; and

(4) in subsection (h)—

(A) in paragraph (1), by inserting after subparagraph (B) the following:

''(C) PLANNING AND ENVIRONMENTAL ASSESSMENT COSTS INCURRED PRIOR TO PROJECT APPROVAL.—A project funded under any of subparagraphs (A) through (H) of subsection (d)(2) may permit preapproval planning and environmental compliance costs incurred not more than 18 months before project approval to be credited toward the non-Federal share in accordance with subsection (f).''; and

(B) by striking paragraph (2) and inserting the following:

''(2) WAIVER OF HIGHWAY PROGRAM REQUIREMENTS.—A project funded under this section—

''(A) is intended to enhance recreational opportunity;

''(B) is not considered to be a highway project; and

''(C) is not subject to—

''(i) section 112, 114, 116, 134, 135, 138, 217, or 301 of this title; or

''(ii) section 303 of title 49.''.

SEC. 1604. EXEMPTION OF INTERSTATE SYSTEM.

Subsection 103(c) of title 23, United States Code, is amended by adding at the end the following:

''(5) EXEMPTION OF INTERSTATE SYSTEM.—

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

''(B) INDIVIDUAL ELEMENTS.—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 would qualify independently 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.''.

SEC. 1605. STANDARDS.

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

(1) in paragraph (1), by striking ''and'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(3) consider the preservation, historic, scenic, natural environmental, and community values.''.

(b) CONTEXT SENSITIVE DESIGN.—Section 109 of title 23, United States Code, is amended by striking subsection (p) and inserting the following:

''(p) CONTEXT SENSITIVE DESIGN.—

''(1) IN GENERAL.—The Secretary shall encourage States to design projects funded under this title that—

''(A) allow for the preservation of environmental, scenic, or historic values;

''(B) ensure the safe use of the facility;

''(C) provide for consideration of the context of the locality;

''(D) encourage access for other modes of transportation; and

''(E) comply with subsection (a).

''(2) APPROVAL BY SECRETARY.—Notwithstanding subsections (b) and (c), the Secretary may approve a project described in paragraph (1) for the National Highway System if the project is designed to achieve the criteria specified in that paragraph.''.

SEC. 1606. USE OF HIGH OCCUPANCY VEHICLE LANES.

Section 102 of title 23, United States Code, is amended by striking subsection (a) and inserting the following:

''(a) HIGH OCCUPANCY VEHICLE LANE PASSENGER REQUIREMENTS.—

''(1) DEFINITIONS.—In this subsection:

''(A) RESPONSIBLE AGENCY.—The term 'responsible agency' means—

''(i) a State transportation department; and

''(ii) a local agency in a State that is responsible for transportation matters.

''(B) SERIOUSLY DEGRADED.—The term 'seriously degraded', with respect to a high occupancy vehicle lane, means, in the case of a high occupancy vehicle lane, the minimum average operating speed, performance threshold, and associated time period of the high occupancy vehicle lane, calculated and determined jointly by all applicable responsible agencies and based on conditions unique to the roadway, are unsatisfactory.

''(2) REQUIREMENTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), for each State, 1 or more responsible agencies shall establish the occupancy requirements of vehicles operating on high occupancy vehicle lanes.

''(B) MINIMUM NUMBER OF OCCUPANTS.—Except as provided in paragraph (3), an occupancy requirement established under subparagraph (A) shall—

''(i) require at least 2 occupants per vehicle for a vehicle operating on a high occupancy vehicle lane; and

''(ii) in the case of a high occupancy vehicle lane that traverses an adjacent State, be established in consultation with the adjacent State.

''(3) EXCEPTIONS TO HOV OCCUPANCY REQUIREMENTS.—

''(A) MOTORCYCLES.—For the purpose of this subsection, a motorcycle—

''(i) shall not be considered to be a single occupant vehicle; and

''(ii) shall be allowed to use a high occupancy vehicle lane unless a responsible agency—

''(I) certifies to the Secretary the use of a high occupancy vehicle lane by a motorcycle would create a safety hazard; and

''(II) restricts that the use of the high occupancy vehicle lane by motorcycles.

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

''(i) DEFINITION OF LOW EMISSION AND ENERGY-EFFICIENT VEHICLE.—In this subparagraph, the term 'low emission and energy-efficient vehicle' means a vehicle that has been certified by the Administrator of the Environmental Protection Agency—

''(I)(aa) to have a 45-mile per gallon or greater fuel economy highway rating; or

''(bb) to qualify as an alternative fueled vehicle under section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211); and

''(II) as meeting Tier II emission level established in regulations promulgated by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)) for that make and model year vehicle.

''(ii) EXEMPTION FOR LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—A responsible agency may permit qualifying low emission and energy-efficient vehicles that do not meet applicable occupancy requirements (as determined by the responsible agency) to use high occupancy vehicle lanes if the responsible agency—

''(I) establishes a program that addresses how those qualifying low emission and energy-efficient vehicles are selected and certified;

''(II) establishes requirements for labeling qualifying low emission and energy-efficient vehicles (including procedures for enforcing those requirements);

''(III) continuously monitors, evaluates, and reports to the Secretary on performance; and

''(IV) imposes such restrictions on the use on high occupancy vehicle lanes by vehicles that do not satisfy established occupancy requirements as are necessary to ensure that the performance of individual high occupancy vehicle lanes, and the entire high occupancy vehicle lane system, will not become seriously degraded.

''(C) TOLLING OF VEHICLES.—

''(i) IN GENERAL.—A responsible agency may permit vehicles, in addition to the vehicles described in paragraphs (A), (B), and (D) that do not satisfy established occupancy requirements, to use a high occupancy vehicle lane only if the responsible agency charges those vehicles a toll.

''(ii) APPLICABLE AUTHORITY.—In imposing a toll under clause (i), a responsible agency shall—

''(I) be subject to section 129;

''(II) establish a toll program that addresses ways in which motorists may enroll and participate in the program;

''(III) develop, manage, and maintain a system that will automatically collect the tolls from covered vehicles;

''(IV) continuously monitor, evaluate, and report on performance of the system;

''(V) establish such policies and procedures as are necessary—

''(aa) to vary the toll charged in order to manage the demand for use of high occupancy vehicle lanes; and

''(bb) to enforce violations; and

''(VI) establish procedures to impose such restrictions on the use of high occupancy vehicle lanes by vehicles that do not satisfy established occupancy requirements as are necessary to ensure that the performance of individual high occupancy vehicle lanes, and the entire high occupancy vehicle lane system, will not become seriously degraded.

''(D) DESIGNATED PUBLIC TRANSPORTATION VEHICLES.—

''(i) DEFINITION OF DESIGNATED PUBLIC TRANSPORTATION VEHICLE.—In this subparagraph, the term 'designated public transportation vehicle' means a vehicle that—

''(I) provides designated public transportation (as defined in section 221 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12141)); and

''(II)(aa) is owned or operated by a public entity; or

''(bb) is operated under a contract with a public entity.

''(ii) USE OF HIGH OCCUPANCY VEHICLE LANES.—A responsible agency may permit designated public transportation vehicles that do not satisfy established occupancy requirements to use high occupancy vehicle lanes if the responsible agency—

''(I) requires the clear and identifiable labeling of each designated public transportation vehicle operating under a contract with a public entity with the name of the public entity on all sides of the vehicle;

''(II) continuously monitors, evaluates, and reports on performance of those designated public transportation vehicles; and

''(III) imposes such restrictions on the use of high occupancy vehicle lanes by designated public transportation vehicles as are necessary to ensure that the performance of individual high occupancy vehicle lanes, and the entire high occupancy vehicle lane system, will not become seriously degraded.

''(E) HOV LANE MANAGEMENT, OPERATION, AND MONITORING.—

''(i) IN GENERAL.—A responsible agency that permits any of the exceptions specified in this paragraph shall comply with clauses (ii) and (iii).

''(ii) PERFORMANCE MONITORING, EVALUATION, AND REPORTING.—A responsible agency described in clause (i) shall establish, manage, and support a performance monitoring, evaluation, and reporting program under which the responsible agency continuously monitors, assesses, and reports on the effects that any vehicle permitted to use a high occupancy vehicle lane under an exception under this paragraph may have on the operation of—

''(I) individual high occupancy vehicle lanes; and

''(II) the entire high occupancy vehicle lane system.

''(iii) OPERATION OF HOV LANE OR SYSTEM.—A responsible agency described in clause (i) shall limit use of, or cease to use, any of the exceptions specified in this paragraph if the presence of any vehicle permitted to use a high occupancy vehicle lane under an exception under this paragraph seriously degrades the operation of—

''(I) individual high occupancy vehicle lanes; and

''(II) the entire high occupancy vehicle lane system.''.

SEC. 1607. BICYCLE TRANSPORTATION AND PEDESTRIAN WALKWAYS.

(a) IN GENERAL.—Section 217 of title 23, United States Code, is amended—

(1) in subsection (a), by inserting ''pedestrian and'' after ''safe'';

(2) in subsection (e), by striking ''bicycles'' each place it appears and inserting ''pedestrians or bicyclists'';

(3) by striking subsection (f) and inserting the following:

''(f) FEDERAL SHARE.—The Federal share of the construction of bicycle transportation facilities and pedestrian walkways, and for carrying out nonconstruction projects relating to safe pedestrian and bicycle use, shall be determined in accordance with section 120(b).'';

(4) by redesignating subsection (j) as subsection (k);

(5) by inserting after subsection (i) the following:

''(j) BICYCLE AND PEDESTRIAN SAFETY GRANTS.—

''(1) IN GENERAL.—The Secretary shall select and make grants to a national, nonprofit organization engaged in promoting bicycle and pedestrian safety—

''(A) to operate a national bicycle and pedestrian clearinghouse;

''(B) to develop information and educational programs regarding walking and bicycling; and

''(C) to disseminate techniques and strategies for improving bicycle and pedestrian safety.

''(2) FUNDING.—The Secretary may use funds set aside under section 104(n) to carry out this subsection.

''(3) APPLICABILITY OF TITLE 23.—Funds authorized to be appropriated to carry out this subsection shall be available for obligation in the same manner as if the funds were apportioned under section 104, except that the funds shall remain available until expended.''; and

(6) in subsection (k) (as redesignated by paragraph (4))—

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

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

''(4) SHARED USE PATH.—The term 'shared use path' means a multiuse trail or other path that is—

''(A) physically separated from motorized vehicular traffic by an open space or barrier, either within a highway right-of-way or within an independent right-of-way; and

''(B) usable for transportation purposes (including by pedestrians, bicyclists, skaters, equestrians, and other nonmotorized users).''.

(b) RESERVATION OF FUNDS.—Section 104 of title 23, United States Code (as amended by section 1522), is amended by adding at the end the following:

''(n) BICYCLE AND PEDESTRIAN SAFETY GRANTS.—On October 1 of each of fiscal years 2004 through 2009, the Secretary, after making the deductions authorized by subsections (a) and (f), shall set aside $500,000 of the remaining funds apportioned under subsection (b)(3) for use in carrying out the bicycle and pedestrian safety grant program under section 217.''.

SEC. 1608. IDLING REDUCTION FACILITIES IN INTERSTATE RIGHTS-OF-WAY.

Section 111 of title 23, United States Code, is amended by adding at the end the following:

''(d) IDLING REDUCTION FACILITIES IN INTERSTATE RIGHTS-OF-WAY.—

''(1) IN GENERAL.—Notwithstanding subsection (a), a State may—

''(A) permit electrification or other idling reduction facilities and equipment, for use by motor vehicles used for commercial purposes, to be placed in rest and recreation areas, and in safety rest areas, constructed or located on rights-of-way of the Interstate System in the State, so long as those idling reduction measures do not—

''(i) reduce the existing number of designated truck parking spaces at any given rest or recreation area; or

''(ii) preclude the use of those spaces by trucks employing alternative idle reduction technologies; and

''(B) charge a fee, or permit the charging of a fee, for the use of those parking spaces actively providing power to a truck to reduce idling.

''(2) PURPOSE.—The exclusive purpose of the facilities described in paragraph (1) (or similar technologies) shall be to enable operators of motor vehicles used for commercial purposes—

''(A) to reduce idling of a truck while parked in the rest or recreation area; and

''(B) to use installed or other equipment specifically designed to reduce idling of a truck, or provide alternative power for supporting driver comfort, while parked.''.

SEC. 1609. TOLL PROGRAMS.

(a) INTERSTATE SYSTEM RECONSTRUCTION AND REHABILITATION PILOT PROGRAM.—Section 1216(b) of the Transportation Equity Act for the 21st Century (23 U.S.C. 129 note; 112 Stat. 212)—

(1) is amended—

(A) in paragraph (1)—

(i) by striking ''The Secretary'' and inserting ''Notwithstanding section 301, the Secretary''; and

(ii) by striking ''that could not otherwise be adequately maintained or functionally improved without the collection of tolls'';

(B) in paragraph (3), by striking subparagraph (C) and inserting the following:

''(C) An analysis demonstrating that financing the reconstruction or rehabilitation of the facility with the collection of tolls under this pilot program is the most efficient, economical, or expeditious way to advance the project.'';

(C) in paragraph (4)—

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

''(A) the State's analysis showing that financing the reconstruction or rehabilitation of a facility with the collection of tolls under the pilot program is the most efficient, economical, or expeditious way to advance the project;'';

(ii) by striking subparagraph (B) and inserting the following:

''(B) the facility needs reconstruction or rehabilitation, including major work that may require replacing sections of the existing facility on new alignment;'';

(iii) by striking subparagraph (C); and

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

(2) is redesignated as subsection (d) of section 129 of title 23, United States Code, and moved to appear at the end of that section; and

(3) by striking ''of title 23, United States Code'' each place it appears.

(b) FAST AND SENSIBLE TOLL (FAST) LANES PROGRAM.—Section 129 of title 23, United States Code (as amended by subsection (a)(2)), is amended by adding at the end the following:

''(e) FAST AND SENSIBLE TOLL (FAST) LANES PROGRAM.—

''(1) DEFINITIONS.—In this subsection:

''(A) ELIGIBLE TOLL FACILITY.—The term 'eligible toll facility' includes—

''(i) a facility in existence on the date of enactment of this subsection that collects tolls;

''(ii) a facility in existence on the date of enactment of this subsection, including a facility that serves high occupancy vehicles;

''(iii) a facility modified or constructed after the date of enactment of this subsection to create additional tolled capacity (including a facility constructed by a private entity or using private funds); and

''(iv) in the case of a new lane added to a previously non-tolled facility, only the new lane.

''(B) NONATTAINMENT AREA.—The term 'nonattainment area' has the meaning given the term in section 171 of the Clean Air Act (42 U.S.C. 7501).

''(2) ESTABLISHMENT.—Notwithstanding sections 129 and 301, the Secretary shall permit a State, public authority, or a public or private entity designated by a State, to collect a toll from motor vehicles at an eligible toll facility for any highway, bridge, or tunnel, including facilities on the Interstate System—

''(A) to manage high levels of congestion;

''(B) to reduce emissions in a nonattainment area or maintenance area; or

''(C) to finance the expansion of a highway, for the purpose of reducing traffic congestion, by constructing 1 or more additional lanes (including bridge, tunnel, support, and other structures necessary for that construction) on the Interstate System.

''(3) LIMITATION ON USE OF REVENUES.—

''(A) USE.—

''(i) IN GENERAL.—Toll revenues received under paragraph (2) shall be used by a State, public authority, or private entity designated by a State, for—

''(I) debt service for debt incurred on 1 or more highway or transit projects carried out under this title or title 49;

''(II) a reasonable return on investment of any private financing;

''(III) the costs necessary for proper operation and maintenance of any facilities under paragraph (2) (including reconstruction, resurfacing, restoration, and rehabilitation); or

''(IV) if the State, public authority, or private entity annually certifies that the tolled facility is being adequately operated and maintained, any other purpose relating to a highway or transit project carried out under this title or title 49.

''(B) REQUIREMENTS.—

''(i) VARIABLE PRICE REQUIREMENT.—A facility that charges tolls under this subsection may establish a toll that varies in price according to time of day or level of traffic, as appropriate to manage congestion or improve air quality.

''(ii) HOV VARIABLE PRICING REQUIREMENT.—The Secretary shall require, for each high occupancy vehicle facility that charges tolls under this subsection, that the tolls vary in price according to time of day or level of traffic, as appropriate to manage congestion or improve air quality.

''(iii) HOV PASSENGER REQUIREMENTS.—In addition to the exceptions to the high occupancy vehicle passenger requirements established under section 102(a)(2), a State may permit motor vehicles with fewer than 2 occupants to operate in high occupancy vehicle lanes as part of a variable toll pricing program established under this subsection.

''(C) AGREEMENT.—

''(i) IN GENERAL.—Before the Secretary may permit a facility to charge tolls under this subsection, the Secretary and the applicable State, public authority, or private entity designated by a State shall enter into an agreement for each facility incorporating the conditions described in subparagraphs (A) and (B).

''(ii) TERMINATION.—An agreement under clause (i) shall terminate with respect to a facility upon the decision of the State, public authority, or private entity designated by a State to discontinue the variable tolling program under this subsection for the facility.

''(iii) DEBT.—

''(I) IN GENERAL.—If there is any debt outstanding on a facility at the time at which the decision is made to discontinue the program under this subsection with respect to the facility, the facility may continue to charge tolls in accordance with the terms of the agreement until such time as the debt is retired.

''(II) NOTICE.—On retirement of the debt of a tolled facility, the applicable State, public authority, or private entity designated by a State shall provide notice to the public of that retirement.

''(D) LIMITATION ON FEDERAL SHARE.—The Federal share of the cost of a project on a facility tolled under this subsection, including a project to install the toll collection facility shall be a percentage, not to exceed 80 percent, determined by the applicable State.

''(4) ELIGIBILITY.—To be eligible to participate in the program under this subsection, a State, public authority, or private entity designated by a State shall provide to the Secretary—

''(A) a description of the congestion or air quality problems sought to be addressed under the program;

''(B) a description of—

''(i) the goals sought to be achieved under the program; and

''(ii) the performance measures that would be used to gauge the success made toward reaching those goals; and

''(C) such other information as the Secretary may require.

''(5) AUTOMATION.—Fees collected from motorists using a FAST lane shall be collected only through the use of noncash electronic technology that optimizes the free flow of traffic on the tolled facility.

''(6) INTEROPERABILITY.—

''(A) RULE.—

''(i) IN GENERAL.—Not later than 180 days after the date of enactment of this paragraph, the Secretary shall promulgate a final rule specifying requirements, standards, or performance specifications for automated toll collection systems implemented under this section.

''(ii) DEVELOPMENT.—In developing that rule, which shall be designed to maximize the interoperability of electronic collection systems, the Secretary shall, to the maximum extent practicable—

''(I) seek to accelerate progress toward the national goal of achieving a nationwide interoperable electronic toll collection system;

''(II) take into account the use of noncash electronic technology currently deployed within an appropriate geographical area of travel and the noncash electronic technology likely to be in use within the next 5 years; and

''(III) seek to minimize additional costs and maximize convenience to users of toll facility and to the toll facility owner or operator.

''(B) FUTURE MODIFICATIONS.—As the state of technology progresses, the Secretary shall modify the rule promulgated under subparagraph (A), as appropriate.

''(7) REPORTING.—

''(A) IN GENERAL.—The Secretary, in cooperation with State and local agencies and other program participants and with opportunity for public comment, shall—

''(i) develop and publish performance goals for each FAST lane project;

''(ii) establish a program for regular monitoring and reporting on the achievement of performance goals, including—

''(I) effects on travel, traffic, and air quality;

''(II) distribution of benefits and burdens;

''(III) use of alternative transportation modes; and

''(IV) use of revenues to meet transportation or impact mitigation needs.

''(B) REPORTS TO CONGRESS.—The Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

''(i) not later than 1 year after the date of enactment of this subsection, and annually thereafter, a report that describes in detail the uses of funds under this subsection in accordance with paragraph (8)(D); and

''(ii) not later than 3 years after the date of enactment of this subsection, and every 3 years thereafter, a report that describes any success of the program under this subsection in meeting congestion reduction and other performance goals established for FAST lane programs.

''(8) FUNDING.—

''(A) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out pre-implementation studies and post-implementation evaluations of projects planned or implemented under this subsection $11,000,000 for each of fiscal years 2004 through 2009.

''(B) AVAILABILITY.—Funds allocated by the Secretary to a State under this subsection shall remain available for obligation by the State for a period of 3 years after the last day of the fiscal year for which the funds were authorized.

''(C) CONTRACT AUTHORITY.—Funds authorized to be appropriated under this paragraph shall be available for obligation in the same manner as if the funds were apportioned under this chapter, except that the Federal share of the cost of any project carried out under this subsection and the availability of funds authorized by this paragraph shall be determined in accordance with this subsection.

''(D) PROGRAM PROMOTION.—Notwithstanding any other provision of this section, the Secretary shall use an amount not to exceed 2 percent of the funds made available under subparagraph (A)—

''(i) to make grants to promote the purposes of the program under this subsection;

''(ii) to provide technical support to State and local governments or other public or private entities involved in implementing or considering FAST lane programs; and

''(iii) to conduct research on variable pricing that will support State or local efforts to initiate those pricing requirements.

''(E) EFFECT ON OTHER APPORTIONMENTS AND ALLOCATIONS.—Revenues collected from tolls established under this subsection shall not be taken into account in determining the apportionments and allocations that any State or transportation district within a State shall be entitled to receive under or in accordance with this chapter.

''(9) COMPLIANCE.—The Secretary shall ensure that any project or activity carried out

under this section complies with requirements under section 106 of this title and section 307 of title 49.

''(10) VOLUNTARY USE.—Nothing in this subsection requires any highway user to use a FAST lane.

''(11) ENVIRONMENTAL REQUIREMENTS.—Nothing in this subsection affects any environmental requirement applicable to the construction or operation of an eligible toll facility under this title or any other provision of law.''.

(c) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Section 1012 of the Intermodal Surface Transportation Efficiency Act (23 U.S.C. 149 note; 105 Stat. 1938; 112 Stat. 211) is amended by striking subsection (b).

(2) CONTINUATION OF PROGRAM.—Notwithstanding the amendment made by paragraph (1), the Secretary shall monitor and allow any value pricing program established under a cooperative agreement in effect on the day before the date of enactment of this Act to continue.

SEC. 1610. FEDERAL REFERENCE METHOD.

(a) IN GENERAL.—Section 6102 of the Transportation Equity Act for the 21st Century (42 U.S.C. 7407 note; 112 Stat. 464) is amended by striking subsection (e) and inserting the following:

''(e) FIELD STUDY.—Not later than 2 years after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, the Administrator shall—

''(1) conduct a field study of the ability of the $PM_{2.5}$ Federal Reference Method to differentiate those particles that are larger than 2.5 micrometers in diameter;

''(2) develop a Federal reference method to measure directly particles that are larger than 2.5 micrometers in diameter without reliance on subtracting from coarse particle measurements those particles that are equal to or smaller than 2.5 micrometers in diameter;

''(3) develop a method of measuring the composition of coarse particles; and

''(4) submit a report on the study and responsibilities of the Administrator under paragraphs (1) through (3) to—

''(A) the Committee on Commerce of the House of Representatives; and

''(B) the Committee on Environment and Public Works of the Senate.''.

SEC. 1611. ADDITION OF PARTICULATE MATTER AREAS TO CMAQ.

Section 104(b)(2) of title 23, United States Code, is amended—

(1) in subparagraph B—

(A) in the matter preceding clause (i), by striking ''ozone or carbon monoxide'' and inserting ''ozone, carbon monoxide, or fine particulate matter ($PM_{2.5}$)'';

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

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

(C) in clause (vi), by striking ''or'' after the semicolon; and

(D) in clause (vii)—

(i) by striking ''area as described in section 149(b) for ozone,'' and inserting ''area for ozone (as described in section 149(b) or for PM–2.5''; and

(ii) by striking the period at the end and inserting a semicolon;

(2) by adding at the end the following:

''(viii) 1.0 if, at the time of apportionment, any county that is not designated as a nonattainment or maintenance area under the 1-hour ozone standard is designated as nonattainment under the 8-hour ozone standard; or

''(ix) 1.2 if, at the time of apportionment, the area is not a nonattainment or maintenance area as described in section 149(b) for ozone or carbon monoxide, but is an area designated nonattainment under the PM–2.5 standard.'';

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

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

(4) by redesignating subparagraph (D) and (E) as subparagraphs (E) and (F) respectively; and

(5) by inserting after subparagraph (C) the following:

''(D) ADDITIONAL ADJUSTMENT FOR PM 2.5 AREAS.—If, in addition to being designated as a nonattainment or maintenance area for ozone or carbon monoxide, or both as described in section 149(b), any county within the area was also designated under the PM–2.5 standard as a nonattainment or maintenance area, the weighted nonattainment or maintenance area population of those counties shall be further multiplied by a factor of 1.2.''.

SEC. 1612. ADDITION TO CMAQ-ELIGIBLE PROJECTS.

(a) ELIGIBLE PROJECTS.—Section 149(b) of title 23, United States Code, is amended—

(1) in paragraph (4), by striking ''or'' at the end;

(2) in paragraph (5), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(6) if the project or program is for the purchase of alternative fuel (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)) or biodiesel.''.

(b) STATES RECEIVING MINIMUM APPORTIONMENT.—Section 149(c) of title 23, United States Code, is amended—

(1) in paragraph (1), by striking ''for any project eligible under the surface transportation program under section 133.'' and inserting the following: ''for any project in the State that—

''(A) would otherwise be eligible under this section as if the project were carried out in a nonattainment or maintenance area; or

''(B) is eligible under the surface transportation program under section 133.''; and

(2) in paragraph (2), by striking ''for any project in the State eligible under section 133.'' and inserting the following: ''for any project in the State that—

''(A) would otherwise be eligible under this section as if the project were carried out in a nonattainment or maintenance area; or

''(B) is eligible under the surface transportation program under section 133.''.

SEC. 1613. IMPROVED INTERAGENCY CONSULTATION.

Section 149 of title 23, United States Code, is amended by adding at the end the following:

''(g) INTERAGENCY CONSULTATION.—The Secretary shall encourage States and metropolitan planning organizations to consult with State and local air quality agencies in nonattainment and maintenance areas on the estimated emission reductions from proposed congestion mitigation and air quality improvement programs and projects.''.

SEC. 1614. EVALUATION AND ASSESSMENT OF CMAQ PROJECTS.

Section 149 of title 23, United States Code, is amended by adding at the end the following:

''(h) EVALUATION AND ASSESSMENT OF PROJECTS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall evaluate and assess a representative sample of projects funded under the congestion mitigation and air quality program to—

''(A) determine the direct and indirect impact of the projects on air quality and congestion levels; and

''(B) ensure the effective implementation of the program.

''(2) DATABASE.—Using appropriate assessments of projects funded under the congestion mitigation and air quality program and results from other research, the Secretary shall maintain and disseminate a cumulative database describing the impacts of the projects.

''(3) CONSIDERATION.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall consider the recommendations and findings of the report submitted to Congress under section 1110(e) of the Transportation Equity Act for the 21st Century (112 Stat. 144), including recommendations and findings that would improve the operation and evaluation of the congestion mitigation and air quality improvement program under section 149.''.

SEC. 1615. SYNCHRONIZED PLANNING AND CONFORMITY TIMELINES, REQUIREMENTS, AND HORIZON.

(a) METROPOLITAN PLANNING.—

(1) DEVELOPMENT OF LONG-RANGE TRANSPORTATION PLAN.—Section 134(g)(1) of title 23, United States Code, is amended by striking ''periodically, according to a schedule that the Secretary determines to be appropriate,'' and inserting ''every 4 years (or more frequently, in a case in which the metropolitan planning organization elects to update a transportation plan more frequently) in areas designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)), and in areas that were nonattainment that have been redesignated to attainment in accordance with section 107(d)(3) of that Act (42 U.S.C. 7407(d)(3)), with a maintenance plan under section 175A of that Act (42 U.S.C. 7505a), or every 5 years (or more frequently, in a case in which the metropolitan planning organization elects to update a transportation plan more frequently) in areas designated as attainment (as defined in section 107(d) of that Act (42 U.S.C. 7407(d))),''.

(2) METROPOLITAN TRANSPORTATION IMPROVEMENT PROGRAM.—Section 134(h) of title 23, United States Code, is amended—

(A) in paragraph (1)(D), by striking ''2 years'' and inserting ''4 years''; and

(B) in paragraph (2)(A), by striking ''3-year'' and inserting ''4-year''.

(3) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—Section 135(f)(1)(A) of title 23, United States Code, is amended by inserting after ''program'' the following: ''(which program shall cover a period of 4 years and be updated every 4 years)''.

(4) FINAL REGULATIONS.—Not later than 18 months after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, the Secretary shall promulgate regulations that are consistent with the amendments made by this subsection.

(b) SYNCHRONIZED CONFORMITY DETERMINATION.—Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) is amended—

(1) in paragraph (2)—

(A) by striking ''(2) Any transportation plan'' and inserting the following:

''(2) TRANSPORTATION PLANS AND PROGRAMS.—Any transportation plan'';

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

(C) in subparagraph (D)—

(i) by striking ''Any project'' and inserting ''any transportation project''; and

(ii) by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following:

''(E) the appropriate metropolitan planning organization shall redetermine conformity of existing transportation plans and programs not later than 2 years after the date on which the Administrator—

''(i) finds a motor vehicle emissions budget to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2003);

''(ii) approves an implementation plan that establishes a motor vehicle emissions budget, if that budget has not yet been used in a conformity determination prior to approval; or

''(iii) promulgates an implementation plan that establishes or revises a motor vehicle emissions budget.'';

(2) in paragraph (4)(B)(ii), by striking ''but in no case shall such determinations for transportation plans and programs be less frequent than every 3 years; and'' and inserting ''but the frequency for making conformity determinations on updated transportation plans and programs shall be every 4 years, except in a case in which—

''(I) the metropolitan planning organization elects to update a transportation plan or program more frequently; or

''(II) the metropolitan planning organization is required to determine conformity in accordance with paragraph (2)(E); and'';

(3) in paragraph (4)(B)—

(A) in clause (ii), by striking ''and'' at the end;

(B) in clause (iii), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(iv) address the effects of the most recent population, economic, employment, travel, transit ridership, congestion, and induced travel demand information in the development and application of the latest travel and emissions models.'';

(4) by adding at the end the following:

''(7) CONFORMITY HORIZON FOR TRANSPORTATION PLANS.—

''(A) IN GENERAL.—For the purposes of this section, a transportation plan in a nonattainment or maintenance area shall be considered to be a transportation plan or a portion of a transportation plan that extends for the longest of the following periods:

''(i) The first 10-year period of any such transportation plan.

''(ii) The latest year in the implementation plan applicable to the area that contains a motor vehicle emission budget.

''(iii) The year after the completion date of a regionally significant project, if the project requires approval before the subsequent conformity determination.

''(B) EXCEPTION.—In a case in which an area has a revision to an implementation plan under section 175A(b) and the Administrator has found the motor vehicle emissions budgets from that revision to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2003), or has approved the revision, the transportation plan shall be considered to be a transportation plan or portion of a transportation plan that extends through the last year of the implementation plan required under section 175A(b).

''(8) DEFINITIONS.—In this subsection:

''(A) REGIONALLY SIGNIFICANT PROJECT.—

''(i) IN GENERAL.—The term 'regionally significant project' means a transportation project that is on a facility that serves a regional transportation need, including—

''(I) access to and from the area outside of the region;

''(II) access to and from major planned developments, including new retail malls, sports complexes, or transportation terminals; and

''(III) most transportation terminals.

''(ii) PRINCIPAL ARTERIALS AND FIXED GUIDEWAYS.—The term 'regionally significant project' includes, at a minimum—

''(I) all principal arterial highways; and

''(II) all fixed guideway transit facilities that offer an alternative to regional highway travel.

''(iii) ADDITIONAL PROJECTS.—The interagency consultation process and procedures described in section 93.105(c) of title 40, Code of Federal Regulations (as in effect on October 1, 2003), shall be used to make determinations as to whether minor arterial highways and other transportation projects should be considered 'regionally significant projects'.

''(iv) EXCLUSIONS.—The term 'regionally significant project' does not include any project of a type listed in sections 93.126 or 127 of title 40, Code of Federal Regulations (as in effect on October 1, 2003).

''(B) SIGNIFICANT REVISION.—The term 'significant revision' means—

''(i) with respect to a regionally significant project, a significant change in design concept or scope to the project; and

''(ii) with respect to any other kind of project, a change that converts a project that is not a regionally significant project into a regionally significant project.

''(C) TRANSPORTATION PROJECT.—The term 'transportation project' includes only a project that is—

''(i) a regionally significant project; or

''(ii) a project that makes a significant revision to an existing project.''; and

(5) in the matter following paragraph (3)(B), by inserting ''transportation'' before ''project'' each place it appears.

SEC. 1616. TRANSITION TO NEW AIR QUALITY STANDARDS.

Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) is amended by striking paragraph (3) and inserting the following:

''(3) METHODS OF CONFORMITY DETERMINATION BEFORE BUDGET IS AVAILABLE.—

''(A) IN GENERAL.—Until such time as a motor vehicle emission budget from an implementation plan submitted for a national ambient air quality standard is determined to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2003), or the submitted implementation plan is approved, conformity of such a plan, program, or project shall be demonstrated, in accordance with clauses (i) and (ii) and as selected through the consultation process required under paragraph (4)(D)(i), with—

''(i) a motor vehicle emission budget that has been found adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2003), or that has been approved, from an implementation plan for the most recent prior applicable national ambient air quality standard addressing the same pollutant; or

''(ii) other such tests as the Administrator shall determine to ensure that—

''(I) the transportation plan or program—

''(aa) is consistent with the most recent estimates of mobile source emissions;

''(bb) provides for the expeditious implementation of transportation control measures in the applicable implementation plan; and

''(cc) with respect to an ozone or carbon monoxide nonattainment area, contributes to annual emissions reductions consistent with sections 182(b)(1) and 187(a)(7); and

''(II) the transportation project—

''(aa) comes from a conforming transportation plan and program described in this subparagraph; and

''(bb) in a carbon monoxide nonattainment area, eliminates or reduces the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.

''(B) DETERMINATION FOR A TRANSPORTATION PROJECT IN A CARBON MONOXIDE NONATTAINMENT AREA.—A determination under subparagraph (A)(ii)(II)(bb) may be made as part of either the conformity determination for the transportation program or for the individual project taken as a whole during the environmental review phase of project development.''.

SEC. 1617. REDUCED BARRIERS TO AIR QUALITY IMPROVEMENTS.

Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) (as amended by section 1615(b)(4)) is amended—

(1) by redesignating paragraph (8) as paragraph (9); and

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

''(8) SUBSTITUTION FOR TRANSPORTATION CONTROL MEASURES.—

''(A) IN GENERAL.—Transportation control measures that are specified in an implementation plan may be replaced or added to the implementation plan with alternate or additional transportation control measures if—

''(i) the substitute measures achieve equivalent or greater emissions reductions than the control measure to be replaced, as demonstrated with an analysis that is consistent with the current methodology used for evaluating the replaced control measure in the implementation plan;

''(ii) the substitute control measures are implemented—

''(I) in accordance with a schedule that is consistent with the schedule provided for control measures in the implementation plan; or

''(II) if the implementation plan date for implementation of the control measure to be replaced has passed, as soon as practicable after the implementation plan date but not later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

''(iii) the substitute and additional control measures are accompanied with evidence of adequate personnel, funding, and authority under State or local law to implement, monitor, and enforce the control measures;

''(iv) the substitute and additional control measures were developed through a collaborative process that included—

''(I) participation by representatives of all affected jurisdictions (including local air pollution control agencies, the State air pollution control agency, and State and local transportation agencies);

''(II) consultation with the Administrator; and

''(III) reasonable public notice and opportunity for comment; and

''(v) the metropolitan planning organization, State air pollution control agency, and the Administrator concur with the equivalency of the substitute or additional control measures.

''(B) ADOPTION.—After carrying out subparagraph (A), a State shall adopt the substitute or additional transportation control measure in the applicable implementation plan.

''(C) NO REQUIREMENT FOR EXPRESS PERMISSION.—The substitution or addition of a transportation control measure in accordance with this paragraph shall not be contingent on there being any provision in the implementation plan that expressly permits such a substitution or addition.

''(D) NO REQUIREMENT FOR NEW CONFORMITY DETERMINATION.—The substitution or addition of a transportation control measure in

accordance with this paragraph shall not require—

''(i) a new conformity determination for the transportation plan; or

''(ii) a revision of the implementation plan.

''(E) CONTINUATION OF CONTROL MEASURE BEING REPLACED.—A control measure that is being replaced by a substitute control measure under this paragraph shall remain in effect until the substitute control measure is adopted by the State pursuant to subparagraph (B).

''(F) EFFECT OF ADOPTION.—Adoption of a substitute control measure shall constitute rescission of the previously applicable control measure.''.

SEC. 1618. AIR QUALITY MONITORING DATA INFLUENCED BY EXCEPTIONAL EVENTS.

(a) IN GENERAL.—Section 319 of the Clean Air Act (42 U.S.C. 7619) is amended—

(1) by striking the section heading and all that follows through ''after notice and opportunity for public hearing'' and inserting the following:

''SEC. 319. AIR QUALITY MONITORING.

''(a) IN GENERAL.—After notice and opportunity for public hearing''; and

(2) by adding at the end the following:

''(b) AIR QUALITY MONITORING DATA INFLUENCED BY EXCEPTIONAL EVENTS.—

''(1) DEFINITION OF EXCEPTIONAL EVENT.—In this section:

''(A) IN GENERAL.—The term 'exceptional event' means an event that—

''(i) affects air quality;

''(ii) is not reasonably controllable or preventable;

''(iii) is—

''(I) a natural event; or

''(II) an event caused by human activity that is unlikely to recur at a particular location; and

''(iv) is determined by the Administrator through the process established in the regulations promulgated under paragraph (2) to be an exceptional event.

''(B) EXCLUSIONS.—The term 'exceptional event' does not include—

''(i) stagnation of air masses or meteorological inversions;

''(ii) a meteorological event involving high temperatures or lack of precipitation; or

''(iii) air pollution relating to source noncompliance.

''(2) REGULATIONS.—

''(A) PROPOSED REGULATIONS.—Not later than March 1, 2005, after consultation with Federal land managers and State air pollution control agencies, the Administrator shall publish in the Federal Register proposed regulations governing the review and handling of air quality monitoring data influenced by exceptional events.

''(B) FINAL REGULATIONS.—Not later than 1 year after the date on which the Administrator publishes proposed regulations under subparagraph (A), and after providing an opportunity for interested persons to make oral presentations of views, data, and arguments regarding the proposed regulations, the Administrator shall promulgate final regulations governing the review and handling or air quality monitoring data influenced by an exceptional event that are consistent with paragraph (3).

''(3) PRINCIPLES AND REQUIREMENTS.—

''(A) PRINCIPLES.—In promulgating regulations under this section, the Administrator shall follow—

''(i) the principle that protection of public health is the highest priority;

''(ii) the principle that timely information should be provided to the public in any case in which the air quality is unhealthy;

''(iii) the principle that all ambient air quality data should be included in a timely manner, an appropriate Federal air quality database that is accessible to the public;

''(iv) the principle that each State must take necessary measures to safeguard public health regardless of the source of the air pollution; and

''(v) the principle that air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in all monitoring data and analyses.

''(B) REQUIREMENTS.—Regulations promulgated under this section shall, at a minimum, provide that—

''(i) the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies;

''(ii) a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location;

''(iii) there is a public process for determining whether an event is exceptional; and

''(iv) there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the Environmental Protection Agency with respect to exceedances or violations of the national ambient air quality standards.

''(4) INTERIM PROVISION.—Until the effective date of a regulation promulgated under paragraph (2), the following guidance issued by the Administrator shall continue to apply:

''(A) Guidance on the identification and use of air quality data affected by exceptional events (July 1986).

''(B) Areas affected by PM–10 natural events, May 30, 1996.

''(C) Appendices I, K, and N to part 50 of title 40, Code of Federal Regulations.''.

SEC. 1619. CONFORMING AMENDMENTS.

Section 176(c)(4) of the Clean Air Act (42 U.S.C. 7506(c)(4) is amended—

(1) by redesignating subparagraphs (B) through (D) as subparagraphs (D) through (F), respectively;

(2) by striking ''(4)(A) No later than one year after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate'' and inserting the following:

''(4) CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY.—

''(A) IN GENERAL.—The Administrator shall promulgate, and periodically update,'';

(3) in subparagraph (A)—

(A) in the second sentence, by striking ''No later than one year after such date of enactment, the Administrator, with the concurrence of the Secretary of Transportation, shall promulgate'' and inserting the following:

''(B) TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS.—The Administrator, with the concurrence of the Secretary of Transportation, shall promulgate, and periodically update,''; and

(B) in the third sentence, by striking ''A suit'' and inserting the following:

''(C) CIVIL ACTION TO COMPEL PROMULGATION.—A civil action''; and

(4) by striking subparagraph (E) (as redesignated by paragraph (1)) and inserting the following:

''(E) INCLUSION OF CRITERIA AND PROCEDURES IN SIP.—Not later than 2 years after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, the procedures under subparagraph (A) shall include a requirement that each State include in the State implementation plan criteria and procedures for consultation in accordance with the Administrator's criteria and procedures for consultation required by subparagraph (D)(i).''.

SEC. 1620. HIGHWAY STORMWATER DISCHARGE MITIGATION PROGRAM.

(a) HIGHWAY STORMWATER MITIGATION PROJECTS.—Section 133(d) of title 23, United States Code (as amended by section 1401(a)(2)(B)), is amended by adding at the end the following:

''(5) HIGHWAY STORMWATER DISCHARGE MITIGATION PROJECTS.—Of the amount apportioned to a State under section 104(b)(3) for a fiscal year, 2 percent shall be available only for projects and activities carried out under section 167.''.

(b) HIGHWAY STORMWATER DISCHARGE MITIGATION PROGRAM.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1601(a)), is amended by adding at the end the following:

''§ 167. Highway stormwater discharge mitigation program

''(a) DEFINITIONS.—In this section:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

''(2) ELIGIBLE MITIGATION PROJECT.—The term 'eligible mitigation project' means a practice or technique that—

''(A) improves stormwater discharge water quality;

''(B) attains preconstruction hydrology;

''(C) promotes infiltration of stormwater into groundwater;

''(D) recharges groundwater;

''(E) minimizes stream bank erosion;

''(F) promotes natural filters;

''(G) otherwise mitigates water quality impacts of highway stormwater discharges, improves surface water quality, or enhances groundwater recharge; or

''(H) reduces flooding caused by highway stormwater discharge.

''(3) FEDERAL-AID HIGHWAY AND ASSOCIATED FACILITY.—The term 'Federal-aid highway and associated facility' means—

''(A) a Federal-aid highway; or

''(B) a facility or land owned by a State (or political subdivision of a State) that is directly associated with the Federal-aid highway.

''(4) HIGHWAY STORMWATER DISCHARGE.—The term 'highway stormwater discharge' means stormwater discharge from a Federal-aid highway, or a Federal-aid highway and associated facility, that was constructed before the date of enactment of this section.

''(5) HIGHWAY STORMWATER DISCHARGE MITIGATION.—The term 'highway stormwater discharge mitigation' means—

''(A) the reduction of water quality impacts of stormwater discharges from Federal-aid highways or Federal-aid highways and associated facilities; or

''(B) the enhancement of groundwater recharge from stormwater discharges from Federal-aid highways or Federal-aid highways and associated facilities.

''(6) PROGRAM.—The term 'program' means the highway stormwater discharge mitigation program established under subsection (b).

''(b) ESTABLISHMENT.—The Secretary shall establish a highway stormwater discharge mitigation program—

''(1) to improve the quality of stormwater discharge from Federal-aid highways or Federal-aid highways and associated facilities; and

''(2) to enhance groundwater recharge.

''(c) PRIORITY OF PROJECTS.—For projects funded from the allocation under section 133(d)(6), a State shall give priority to

projects sponsored by a State or local government that assist the State or local government in complying with the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

''(d) GUIDANCE.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Administrator, shall issue guidance to assist States in carrying out this section.

''(2) REQUIREMENTS FOR GUIDANCE.—The guidance issued under paragraph (1) shall include information concerning innovative technologies and nonstructural best management practices to mitigate highway stormwater discharges.''.

(c) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1601(b), is amended by inserting after the item relating to section 166 the following:

''167. Highway stormwater discharge mitigation program.''.

SEC. 1621. EXEMPTION FROM CERTAIN HAZARDOUS MATERIALS TRANSPORTATION REQUIREMENTS.

(a) DEFINITION OF ELIGIBLE PERSON.—In this section, the term ''eligible person'' means an agricultural producer that has gross agricultural commodity sales that do not exceed $500,000.

(b) EXEMPTION.—Subject to subsection (c), part 172 of title 49, Code of Federal Regulations, shall not apply to an eligible person that transports a fertilizer, pesticide, propane, gasoline, or diesel fuel for agricultural purposes, to the extent determined by the Secretary.

(c) APPLICABILITY.—Subsection (b) applies to security plan requirements under subpart I of part 172 of title 49, Code of Federal Regulations (or a successor regulation).

Subtitle G—Operations

SEC. 1701. TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.

(a) SURFACE TRANSPORTATION PROGRAM ELIGIBILITY.—Section 133(b) of title 23, United States Code (as amended by section 1601(a)(2)), is amended by adding at the end the following:

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

''(17) RUSH HOUR CONGESTION RELIEF.—

''(A) IN GENERAL.—Subject to subparagraph (B), a State may spend the funds apportioned under this section to reduce traffic delays caused by motor vehicle accidents and breakdowns on highways during peak driving times.

''(B) USE OF FUNDS.—A State, metropolitan planning organization, or local government may use the funds under subparagraph (A)—

''(i) to develop a region-wide coordinated plan to mitigate traffic delays caused by motor vehicle accidents and breakdowns;

''(ii) to purchase or lease telecommunications equipment for first responders;

''(iii) to purchase or lease towing and recovery services;

''(iv) to pay contractors for towing and recovery;

''(v) to rent vehicle storage areas adjacent to roadways;

''(vi) to fund service patrols, equipment, and operations;

''(vii) to purchase incident detection equipment;

''(viii) to carry out training.''.

(b) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM ELIGIBILITY.—Section 149(b)(5) of title 23, United States Code, is amended by inserting ''improve transportation systems management and operations,'' after ''intersections,''.

(c) TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.—

(1) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1620(b)), is amended by adding at the end the following:

''§ 168. Transportation systems management and operations

''(a) IN GENERAL.—The Secretary shall carry out a transportation systems management and operations program to—

''(1) ensure efficient and effective transportation systems management and operations on Federal-aid highways through collaboration, coordination, and real-time information sharing at a regional and Statewide level among—

''(A) managers and operators of major modes of transportation;

''(B) public safety officials; and

''(C) the general public; and

''(2) manage and operate Federal-aid highways in a coordinated manner to preserve the capacity and maximize the performance of highway and transit facilities for travelers and carriers.

''(b) AUTHORIZED ACTIVITIES.—

''(1) IN GENERAL.—In carrying out the program under subsection (a), the Secretary may carry out activities to—

''(A) encourage managers and operators of major modes of transportation, public safety officials, and transportation planners in urbanized areas that are responsible for conducting the day-to-day management, operations, public safety, and planning of transportation facilities and services to collaborate on and coordinate, on a regional level and in a continuous and sustained manner, improved transportation systems management and operations; and

''(B) encourage States to—

''(i) establish a system of basic real-time monitoring for the surface transportation system; and

''(ii) provide the means to share the data gathered under clause (i) among—

''(I) highway, transit, and public safety agencies;

''(II) jurisdictions (including States, cities, counties, and metropolitan planning organizations);

''(III) private-sector entities; and

''(IV) the general public.

''(2) ACTIVITIES.—Activities to be carried out under paragraph (1) include—

''(A) developing a regional concept of operations that defines a regional strategy shared by all transportation and public safety participants with respect to the manner in which the transportation systems of the region should be managed, operated, and measured;

''(B) the sharing of information among operators, service providers, public safety officials, and the general public; and

''(C) guiding, in a regionally-coordinated manner and in a manner consistent with and integrated into the metropolitan and statewide transportation planning processes and regional intelligent transportation system architecture, the implementation of regional transportation system management and operations initiatives, including—

''(i) emergency evacuation and response;

''(ii) traffic incident management;

''(iii) technology deployment; and

''(iv) traveler information systems delivery.

''(c) COOPERATION.—In carrying out the program under subsection (a), the Secretary may assist and cooperate with other Federal agencies, State and local governments, metropolitan planning organizations, private industry, and other interested parties to improve regional collaboration and real-time information sharing between managers and operators of major modes of transportation, public safety officials, emergency managers, and the general public to increase the security, safety, and reliability of Federal-aid highways.

''(d) GUIDANCE; REGULATIONS.—

''(1) IN GENERAL.—In carrying out the program under subsection (a), the Secretary may issue guidance or promulgate regulations for the procurement of transportation system management and operations facilities, equipment, and services, including—

''(A) equipment procured in preparation for natural disasters, disasters caused by human activity, and emergencies;

''(B) system hardware;

''(C) software; and

''(D) software integration services.

''(2) CONSIDERATIONS.—In developing the guidance or regulations under paragraph (1), the Secretary may consider innovative procurement methods that support the timely and streamlined execution of transportation system management and operations programs and projects.

''(3) FINANCIAL ASSISTANCE.—The Secretary may authorize the use of funds made available under section 104(b)(3) to provide assistance for regional operations collaboration and coordination activities that are associated with regional improvements, such as—

''(A) traffic incident management;

''(B) technology deployment;

''(C) emergency management and response;

''(D) traveler information; and

''(E) congestion relief.''.

(2) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1620(c)), is amended by adding at the end:

''168. Transportation systems management and operations.''.

SEC. 1702. REAL-TIME SYSTEM MANAGEMENT INFORMATION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1701(c)(1)), is amended by adding at the end the following:

''§ 169. Real-time system management information program

''(a) IN GENERAL.—The Secretary shall carry out a real-time system management information program to—

''(1) provide a nationwide system of basic real-time information for managing and operating the surface transportation system;

''(2)(A) identify long-range real-time highway and transit monitoring needs; and

''(B) develop plans and strategies for meeting those needs;

''(3) provide the capability and means to share the basic real-time information with State and local governments and the traveling public; and

''(4) provide the nationwide capability to monitor, in real-time, the traffic and travel conditions of major highways in the United States, and to share that information with State and local governments and the traveling public, to—

''(A) improve the security of the surface transportation system;

''(B) address congestion problems;

''(C) support improved response to weather events; and

''(D) facilitate the distribution of national and regional traveler information.

''(b) DATA EXCHANGE FORMATS.—Not later than 1 year after the date of enactment of this section, the Secretary shall establish data exchange formats to ensure that the data provided by highway and transit monitoring systems (including statewide incident reporting systems) can readily be exchanged

between jurisdictions to facilitate the nationwide availability of information on traffic and travel conditions.

''(c) STATEWIDE INCIDENT REPORTING SYSTEM.—Not later than 2 years after the date of enactment of this section, or not later than 5 years after the date of enactment of this section if the Secretary determines that adequate real-time communications capability will not be available within 2 years after the date of enactment of this section, each State shall establish a statewide incident reporting system to facilitate the real-time electronic reporting of highway and transit incidents to a central location for use in—

''(1) monitoring an incident;

''(2) providing accurate traveler information on the incident; and

''(3) responding to the incident as appropriate.

''(d) REGIONAL ITS ARCHITECTURE.—

''(1) IN GENERAL.—In developing or updating regional intelligent transportation system architectures under section 940.9 of title 23, Code of Federal Regulations (or any successor regulation), States and local governments shall address—

''(A) the real-time highway and transit information needs of the State or local government, including coverage, monitoring systems, data fusion and archiving, and methods of exchanging or sharing information; and

''(B) the systems needed to meet those needs.

''(2) DATA EXCHANGE FORMATS.—In developing or updating regional intelligent transportation system architectures, States and local governments are encouraged to incorporate the data exchange formats developed by the Secretary under subsection (b) to ensure that the data provided by highway and transit monitoring systems can readily be—

''(A) exchanged between jurisdictions; and

''(B) shared with the traveling public.

''(e) ELIGIBLE FUNDING.—Subject to project approval by the Secretary, a State may—

''(1) use funds available to the State under section 505(a) to carry out activities relating to the planning of real-time monitoring elements; and

''(2) use funds apportioned to the State under paragraphs (1) and (3) of section 104(b) to carry out activities relating to the planning and deployment of real-time monitoring elements.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1701(c)(2)), is amended adding at the end the following:

''169. Real-time system management information program.''.

SEC. 1703. CONTRACTING FOR ENGINEERING AND DESIGN SERVICES.

Section 112(b)(2) of title 23, United States Code, is amended—

(1) in subparagraph (A), by striking ''title 40'' and all that follows through the period and inserting ''title 40.'';

(2) by striking subparagraph (B);

(3) by redesignating subparagraphs (C) through (F) as subparagraphs (B) through (E), respectively; and

(4) by striking subparagraph (G).

SEC. 1704. OFF-DUTY TIME FOR DRIVERS OF COMMERCIAL VEHICLES.

Section 345(a)(2) of the National Highway System Designation Act of 1995 (49 U.S.C. 31136 note; 109 Stat. 613) is amended by adding at the end the following: ''No additional off-duty time for a driver of such a vehicle shall be required in order for the driver to operate the vehicle.''.

SEC. 1705. DESIGNATION OF TRANSPORTATION MANAGEMENT AREAS.

(a) FUNDING.—Section 134(d)(3)(C)(ii) of title 23, United States Code, is amended by striking subclause (II) and inserting the following:

''(II) FUNDING.—In addition to funds made available to the metropolitan planning organization for the Lake Tahoe Region under this title and chapter 53 of title 49, 1 percent of all funds distributed under section 202 shall be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.''.

(b) SPECIAL DESIGNATION.—Section 134(i)(1) of title 23, United States Code, is amended by adding at the end the following:

''(C) SPECIAL DESIGNATION.—

''(i) IN GENERAL.—The urbanized areas of Oklahoma City, Oklahoma, and Norman, Oklahoma, shall be designated as a single transportation management area.

''(ii) ALLOCATION.—The allocation of funds to the Oklahoma City-Norman Transportation Management Area designated under clause (i) shall be based on the aggregate population of the 2 urbanized areas referred to in that clause, as determined by the Bureau of the Census.''.

Subtitle H—Federal-Aid Stewardship

SEC. 1801. FUTURE INTERSTATE SYSTEM ROUTES.

Section 103(c)(4)(B) of title 23, United States Code, is amended—

(1) in clause (ii), by striking ''12'' and inserting ''25''; and

(2) in clause (iii)—

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

(B) by adding at the end the following:

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

SEC. 1802. STEWARDSHIP AND OVERSIGHT.

(a) IN GENERAL.—Section 106 of title 23, United States Code, is amended—

(1) by striking subsection (e) and inserting the following:

''(e) VALUE ENGINEERING ANALYSIS.—

''(1) DEFINITION OF VALUE ENGINEERING ANALYSIS.—

''(A) IN GENERAL.—In this subsection, the term 'value engineering analysis' means a systematic process of review and analysis of a project, during the concept and design phases, by a multidisciplined team of persons not involved in the project, that is conducted to provide recommendations such as those described in subparagraph (B) for—

''(i) providing the needed functions safely, reliably, and at the lowest overall cost; and

''(ii) improving the value and quality of the project.

''(B) INCLUSIONS.—The recommendations referred to in subparagraph (A) include, with respect to a project—

''(i) combining or eliminating otherwise inefficient use of costly parts of the original proposed design for the project; and

''(ii) completely redesigning the project using different technologies, materials, or methods so as to accomplish the original purpose of the project.

''(2) ANALYSIS.—The State shall provide a value engineering analysis or other cost-reduction analysis for—

''(A) each project on the Federal-Aid System with an estimated total cost of $25,000,000 or more;

''(B) a bridge project with an estimated total cost of $20,000,000 or more; and

''(C) any other project the Secretary determines to be appropriate.

''(3) MAJOR PROJECTS.—The Secretary may require more than 1 analysis described in paragraph (2) for a major project described in subsection (h).

''(4) REQUIREMENTS.—Analyses described in paragraph (1) for a bridge project shall—

''(A) include bridge substructure requirements based on construction material; and

''(B) be evaluated—

''(i) on engineering and economic bases, taking into consideration acceptable designs for bridges; and

''(ii) using an analysis of life-cycle costs and duration of project construction.''; and

(2) by striking subsections (g) and (h) and inserting the following:

''(g) OVERSIGHT PROGRAM.—

''(1) PROGRAM.—

''(A) IN GENERAL.—The Secretary shall establish an oversight program to monitor the effective and efficient use of funds made available under this title.

''(B) MINIMUM REQUIREMENTS.—At a minimum, the program shall monitor and respond to all areas relating to financial integrity and project delivery.

''(2) FINANCIAL INTEGRITY.—

''(A) FINANCIAL MANAGEMENT SYSTEMS.—

''(i) IN GENERAL.—The Secretary shall perform annual reviews of the financial management systems of State transportation departments that affect projects approved under subsection (a).

''(ii) REVIEW AREAS.—In carrying out clause (i), the Secretary shall use risk assessment procedures to identify areas to be reviewed.

''(B) PROJECT COSTS.—The Secretary shall—

''(i) develop minimum standards for estimating project costs; and

''(ii) periodically evaluate practices of the States for—

''(I) estimating project costs;

''(II) awarding contracts; and

''(III) reducing project costs.

''(C) RESPONSIBILITY OF THE STATES.—

''(i) IN GENERAL.—Each State shall be responsible for ensuring that subrecipients of Federal funds within the State under this section have—

''(I) sufficient accounting controls to properly manage the Federal funds; and

''(II) adequate project delivery systems for projects approved under this section.

''(ii) REVIEW BY SECRETARY.—The Secretary shall periodically review monitoring by the States of those subrecipients.

''(3) PROJECT DELIVERY.—The Secretary shall—

''(A) perform annual reviews of the project delivery system of each State, including analysis of 1 or more activities that are involved in the life cycle of a project; and

''(B) employ risk assessment procedures to identify areas to be reviewed.

''(4) SPECIFIC OVERSIGHT RESPONSIBILITIES.—Nothing in this section discharges or otherwise affects any oversight responsibility of the Secretary—

''(A) specifically provided for under this title or other Federal law; or

''(B) for the design and construction of all Appalachian development highways under section 14501 of title 40 or section 170 of this title.

''(h) MAJOR PROJECTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, a recipient of Federal financial assistance for a project under this title with an estimated total cost of $1,000,000,000 or more, and recipients for such other projects as may be identified by the Secretary, shall submit to the Secretary for each project—

''(A) a project management plan; and

''(B) an annual financial plan.

''(2) PROJECT MANAGEMENT PLAN.—A project management plan shall document—

''(A) the procedures and processes that are in effect to provide timely information to the project decisionmakers to effectively

manage the scope, costs, schedules, and quality of, and the Federal requirements applicable to, the project; and

''(B) the role of the agency leadership and management team in the delivery of the project.

''(3) FINANCIAL PLAN.—A financial plan shall—

''(A) be based on detailed estimates of the cost to complete the project; and

''(B) provide for the annual submission of updates to the Secretary that are based on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project.

''(i) OTHER PROJECTS.—A recipient of Federal financial assistance for a project under this title that receives $100,000,000 or more in Federal assistance for the project, and that is not covered by subsection (h), shall prepare, and make available to the Secretary at the request of the Secretary, an annual financial plan for the project.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 114(a) of title 23, United States Code, is amended—

(A) in the first sentence by striking ''highways or portions of highways located on a Federal-aid system'' and inserting ''Federal-aid highway or a portion of a Federal-aid highway''; and

(B) by striking the second sentence and inserting ''The Secretary shall have the right to conduct such inspections and take such corrective action as the Secretary determines to be appropriate.''.

(2) Section 117 of title 23, United States Code, is amended—

(A) by striking subsection (d); and

(B) by redesignating subsections (e) through (h) as subsections (d) through (g), respectively.

(c) CONTRACTOR SUSPENSION AND DEBARMENT POLICY; SHARING FRAUD MONETARY RECOVERIES.—

(1) IN GENERAL.—Section 307 of title 49, United States Code, is amended to read as follows:

''§ 307. Contractor suspension and debarment policy; sharing fraud monetary recoveries

''(a) MANDATORY ENFORCEMENT POLICY.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary—

''(A) shall debar any contractor or subcontractor convicted of a criminal or civil offense involving fraud relating to a project receiving Federal highway or transit funds for such period as the Secretary determines to be appropriate; and

''(B) subject to approval by the Attorney General—

''(i) except as provided in paragraph (2), shall suspend any contractor or subcontractor upon indictment for criminal or civil offenses involving fraud; and

''(ii) may exclude nonaffiliated subsidiaries of a debarred business entity.

''(2) NATIONAL SECURITY EXCEPTION.—If the Secretary finds that mandatory debarment or suspension of a contractor or subcontractor under paragraph (1) would be contrary to the national security of the United States, the Secretary—

''(A) may waive the debarment or suspension; and

''(B) in the instance of each waiver, shall provide notification to Congress of the waiver with appropriate details.

''(b) SHARING OF MONETARY RECOVERIES.—

''(1) IN GENERAL.—Notwithstanding any other provision of law—

''(A) monetary judgments accruing to the Federal Government from judgments in Federal criminal prosecutions and civil judgments pertaining to fraud in highway and transit programs shall be shared with the State or local transit agency involved; and

''(B) the State or local transit agency shall use the funds for transportation infrastructure and oversight activities relating to programs authorized under title 23 and this title.

''(2) AMOUNT.—The amount of recovered funds to be shared with an affected State or local transit agency shall be—

''(A) determined by the Attorney General, in consultation with the Secretary; and

''(B) considered to be Federal funds to be used in compliance with other relevant Federal transportation laws (including regulations).

''(3) FRAUDULENT ACTIVITY.—Paragraph (1) shall not apply in any case in which a State or local transit agency is found by the Attorney General, in consultation with the Secretary, to have been involved or negligent with respect to the fraudulent activities.''.

(2) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 49, United States Code, is amended by striking the item relating to section 307 and inserting the following:

''307. Contractor suspension and debarment policy; sharing fraud monetary recoveries.''.

SEC. 1803. DESIGN-BUILD CONTRACTING.

Section 112(b)(3) of title 23, United States Code, is amended by striking subparagraph (C) and inserting the following:

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

SEC. 1804. PROGRAM EFFICIENCIES—FINANCE.

(a) ADVANCE CONSTRUCTION.—Section 115 of title 23, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d);

(2) by redesignating subsections (a)(2), (a)(2)(A), and (a)(2)(B) as subsections (c), (c)(1), and (c)(2), respectively, and indenting appropriately;

(3) by striking ''(a) CONGESTION'' and all that follows through subsection (a)(1)(B);

(4) by striking subsection (b); and

(5) by inserting after the section heading the following:

''(a) IN GENERAL.—The Secretary may authorize a State to proceed with a project authorized under this title—

''(1) without the use of Federal funds; and

''(2) in accordance with all procedures and requirements applicable to the project other than those procedures and requirements that limit the State to implementation of a project—

''(A) with the aid of Federal funds previously apportioned or allocated to the State; or

''(B) with obligation authority previously allocated to the State.

''(b) OBLIGATION OF FEDERAL SHARE.—The Secretary, on the request of a State and execution of a project agreement, may obligate all or a portion of the Federal share of the project authorized under this section from any category of funds for which the project is eligible.''.

(b) OBLIGATION AND RELEASE OF FUNDS.—Section 118 of title 23, United States Code, is amended by striking subsection (d) and inserting the following:

''(d) OBLIGATION AND RELEASE OF FUNDS.—

''(1) IN GENERAL.—Funds apportioned or allocated to a State for a particular purpose for any fiscal year shall be considered to be obligated if a sum equal to the total of the funds apportioned or allocated to the State for that purpose for that fiscal year and previous fiscal years is obligated.

''(2) RELEASED FUNDS.—Any funds released by the final payment for a project, or by modifying the project agreement for a project, shall be—

''(A) credited to the same class of funds previously apportioned or allocated to the State; and

''(B) immediately available for obligation.

''(3) NET OBLIGATIONS.—Notwithstanding any other provision of law (including a regulation), obligations recorded against funds made available under this section shall be recorded and reported as net obligations.''.

SEC. 1805. SET-ASIDES FOR INTERSTATE DISCRETIONARY PROJECTS.

Section 118(c)(1) of title 23, United States Code, is amended—

(1) by striking ''$50,000,000'' and all that follows through ''2003'' and inserting ''$100,000,000 for each of fiscal years 2004 through 2009''; and

(2) by striking ''Transportation Equity Act for the 21st Century'' and inserting ''Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004''.

SEC. 1806. FEDERAL LANDS HIGHWAYS PROGRAM.

(a) FEDERAL SHARE PAYABLE.—

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

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

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

(2) TECHNICAL REFERENCES.—Section 120(l) of title 23, United States Code, is amended by striking ''section 104'' and inserting ''this title or chapter 53 of title 49''.

(b) PAYMENTS TO FEDERAL AGENCIES FOR FEDERAL-AID PROJECTS.—Section 132 of title 23, United States Code, is amended—

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

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

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

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

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

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

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

(c) ALLOCATIONS.—Section 202 of title 23, United States Code, is amended—

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

''(a) ALLOCATION BASED ON NEED.—

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

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

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

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

''(1) PUBLIC LANDS HIGHWAYS.—

''(A) IN GENERAL.—On October 1 of each fiscal year, the Secretary shall allocate 33⅓ percent of the sums authorized to be appropriated for that fiscal year for public lands

highways among those States having unappropriated or unreserved public lands, or nontaxable Indian lands or other Federal reservations, on the basis of need in the States, respectively, as determined by the Secretary, on application of the State transportation departments of the respective States.

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

''(2) FOREST HIGHWAYS.—

''(A) IN GENERAL.—On October 1 of each fiscal year, the Secretary shall allocate 66⅔ percent of the funds authorized to be appropriated for public lands highways for forest highways in accordance with section 134 of the Federal-Aid Highway Act of 1987 (23 U.S.C. 202 note; 101 Stat. 173).

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

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

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

(3) in subsection (c)—

(A) by striking ''(c) On'' and inserting the following:

''(c) PARK ROADS AND PARKWAYS.—

''(1) IN GENERAL.—On''; and

(B) by adding at the end the following:

''(2) PRIORITY.—

''(A) DEFINITION OF QUALIFYING NATIONAL PARK.—In this paragraph, the term ''qualifying national park'' means a National Park that is used more than 1,000,000 recreational visitor days per year, based on an average of the 3 most recent years of available data from the National Park Service.

''(B) PRIORITY.—Notwithstanding any other provision of law, with respect to funds authorized for park roads and parkways, the Secretary shall give priority in the allocation of funds to projects for highways that—

''(i) are located in, or provide access to, a qualifying National Park; and

''(ii) were initially constructed before 1940.

''(C) PRIORITY CONFLICTS.—If there is a conflict between projects described in subparagraph (B), the Secretary shall give highest priority to projects that—

''(i) are in, or that provide access to, parks that are adjacent to a National Park of a foreign country; or

''(ii) are located in more than 1 State;'';

(4) in subsection (d)—

(A) in paragraph (1)—

(i) in the paragraph heading, by striking ''1999'' and inserting ''2005''; and

(ii) by striking ''1999'' and inserting ''2005'';

(B) in paragraph (2)—

(i) in the paragraph heading, by striking ''2000'' and inserting ''2005'';

(ii) in subparagraphs (A), (B), and (D), by striking ''2000'' each place it appears and inserting ''2005'';

(iii) in subparagraph (B), by striking ''1999'' each place it appears and inserting ''2004''; and

(iv) by adding at the end the following:

''(E) TRANSFERRED FUNDS.—

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

''(ii) FORMULA.—If the Secretary of the Interior has not promulgated final regulations for the distribution of funds under clause (i) for a fiscal year by the date on which the funds for the fiscal year are required to be distributed under that clause, the Secretary of the Interior shall distribute the funds under clause (i) in accordance with the applicable funding formula for the preceding year.

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

(C) in paragraph (4)—

(i) in subparagraph (B)—

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

''(B) FUNDING.—

''(i) RESERVATION OF FUNDS.—Of the amounts authorized to be appropriated for Indian reservation roads for each fiscal year, the Secretary, in cooperation with the Secretary of the Interior, shall reserve not less than $15,000,000 for each of fiscal years 2004 through 2009 to carry out planning, design, engineering, preconstruction, construction, and inspection of projects to replace,''; and

(II) by adding at the end the following:

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

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

''(D) APPROVAL REQUIREMENT.—

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

''(ii) CONSTRUCTION AND CONSTRUCTION ENGINEERING.—The Secretary may make funds available under clause (i) for construction and construction engineering only after approval by the Secretary of applicable plans, specifications, and estimates.''; and

(5) by adding at the end the following:

''(f) ADMINISTRATION OF INDIAN RESERVATION ROADS.—Notwithstanding any other provision of law, for any fiscal year, not more than 6 percent of the contract authority amounts made available from the Highway Trust Fund to the Bureau of Indian Affairs under this title shall be used to pay the expenses incurred by the Bureau in administering the Indian reservation roads program (including the administrative expenses relating to individual projects associated with the Indian reservation roads program).''.

(d) PLANNING AND AGENCY COORDINATION.—Section 204 of title 23, United States Code, is amended—

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

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

''(b) USE OF FUNDS.—

''(1) IN GENERAL.—Funds available for public lands highways, recreation roads, park roads and parkways, forest highways, and Indian reservation roads shall be used by the Secretary and the Secretary of the appropriate Federal land management agency to pay the cost of transportation planning, research, engineering, operation and maintenance of transit facilities, and construction of the highways, roads, parkways, forest highways, and transit facilities located on public land, national parks, and Indian reservations.

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

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

''(B) an Indian tribe.

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

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

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

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

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

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

(3) in subsection (k)(1)—

(A) in subparagraph (B)—

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

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

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

(C) by adding at the end the following:

''(D) maintenance of public roads in national fish hatcheries under the jurisdiction of the United States Fish and Wildlife Service;

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

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

(e) SAFETY.—

(1) ALLOCATIONS.—Section 202 of title 23, United States Code (as amended by subsection (c)(5)), is amended by adding at the end the following:

''(g) SAFETY.—Subject to paragraph (2), on October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for the fiscal year for safety as follows:

''(1) 12 percent to the Bureau of Reclamation.

''(2) 18 percent to the Bureau of Indian Affairs.

''(3) 17 percent to the Bureau of Land Management.

''(4) 17 percent to the Forest Service.

''(5) 7 percent to the United States Fish and Wildlife Service.

''(6) 17 percent to the National Park Service.

''(7) 12 percent to the Corps of Engineers.''.

(2) AVAILABILITY OF FUNDS.—Section 203 of title 23, United States Code, is amended by inserting ''safety projects or activities,'' after ''refuge roads,'' each place it appears.

(3) USE OF FUNDING.—Section 204 of title 23, United States Code, is amended by adding at the end the following:

''(l) SAFETY ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding any other provision of this title, funds made available for safety under this title shall be used by the Secretary and the head of the appropriate Federal land management agency only to pay the costs of carrying out—

''(A) transportation safety improvement activities;

''(B) activities to eliminate high-accident locations;

''(C) projects to implement protective measures at, or eliminate, at-grade railway-highway crossings;

''(D) collection of safety information;

''(E) transportation planning projects or activities;

''(F) bridge inspection;

''(G) development and operation of safety management systems;

''(H) highway safety education programs; and

''(I) other eligible safety projects and activities authorized under chapter 4.

''(2) CONTRACTS.—In carrying out paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into contracts or agreements with—

''(A) a State;

''(B) a political subdivision of a State; or

''(C) an Indian tribe.

''(3) EXCEPTION.—The cost sharing requirements under the Federal Water Project Recreation Act (16 U.S.C. 460*l*–12 et seq.) shall not apply to funds made available to the Bureau of Reclamation under this subsection.''.

(f) RECREATION ROADS.—

(1) AUTHORIZATIONS.—Section 201 of title 23, United States Code, is amended in the first sentence by inserting ''recreation roads,'' after ''public lands highways,''.

(2) ALLOCATIONS.—Section 202 of title 23, United States Code (as amended by subsection (e)(1)), is amended by adding at the end the following:

''(h) RECREATION ROADS.—

''(1) IN GENERAL.—Subject to paragraphs (2) and (3), on October 1 of each fiscal year, the Secretary, after completing the transfer under subsection 204(i), shall allocate the sums authorized to be appropriated for the fiscal year for recreation roads as follows:

''(A) 8 percent to the Bureau of Reclamation.

''(B) 9 percent to the Corps of Engineers.

''(C) 13 percent to the Bureau of Land Management.

''(D) 70 percent to the Forest Service.

''(2) ALLOCATION WITHIN AGENCIES.—Recreation road funds allocated to a Federal agency under paragraph (1) shall be allocated for projects and activities of the Federal agency according to the relative needs of each area served by recreation roads under the jurisdiction of the Federal agency, as indicated in the approved transportation improvement program for each Federal agency.''.

(3) AVAILABILITY OF FUNDS.—Section 203 of title 23, United States Code, is amended—

(A) in the first sentence, by inserting ''recreation roads,'' after ''Indian reservation roads,''; and

(B) in the fourth sentence, by inserting '', recreation roads,'' after ''Indian roads''.

(4) USE OF FUNDING.—Section 204 of title 23, United States Code (as amended by subsection (e)(3)), is amended by adding at the end the following:

''(m) RECREATION ROADS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this title, funds made available for recreation roads under this title shall be used by the Secretary and the Secretary of the appropriate Federal land management agency only to pay the cost of—

''(A) maintenance or improvements of existing recreation roads;

''(B) maintenance and improvements of eligible projects described in paragraph (1), (2), (3), (5), or (6) of subsection (h) that are located in or adjacent to Federal land under the jurisdiction of—

''(i) the Department of Agriculture; or

''(ii) the Department of the Interior;

''(C) transportation planning and administrative activities associated with those maintenance and improvements; and

''(D) the non-Federal share of the cost of any project funded under this title or chapter 53 of title 49 that provides access to or within Federal land described in subparagraph (B).

''(2) CONTRACTS.—In carrying out paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into contracts or agreements with—

''(A) a State;

''(B) a political subdivision of a State; or

''(C) an Indian tribe.

''(3) NEW ROADS.—No funds made available under this section shall be used to pay the cost of the design or construction of new recreation roads.

''(4) COMPLIANCE WITH OTHER ENVIRONMENTAL LAWS.—A maintenance or improvement project that is funded under this subsection, and that is consistent with or has been identified in a land use plan for an area under the jurisdiction of a Federal agency, shall not require any additional environmental reviews or assessments under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if—

''(A) the Federal agency that promulgated the land use plan analyzed the specific proposal for the maintenance or improvement project under that Act; and

''(B) as of the date on which the funds are to be expended, there are—

''(i) no significant changes to the proposal bearing on environmental concerns; and

''(ii) no significant new information.

''(5) EXCEPTION.—The cost sharing requirements under the Federal Water Project Recreation Act (16 U.S.C. 460*l*–12 et seq.) shall not apply to funds made available to the Bureau of Reclamation under this subsection.''.

(g) CONFORMING AMENDMENTS.—

(1) Sections 120(e) and 125(e) of title 23, United States Code, are amended by striking ''public lands highways,'' each place it appears and inserting ''public lands highways, recreation roads,''.

(2) Sections 120(e), 125(e), 201, 202(a), and 203 of title 23, United States Code, are amended by striking ''forest development roads'' each place it appears and inserting ''National Forest System roads''.

(3) Section 202(e) of title 23, United States Code, is amended by striking ''Refuge System,'' and inserting ''Refuge System and the various national fish hatcheries,''.

(4) Section 204 of title 23, United States Code, is amended—

(A) in subsection (a)(1), by striking ''public lands highways,'' and inserting ''public lands highways, recreation roads, forest highways,''; and

(B) in subsection (i), by striking ''public lands highways'' each place it appears and inserting ''public lands highways, recreation roads, and forest highways''.

(5) Section 205 of title 23, United States Code, is amended—

(A) by striking the section heading and inserting the following:

''§ 205. National Forest System roads and trails'';

and

(B) in subsections (a) and (d), by striking ''forest development roads'' each place it appears and inserting ''National Forest System roads''.

(6) The analysis for chapter 2 of title 23, United States Code, is amended by striking the item relating to section 205 and inserting the following:

''205. National Forest System roads and trails.''.

(7) Section 217(c) of title 23, United States Code, is amended by inserting ''refuge roads,'' after ''Indian reservation roads,''.

SEC. 1807. HIGHWAY BRIDGE PROGRAM.

(a) IN GENERAL.—Section 144 of title 23, United States Code, is amended—

(1) by striking the section heading and all that follows through subsection (a) and inserting the following:

''§ 144. Highway bridge program

''(a) CONGRESSIONAL STATEMENT.—Congress finds and declares that it is in the vital interest of the United States that a highway bridge program be established to enable States to improve the condition of their bridges through replacement, rehabilitation, and systematic preventative maintenance on highway bridges over waterways, other topographical barriers, other highways, or railroads at any time at which the States and the Secretary determine that a bridge is unsafe because of structural deficiencies, physical deterioration, or functional obsolescence.'';

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

''(d) PARTICIPATION IN PROGRAM.—

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

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

''(B) rehabilitating the bridge.

''(2) SPECIFIC KINDS OF REHABILITATION.—On application by a State to the Secretary for assistance in painting, seismic retrofit, or preventative maintenance of, or installation of 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 preventative maintenance of, or installation of scour countermeasures or application of acetate or sodium acetate/formate or such anti-icing or de-icing composition to, the structure.

''(3) ELIGIBILITY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall determine the eligibility of highway bridges for replacement or rehabilitation for each State based on the number of unsafe highway bridges in the State.

''(B) PREVENTATIVE MAINTENANCE.—A State may carry out a project for preventative maintenance on a bridge, seismic retrofit of a bridge, or installation of scour countermeasures to a bridge under this section without regard to whether the bridge is eligible for replacement or rehabilitation under this section.'';

(3) in subsection (e)—

(A) in the third sentence, by striking ''square footage'' and inserting ''area'';

(B) in the fourth sentence—

(i) by striking ''by the total cost of any highway bridges constructed under subsection (m) in such State, relating to replacement of destroyed bridges and ferryboat services, and,''; and

(ii) by striking ''1997'' and inserting ''2003''; and

(C) in the seventh sentence, by striking ''the Federal-aid primary system'' and inserting ''Federal-aid highways'';

(4) by striking subsections (f) and (g) and inserting the following:

''(f) SET ASIDES.—

''(1) DISCRETIONARY BRIDGE PROGRAM.—

''(A) IN GENERAL.—Of the amounts authorized to be appropriated to carry out the bridge program under this section for each of fiscal years 2004 through 2009, all but $150,000,000 shall be apportioned as provided in subsection (e).

''(B) AVAILABILITY.—The $150,000,000 referred to in subparagraph (A) shall be available at the discretion of the Secretary, except that not to exceed $25,000,000 of that amount shall be available only for projects for the seismic retrofit of bridges.

''(C) SET ASIDES.—For fiscal year 2004, the Secretary shall provide—

''(i) $50,000,000 to the State of Nevada for construction of a replacement of the federally-owned bridge over the Hoover Dam in the Lake Mead National Recreation Area; and

''(ii) $50,000,000 to the State of Missouri for construction of a structure over the Mississippi River to connect the city of St. Louis, Missouri, to the State of Illinois.

''(2) OFF-SYSTEM BRIDGES.—

''(A) IN GENERAL.—Not less than 15 percent of the amount apportioned to each State in each of fiscal years 2004 through 2009 shall be expended for projects to replace, rehabilitate, perform systematic preventative 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, or to complete the Warwick Intermodal Station (including the construction of a people mover between the Station and the T.F. Green Airport).

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

(5) in subsection (i)—

(A) in paragraph (3), by striking ''and'';

(B) in paragraph (4), by striking the period at the end and inserting ''; and'';

(C) by striking ''Such reports'' and all that follows through ''to Congress.''; and

(D) by adding at the end the following:

''(5) biennially submit such reports as are required under this subsection to the appropriate committees of Congress simultaneously with the report required by section 502(g).'';

(6) in the first sentence of subsection (n), by striking ''all standards'' and inserting ''all general engineering standards'';

(7) in subsection (o)—

(A) in paragraph (3)—

(i) by striking ''title (including this section)'' and inserting ''section''; and

(ii) by inserting ''200 percent of'' after ''shall not exceed''; and

(B) in paragraph (4)(B)—

(i) in the second sentence, by inserting ''200 percent of'' after ''not to exceed''; and

(ii) in the last sentence, by striking ''title'' and inserting ''section'';

(8) by redesignating subsections (h) through (q) as subsections (g) through (p), respectively; and

(9) by adding at the end the following:

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

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

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by striking the item relating to section 144 and inserting the following:

''144. Highway bridge program.''.

SEC. 1808. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1702(a)), is amended by adding at the end the following:

''§ 170. Appalachian development highway system

''(a) APPORTIONMENT.—

''(1) IN GENERAL.—The Secretary shall apportion funds made available under section 1101(7) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 for fiscal years 2004 through 2009 among States based on the latest available estimate of the cost to construct highways and access roads for the Appalachian development highway system program prepared by the Appalachian Regional Commission under section 14501 of title 40.

''(2) AVAILABILITY.—Funds described in paragraph (1) shall be available to construct highways and access roads under chapter 145 of title 40.

''(b) APPLICABILITY OF TITLE.—Funds made available under section 1101(7) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 for the Appalachian development highway system shall be available for obligation in the same manner as if the funds were apportioned under this chapter, except that—

''(1) the Federal share of the cost of any project under this section shall be determined in accordance with subtitle IV of title 40; and

''(2) the funds shall remain available until expended.''.

(b) CONFORMING AMENDMENTS.—

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

(2) ANALYSIS.—The analysis of chapter 1 of title 23, United States Code (as amended by section 1702(b)), is amended by adding at the end the following:

''170. Appalachian development highway system.''.

SEC. 1809. MULTISTATE CORRIDOR PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by 1808(a)), is amended by adding at the end the following:

''§ 171. Multistate corridor program

''(a) ESTABLISHMENT AND PURPOSE.—The Secretary shall carry out a program to—

''(1) support and encourage multistate transportation planning and development; and

''(2) facilitate transportation decision-making and coordinate project delivery involving multistate corridors.

''(b) ELIGIBLE RECIPIENTS.—A State transportation department and a metropolitan planning organization may receive and administer funds provided under this section.

''(c) ELIGIBLE ACTIVITIES.—The Secretary shall make allocations under this program for multistate highway and multimodal planning studies and construction.

''(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—

''(1) STUDIES.—All studies funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required by sections 134 and 135.

''(2) CONSTRUCTION.—All construction funded under this program shall be consistent with section 133(b)(1).

''(e) SELECTION CRITERIA.—The Secretary shall select studies and projects to be carried out under the program based on—

''(1) the existence and significance of signed and binding multijurisdictional agreements;

''(2) endorsement of the study or project by applicable elected State and local representatives;

''(3) prospects for early completion of the study or project; or

''(4) whether the projects to be studied or constructed are located on corridors identified by section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 2032).

''(f) PROGRAM PRIORITIES.—In administering the program, the Secretary shall—

''(1) encourage and enable States and other jurisdictions to work together to develop plans for multimodal and multijurisdictional transportation decisionmaking; and

''(2) give priority to studies or projects that emphasize multimodal planning, including planning for operational improvements that—

''(A) increase—

''(i) mobility;

''(ii) freight productivity;

''(iii) access to marine or inland ports;

''(iv) safety and security; and

''(v) reliability; and

''(B) enhance the environment.

''(g) FEDERAL SHARE.—Except as provided in section 120, the Federal share of the cost of a study or project carried out under the program, using funds from all Federal sources, shall be 80 percent.

''(h) APPLICABILITY.—Funds authorized to be appropriated under section 1101(10) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under this chapter.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1809(b)) is amended by adding at the end the following:

''171. Multistate corridor program.''.

SEC. 1810. BORDER PLANNING, OPERATIONS, TECHNOLOGY, AND CAPACITY PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1809(a)), is amended by adding at the end the following:

''§ 172. Border planning, operations, technology, and capacity program

''(a) DEFINITIONS.—In this section:

''(1) BORDER STATE.—The term 'border State' means any of the States of Alaska, Arizona, California, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New Mexico, New York, North Dakota, Texas, Vermont, and Washington.

''(2) PROGRAM.—The term 'program' means the border planning, operations, technology, and capacity program established under subsection (b).

''(b) ESTABLISHMENT AND PURPOSE.—The Secretary shall establish and carry out a

border planning, operations, technology, and capacity improvement program to support coordination and improvement in bi-national transportation planning, operations, efficiency, information exchange, safety, and security at the international borders of the United States with Canada and Mexico.

''(c) ELIGIBLE ACTIVITIES.—

''(1) IN GENERAL.—The Secretary shall make allocations under the program for projects to carry out eligible activities described in paragraph (2) at or near international land borders in border States.

''(2) ELIGIBLE ACTIVITIES.—A border State may obligate funds apportioned to the border State under this section for—

''(A) highway and multimodal planning or environmental studies;

''(B) cross-border port of entry and safety inspection improvements, including operational enhancements and technology applications;

''(C) technology and information exchange activities; and

''(D) right-of-way acquisition, design, and construction, as needed—

''(i) to implement the enhancements or applications described in subparagraphs (B) and (C);

''(ii) to decrease air pollution emissions from vehicles or inspection facilities at border crossings; or

''(iii) to increase highway capacity at or near international borders.

''(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—

''(1) IN GENERAL.—Each project funded under the program shall be carried out in accordance with the continuing, cooperative, and comprehensive planning processes required by sections 134 and 135.

''(2) REGIONALLY SIGNIFICANT PROJECTS.—To be funded under the program, a regionally significant project shall be included on the applicable transportation plan and program required by sections 134 and 135.

''(e) PROGRAM PRIORITIES.—Border States shall give priority to projects that emphasize—

''(1) multimodal planning;

''(2) improvements in infrastructure; and

''(3) operational improvements that—

''(A) increase safety, security, freight capacity, or highway access to rail, marine, and air services; and

''(B) enhance the environment.

''(f) MANDATORY PROGRAM.—

''(1) IN GENERAL.—For each fiscal year, the Secretary shall allocate among border States, in accordance with the formula described in paragraph (2), funds to be used in accordance with subsection (d).

''(2) FORMULA.—Subject to paragraph (3), the amount allocated to a border State under this paragraph shall be determined by the Secretary, as follows:

''(A) 25 percent in the ratio that—

''(i) the average annual weight of all cargo entering the border State by commercial vehicle across the international border with Canada or Mexico, as the case may be; bears to

''(ii) the average annual weight of all cargo entering all border States by commercial vehicle across the international borders with Canada and Mexico.

''(B) 25 percent in the ratio that—

''(i) the average trade value of all cargo imported into the border State and all cargo exported from the border State by commercial vehicle across the international border with Canada or Mexico, as the case may be; bears to

''(ii) the average trade value of all cargo imported into all border States and all cargo exported from all border States by commercial vehicle across the international borders with Canada and Mexico.

''(C) 25 percent in the ratio that—

''(i) the number of commercial vehicles annually entering the border State across the international border with Canada or Mexico, as the case may be; bears to

''(ii) the number of all commercial vehicles annually entering all border States across the international borders with Canada and Mexico.

''(D) 25 percent in the ratio that—

''(i) the number of passenger vehicles annually entering the border State across the international border with Canada or Mexico, as the case may be; bears to

''(ii) the number of all passenger vehicles annually entering all border States across the international borders with Canada and Mexico.

''(3) DATA SOURCE.—

''(A) IN GENERAL.—The data used by the Secretary in making allocations under this subsection shall be based on the Bureau of Transportation Statistics Transborder Surface Freight Dataset (or other similar database).

''(B) BASIS OF CALCULATION.—All formula calculations shall be made using the average values for the most recent 5-year period for which data are available.

''(4) MINIMUM ALLOCATION.—Notwithstanding paragraph (2), for each fiscal year, each border State shall receive at least ½ of 1 percent of the funds made available for allocation under this paragraph for the fiscal year.

''(g) FEDERAL SHARE.—Except as provided in section 120, the Federal share of the cost of a project carried out under the program shall be 80 percent.

''(h) OBLIGATION.—Funds made available under section 1101(11) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 to carry out the program shall be available for obligation in the same manner as if the funds were apportioned under this chapter.

''(i) INFORMATION EXCHANGE.—No individual project the scope of work of which is limited to information exchange shall receive an allocation under the program in an amount that exceeds $500,000 for any fiscal year.

''(j) PROJECTS IN CANADA OR MEXICO.—A project in Canada or Mexico, proposed by a border State to directly and predominantly facilitate cross-border vehicle and commercial cargo movements at an international gateway or port of entry into the border region of the State, may be constructed using funds made available under the program if, before obligation of those funds, Canada or Mexico, or the political subdivision of Canada or Mexico that is responsible for the operation of the facility to be constructed, provides assurances satisfactory to the Secretary that any facility constructed under this subsection will be—

''(1) constructed in accordance with standards equivalent to applicable standards in the United States; and

''(2) properly maintained and used over the useful life of the facility for the purpose for which the Secretary allocated funds to the project.

''(k) TRANSFER OF FUNDS TO THE GENERAL SERVICES ADMINISTRATION.—

''(1) STATE FUNDS.—At the request of a border State, funds made available under the program may be transferred to the General Services Administration for the purpose of funding 1 or more specific projects if—

''(A) the Secretary determines, after consultation with the State transportation department of the border State, that the General Services Administration should carry out the project; and

''(B) the General Services Administration agrees to accept the transfer of, and to administer, those funds.

''(2) NON-FEDERAL SHARE.—

''(A) IN GENERAL.—A border State that makes a request under paragraph (1) shall provide directly to the General Services Administration, for each project covered by the request, the non-Federal share of the cost of each project described in subsection (f).

''(B) NO AUGMENTATION OF APPROPRIATIONS.—Funds provided by a border State under subparagraph (A)—

''(i) shall not be considered to be an augmentation of the appropriations made available to the General Services Administration; and

''(ii) shall be—

''(I) administered in accordance with the procedures of the General Services Administration; but

''(II) available for obligation in the same manner as if the funds were apportioned under this chapter.

''(C) OBLIGATION AUTHORITY.—Obligation authority shall be transferred to the General Services Administration in the same manner and amount as the funds provided for projects under subparagraph (A).

''(3) DIRECT TRANSFER OF AUTHORIZED FUNDS.—

''(A) IN GENERAL.—In addition to allocations to States and metropolitan planning organizations under subsection (c), the Secretary may transfer funds made available to carry out this section to the General Services Administration for construction of transportation infrastructure projects at or near the border in border States, if—

''(i) the Secretary determines that the transfer is necessary to effectively carry out the purposes of this program; and

''(ii) the General Services Administration agrees to accept the transfer of, and to administer, those funds.

''(B) NO AUGMENTATION OF APPROPRIATIONS.—Funds transferred by the Secretary under subparagraph (A)—

''(i) shall not be considered to be an augmentation of the appropriations made available to the General Services Administration; and

''(ii) shall be—

''(I) administered in accordance with the procedures of the General Services Administration; but

''(II) available for obligation in the same manner as if the funds were apportioned under this chapter.

''(C) OBLIGATION AUTHORITY.—Obligation authority shall be transferred to the General Services Administration in the same manner and amount as the funds transferred under subparagraph (A).''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1809(b)), is amended by adding at the end the following:

''172. Border planning, operations, and technology program.''.

SEC. 1811. PUERTO RICO HIGHWAY PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1810(a)), is amended by adding at the end the following:

''§ 173. Puerto Rico highway program

''(a) IN GENERAL.—The Secretary shall allocate funds authorized by section 1101(15) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 for each of fiscal years 2004 through 2009 to the Commonwealth of Puerto Rico to carry out a highway program in the Commonwealth.

''(b) APPLICABILITY OF TITLE.—

''(1) IN GENERAL.—Amounts made available by section 1101(15) of the Safe, Accountable,

Flexible, and Efficient Transportation Equity Act of 2004 shall be available for obligation in the same manner as if such funds were apportioned under this chapter.

''(2) LIMITATION ON OBLIGATIONS.—The amounts shall be subject to any limitation on obligations for Federal-aid highway and highway safety construction programs.

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

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

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

''(B) the ratio that—

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

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

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

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

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1810(b)), is amended by adding at the end the following:

''173. Puerto Rico highway program.''.

SEC. 1812. NATIONAL HISTORIC COVERED BRIDGE PRESERVATION.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1811(a)), is amended by adding at the end the following:

''§ 174. National historic covered bridge preservation

''(a) DEFINITION OF HISTORIC COVERED BRIDGE.—In this section, the term 'historic covered bridge' means a covered bridge that is listed or eligible for listing on the National Register of Historic Places.

''(b) HISTORIC COVERED BRIDGE PRESERVATION.—Subject to the availability of appropriations, the Secretary shall—

''(1) collect and disseminate information on historic covered bridges;

''(2) conduct educational programs relating to the history and construction techniques of historic covered bridges;

''(3) conduct research on the history of historic covered bridges; and

''(4) conduct research on, and study techniques for, protecting historic covered bridges from rot, fire, natural disasters, or weight-related damage.

''(c) GRANTS.—

''(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall make a grant to a State that submits an application to the Secretary that demonstrates a need for assistance in carrying out 1 or more historic covered bridge projects described in paragraph (2).

''(2) ELIGIBLE PROJECTS.—A grant under paragraph (1) may be made for a project—

''(A) to rehabilitate or repair a historic covered bridge; or

''(B) to preserve a historic covered bridge, including through—

''(i) installation of a fire protection system, including a fireproofing or fire detection system and sprinklers;

''(ii) installation of a system to prevent vandalism and arson; or

''(iii) relocation of a bridge to a preservation site.

''(3) AUTHENTICITY REQUIREMENTS.—A grant under paragraph (1) may be made for a project only if—

''(A) to the maximum extent practicable, the project—

''(i) is carried out in the most historically appropriate manner; and

''(ii) preserves the existing structure of the historic covered bridge; and

''(B) the project provides for the replacement of wooden components with wooden components, unless the use of wood is impracticable for safety reasons.

''(4) FEDERAL SHARE.—Except as provided in section 120, the Federal share of the cost of a project carried out with a grant under this subsection shall be 80 percent.

''(d) FUNDING.—There is authorized to be appropriated to carry out this section $14,000,000 for each of fiscal years 2004 through 2009, to remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1811(b)), is amended by adding at the end the following:

''174. National historic covered bridge preservation.''.

SEC. 1813. TRANSPORTATION AND COMMUNITY AND SYSTEM PRESERVATION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1812(a)), is amended by adding at the end the following:

''§ 175. Transportation and community and system preservation program

''(a) ESTABLISHMENT.—The Secretary shall establish a comprehensive program to facilitate the planning, development, and implementation of strategies by States, metropolitan planning organizations, federally-recognized Indian tribes, and local governments to integrate transportation, community, and system preservation plans and practices that address the goals described in subsection (b).

''(b) GOALS.—The goals of the program are to—

''(1) improve the efficiency of the transportation system in the United States;

''(2) reduce the impacts of transportation on the environment;

''(3) reduce the need for costly future investments in public infrastructure;

''(4) provide efficient access to jobs, services, and centers of trade; and

''(5) examine development patterns, and to identify strategies, to encourage private sector development patterns that achieve the goals identified in paragraphs (1) through (4).

''(c) ALLOCATION OF FUNDS FOR IMPLEMENTATION.—

''(1) IN GENERAL.—The Secretary shall allocate funds made available to carry out this subsection to States, metropolitan planning organizations, and local governments to carry out projects to address transportation efficiency and community and system preservation.

''(2) CRITERIA.—In allocating funds made available to carry out this subsection, the Secretary shall give priority to applicants that—

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

''(i) meet the requirements of this title and chapter 53 of title 49, United States Code; and

''(ii)(I) are coordinated with State and local adopted preservation or development plans;

''(II) are intended to promote cost-effective and strategic investments in transportation infrastructure that minimize adverse impacts on the environment; or

''(III) are intended to promote innovative private sector strategies.

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

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

''(ii) urban growth boundaries to guide metropolitan expansion;

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

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

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

''(D) examine ways to encourage private sector investments that address the purposes of this section; and

''(E) propose projects for funding that address the purposes described in subsection (b)(2).

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

''(4) USE OF ALLOCATED FUNDS.—

''(A) IN GENERAL.—An allocation of funds made available to carry out this subsection shall be used by the recipient to implement the projects proposed in the application to the Secretary.

''(B) TYPES OF PROJECTS.—The allocation of funds shall be available for obligation for—

''(i) any project eligible for funding under this title or chapter 53 of title 49, United States Code; or

''(ii) any other activity relating to transportation and community and system preservation that the Secretary determines to be appropriate, including corridor preservation activities that are necessary to implement—

''(I) transit-oriented development plans;

''(II) traffic calming measures; or

''(III) other coordinated transportation and community and system preservation practices.

''(d) FUNDING.—

''(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $50,000,000 for each of fiscal years 2004 through 2009.

''(2) CONTRACT AUTHORITY.—Funds authorized under this subsection shall be available for obligation in the same manner as if the funds were apportioned under this chapter.''.

(b) ELIGIBLE PROJECTS.—Section 133(b) of title 23, United States Code (as amended by section 1701(a)), is amended by adding at the end the following:

''(18) Transportation and community system preservation to facilitate the planning, development, and implementation of strategies of metropolitan planning organizations and local governments to integrate transportation, community, and system preservation plans and practices that address the following:

''(A) Improvement of the efficiency of the transportation system in the United States.

''(B) Reduction of the impacts of transportation on the environment.

''(C) Reduction of the need for costly future investments in public infrastructure.

''(D) Provision of efficient access to jobs, services, and centers of trade.

''(E) Examination of development patterns, and identification of strategies to encourage private sector development patterns, that achieve the goals identified in subparagraphs (A) through (D).

''(19) Projects relating to intersections, including intersections—

''(A) that—

''(i) have disproportionately high accident rates;

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

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

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

''(iii) are directly connected to or located on a Federal-aid highway; and

''(B) improvements that are approved in the regional plan of the appropriate local metropolitan planning organization.''.

(c) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1812(b)), is amended by adding at the end the following:

''175. Transportation and community and system preservation pilot program.''.

SEC. 1814. PARKING PILOT PROGRAMS.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1813(a)), is amended by adding at the end the following:

''§ 176. Parking pilot programs

''(a) COMMERCIAL TRUCK PARKING PILOT PROGRAM.—

''(1) ESTABLISHMENT.—In cooperation with appropriate State, regional, and local governments, the Secretary shall establish a pilot program to address the shortage of long-term parking for drivers of commercial motor vehicles on the National Highway System.

''(2) ALLOCATION OF FUNDS.—

''(A) IN GENERAL.—The Secretary shall allocate funds made available under this subsection to States, metropolitan planning organizations, and local governments.

''(B) CRITERIA.—In allocating funds under this subsection, the Secretary shall give priority to an applicant that—

''(i) demonstrates a severe shortage of commercial vehicle parking capacity on the corridor to be addressed;

''(ii) consults with affected State and local governments, community groups, private providers of commercial vehicle parking, and motorist and trucking organizations; and

''(iii) demonstrates that the project proposed by the applicant is likely to have a positive effect on highway safety, traffic congestion, or air quality.

''(3) USE OF ALLOCATED FUNDS.—

''(A) IN GENERAL.—A recipient of funds allocated under this subsection shall use the funds to carry out the project proposed in the application submitted by the recipient to the Secretary.

''(B) TYPES OF PROJECTS.—Funds under this subsection shall be available for obligation for projects that serve the National Highway System, including—

''(i) construction of safety rest areas that include parking for commercial motor vehicles;

''(ii) construction of commercial motor vehicle parking facilities that are adjacent to commercial truck stops and travel plazas;

''(iii) costs associated with the opening of facilities (including inspection and weigh stations and park-and-ride facilities) to provide commercial motor vehicle parking;

''(iv) projects that promote awareness of the availability of public or private commercial motor vehicle parking on the National Highway System, including parking in connection with intelligent transportation systems and other systems;

''(v) construction of turnouts along the National Highway System for commercial motor vehicles;

''(vi) capital improvements to public commercial motor vehicle truck parking facilities closed on a seasonal basis in order to allow the facilities to remain open year-around; and

''(vii) improvements to the geometric design at interchanges on the National Highway System to improve access to commercial motor vehicle parking facilities.

''(4) REPORT.—Not later than 5 years after the date of enactment of this section, the Secretary shall submit to Congress a report on the results of the pilot program carried out under this subsection.

''(5) FEDERAL SHARE.—The Federal share of the cost of a project carried out under this subsection shall be consistent with section 120.

''(6) FUNDING.—

''(A) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection $10,000,000 for each of fiscal years 2005 through 2009.

''(B) CONTRACT AUTHORITY.—Funds authorized under this paragraph shall be available for obligation in the same manner as if the funds were apportioned under this chapter.

''(b) CORRIDOR AND FRINGE PARKING PILOT PROGRAM.—

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—In cooperation with appropriate State, regional, and local governments, the Secretary shall carry out a pilot program to provide corridor and fringe parking facilities.

''(B) PRIMARY FUNCTION.—The primary function of a corridor and fringe parking facility funded under this subsection shall be to provide parking capacity to support car pooling, van pooling, ride sharing, commuting, and high occupancy vehicle travel.

''(C) OVERNIGHT PARKING.—A State may permit a facility described in subparagraph (B) to be used for the overnight parking of commercial vehicles if the use does not foreclose or unduly limit the primary function of the facility described in subparagraph (B).

''(2) ALLOCATION OF FUNDS.—

''(A) IN GENERAL.—The Secretary shall allocate funds made available to carry out this subsection to States.

''(B) CRITERIA.—In allocating funds under this subsection, the Secretary shall give priority to a State that—

''(i) demonstrates demand for corridor and fringe parking on the corridor to be addressed;

''(ii) consults with affected metropolitan planning organizations, local governments, community groups, and providers of corridor and fringe parking; and

''(iii) demonstrates that the project proposed by the State is likely to have a positive effect on ride sharing, traffic congestion, or air quality.

''(3) USE OF ALLOCATED FUNDS.—

''(A) IN GENERAL.—A recipient of funds allocated under this subsection shall use the funds to carry out the project proposed in the application submitted by the recipient to the Secretary.

''(B) TYPES OF PROJECTS.—Funds under this subsection shall be available for obligation for projects that serve the Federal-aid system, including—

''(i) construction of corridor and fringe parking facilities;

''(ii) costs associated with the opening of facilities;

''(iii) projects that promote awareness of the availability of corridor and fringe parking through the use of signage and other means;

''(iv) capital improvements to corridor and fringe parking facilities closed on a seasonal basis in order to allow the facilities to remain open year-around; and

''(v) improvements to the geometric design on adjoining roadways to facilitate access to, and egress from, corridor and fringe parking facilities.

''(4) REPORT.—Not later than 5 years after the date of enactment of this section, the Secretary shall submit to Congress a report on the results of the pilot program carried out under this subsection.

''(5) FEDERAL SHARE.—The Federal share of the cost of a project carried out under this subsection shall be consistent with section 120.

''(6) FUNDING.—

''(A) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection $10,000,000 for each of fiscal years 2005 through 2009.

''(B) CONTRACT AUTHORITY.—Funds authorized under this paragraph shall be available for obligation in the same manner as if the funds were apportioned under this chapter.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter I of title 23, United States Code (as amended by section 1813(c)), is amended by adding at the end the following:

''176. Parking pilot programs.''.

SEC. 1815. INTERSTATE OASIS PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1814(a)), is amended by adding at the end the following:

''§ 177. Interstate oasis program

''(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, in consultation with the States and other interested parties, the Secretary shall—

''(1) establish an Interstate oasis program; and

''(2) develop standards for designating, as an Interstate oasis, a facility that—

''(A) offers—

''(i) products and services to the public;

''(ii) 24-hour access to restrooms; and

''(iii) parking for automobiles and heavy trucks; and

''(B) meets other standards established by the Secretary.

''(b) STANDARDS FOR DESIGNATION.—The standards for designation under subsection (a) shall include standards relating to—

''(1) the appearance of a facility; and

''(2) the proximity of the facility to the Interstate System.

''(c) ELIGIBILITY FOR DESIGNATION.—If a State elects to participate in the interstate oasis program, any facility meeting the standards established by the Secretary shall be eligible for designation under this section.

''(d) LOGO.—The Secretary shall design a logo to be displayed by a facility designated under this section.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter I of title 23, United States Code (as amended by section 1814(b)), is amended by adding at the end the following:

''177. Interstate oasis program.''.

SEC. 1816. TRIBAL-STATE ROAD MAINTENANCE AGREEMENTS.

Section 204 of title 23, United States Code (as amended by section 1806(f)(4)), is amended by adding at the end the following:

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

''(1) IN GENERAL.—Notwithstanding any other provision of law, regulation, policy, or guideline, an Indian tribe and a State may enter into a road maintenance agreement under which an Indian tribe assumes the responsibilities of the State for—

''(A) Indian reservation roads; and

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

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

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

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

''(3) ANNUAL REPORT.—Effective beginning with fiscal year 2004, the Secretary shall prepare and submit to Congress an annual report that identifies—

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

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

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

SEC. 1817. NATIONAL FOREST SYSTEM ROADS.

Section 205 of title 23, United States Code, is amended by adding at the end the following:

''(e) Of the amounts made available for National Forest System roads, $15,000,000 for each fiscal year shall be used by the Secretary of Agriculture to pay the costs of facilitating the passage of aquatic species beneath roads in the National Forest System, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate.''.

SEC. 1818. TERRITORIAL HIGHWAY PROGRAM.

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

''§ 215. Territorial highway program

''(a) DEFINITIONS.—In this section:

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

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

''(A) American Samoa.

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

''(C) Guam.

''(D) The United States Virgin Islands.

''(b) PROGRAM.—

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

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

''(B) approved by the Secretary.

''(2) FEDERAL SHARE.—The Secretary shall provide Federal financial assistance to territories under this section in accordance with section 120(h).

''(c) TECHNICAL ASSISTANCE.—

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

''(A) engage in highway planning;

''(B) conduct environmental evaluations;

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

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

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

''(d) NONAPPLICABILITY OF CERTAIN PROVISIONS.—

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

''(2) APPLICABLE PROVISIONS.—The specific sections of chapter 1 that are applicable to each territory, and the extent of the applicability of those section, shall be identified in the agreement required by subsection (e).

''(e) AGREEMENT.—

''(1) IN GENERAL.—Except as provided in paragraph (3), none of the funds made available for the program shall be available for obligation or expenditure with respect to any territory until the Governor or chief executive officer of the territory enters into a new agreement with the Secretary (which new agreement shall be entered into not later than 1 year after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004), providing that the government of the territory shall—

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

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

''(i) appropriate for each territory; and

''(ii) approved by the Secretary;

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

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

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

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

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

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

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

''(4) EXISTING AGREEMENTS.—With respect to an agreement between the Secretary and the Governor or chief executive officer of a territory that is in effect as of the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004—

''(A) the agreement shall continue in force until replaced by a new agreement in accordance with paragraph (1); and

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

''(f) PERMISSIBLE USES OF FUNDS.—

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

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

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

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

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

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

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

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

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

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

(b) CONFORMING AMENDMENTS.—

(1) ELIGIBLE PROJECTS.—Section 103(b)(6) of title 23, United States Code, is amended by striking subparagraph (P) and inserting the following:

''(P) Projects eligible for assistance under the territorial highway program under section 215.''.

(2) FUNDING.—Section 104(b)(1)(A) of title 23, United States Code, is amended by striking ''to the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands'' and inserting ''for the territorial highway program authorized under section 215''.

(3) ANALYSIS.—The analysis for chapter 2 of title 23, United States Code, is amended by striking the item relating to section 215 and inserting the following:

''215. Territorial highway program.''.

SEC. 1819. MAGNETIC LEVITATION TRANSPORTATION TECHNOLOGY DEPLOYMENT PROGRAM.

Section 322 of title 23, United States Code, is amended—

(1) in subsection (c)—

(A) by striking ''Not later than'' and inserting the following:

''(1) INITIAL SOLICITATION.—Not later than''; and

(B) by adding at the end the following:

''(2) ADDITIONAL SOLICITATION.—Not later than 1 year after the date of enactment of this paragraph, the Secretary may solicit additional applications from States, or authorities designated by 1 or more States, for financial assistance authorized by subsection (b) for planning, design, and construction of eligible MAGLEV projects.'';

(2) in subsection (e), by striking ''Prior to soliciting applications, the Secretary'' and inserting ''The Secretary'';

(3) in subsection (h)—

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

''(i) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $15,000,000 for each of fiscal years 2004 through 2009.''; and

(B) in subparagraph (B), by striking clause (i) and inserting the following:

''(i) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section—

''(I) $375,000,000 for fiscal year 2004;

''(II) $400,000,000 for fiscal year 2005;

''(III) $415,000,000 for fiscal year 2006;

''(IV) $425,000,000 for fiscal year 2007;

''(V) $435,000,000 for fiscal year 2008; and

''(VI) $450,000,000 for fiscal year 2009.''; and

(4) by striking subsection (i).

SEC. 1820. DONATIONS AND CREDITS.

Section 323 of title 23, United States Code, is amended—

(1) in the first sentence of subsection (c), by inserting ", or a local government from offering to donate funds, materials, or services performed by local government employees," after "services"; and

(2) striking subsection (e).

SEC. 1821. DISADVANTAGED BUSINESS ENTERPRISES.

(a) GENERAL RULE.—Except to the extent that the Secretary determines otherwise, not less than 10 percent of the amounts made available for any program under titles I and II of this Act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) DEFINITIONS.—In this section:

(1) SMALL BUSINESS CONCERN.—

(A) IN GENERAL.—The term "small business concern" has the meaning given the term under section 3 of the Small Business Act (15 U.S.C. 632).

(B) EXCLUSION.—The term "small business concern" does not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals that has average annual gross receipts over the preceding 3 fiscal years in excess of $17,420,000, as adjusted by the Secretary for inflation.

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

(c) ANNUAL LISTING OF DISADVANTAGED BUSINESS ENTERPRISES.—Each State shall annually survey and compile a list of the small business concerns referred to in subsection (a) and the location of such concerns in the State and notify the Secretary, in writing, of the percentage of such concerns which are controlled by women, by socially and economically disadvantaged individuals (other than women), and by individuals who are women and are otherwise socially and economically disadvantaged individuals.

(d) UNIFORM CERTIFICATION.—The Secretary shall establish minimum uniform criteria for State governments to use in certifying whether a concern qualifies for purposes of this section. Such minimum uniform criteria shall include on-site visits, personal interviews, licenses, analysis of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, resume of principal owners, financial capacity, and type of work preferred.

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

SEC. 1822. EMERGENCY RELIEF.

Section 125(c)(1) of title 23, United States Code, is amended by striking $100,000,000'' and inserting "$300,000,000''.

Subtitle I—Technical Corrections

SEC. 1901. REPEAL OR UPDATE OF OBSOLETE TEXT.

(a) LETTING OF CONTRACTS.—Section 112 of title 23, United States Code, is amended—

(1) by striking subsection (f); and

(2) by redesignating subsection (g) as subsection (f).

(b) FRINGE AND CORRIDOR PARKING FACILITIES.—Section 137(a) of title 23, United States Code, is amended in the first sentence by striking "on the Federal-aid urban system" and inserting "on a Federal-aid highway".

SEC. 1902. CLARIFICATION OF DATE.

Section 109(g) of title 23, United States Code, is amended in the first sentence by striking "The Secretary" and all that follows through "of 1970" and inserting "Not later than January 30, 1971, the Secretary shall issue".

SEC. 1903. INCLUSION OF REQUIREMENTS FOR SIGNS IDENTIFYING FUNDING SOURCES IN TITLE 23.

(a) IN GENERAL.—Section 154 of the Federal-Aid Highway Act of 1987 (23 U.S.C. 101 note; 101 Stat. 209) is—

(1) transferred to title 23, United States Code;

(2) redesignated as section 321;

(3) moved to appear after section 320 of that title; and

(4) amended by striking the section heading and inserting the following:

"§ 321. Signs identifying funding sources".

(b) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 23, United States Code, is amended by inserting after the item relating to section 320 the following:

"321. Signs identifying funding sources.".

SEC. 1904. INCLUSION OF BUY AMERICA REQUIREMENTS IN TITLE 23.

(a) IN GENERAL.—Section 165 of the Highway Improvement Act of 1982 (23 U.S.C. 101 note; 96 Stat. 2136) is—

(1) transferred to title 23, United States Code;

(2) redesignated as section 313;

(3) moved to appear after section 312 of that title; and

(4) amended by striking the section heading and inserting the following:

"§ 313. Buy America".

(b) CONFORMING AMENDMENTS.—

(1) The analysis for chapter 3 of title 23, United States Code, is amended by inserting after the item relating to section 312 the following:

"313. Buy America.".

(2) Section 313 of title 23, United States Code (as added by subsection (a)), is amended—

(A) in subsection (a), by striking "by this Act" the first place it appears and all that follows through "of 1978" and inserting "to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title";

(B) in subsection (b), by redesignating paragraph (4) as paragraph (3);

(C) in subsection (d), by striking "this Act," and all that follows through "Code, which" and inserting "the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title that";

(D) by striking subsection (e); and

(E) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

SEC. 1905. TECHNICAL AMENDMENTS TO NONDISCRIMINATION SECTION.

Section 140 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) in the first sentence, by striking "subsection (a) of section 105 of this title" and inserting "section 135";

(B) in the second sentence, by striking "He" and inserting "The Secretary";

(C) in the third sentence, by striking "where he considers it necessary to assure" and inserting "if necessary to ensure"; and

(D) in the last sentence—

(i) by striking "him" and inserting "the Secretary" and

(ii) by striking "he" and inserting "the Secretary";

(2) in subsection (b)—

(A) in the first sentence, by striking "highway construction" and inserting "surface transportation"; and

(B) in the second sentence—

(i) by striking "as he may deem necessary" and inserting "as necessary"; and

(ii) by striking "not to exceed $2,500,000 for the transition quarter ending September 30, 1976, and";

(3) in the second sentence of subsection (c)—

(A) by striking "subsection 104(b)(3) of this title" and inserting "section 104(b)(3)"; and

(B) by striking "he may deem"; and

(4) in the heading of subsection (d), by striking "AND CONTRACTING".

TITLE II—TRANSPORTATION RESEARCH

Subtitle A—Funding

SEC. 2001. AUTHORIZATION OF APPROPRIATIONS.

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

(1) SURFACE TRANSPORTATION RESEARCH.—

(A) IN GENERAL.—For carrying out sections 502, 503, 506, 507, 508, and 511 of title 23, United States Code—

(i) $211,000,000 for each of fiscal years 2004 and 2005;

(ii) $215,000,000 for fiscal year 2006;

(iii) $218,000,000 for fiscal year 2007;

(iv) $220,000,000 for fiscal year 2008; and

(v) $223,000,000 for fiscal year 2009.

(B) SURFACE TRANSPORTATION-ENVIRONMENTAL COOPERATIVE RESEARCH PROGRAM.—For each of fiscal years 2004 through 2009, the Secretary shall set aside $20,000,000 of the funds authorized under subparagraph (A) to carry out the surface transportation-environmental cooperative research program under section 507 of title 23, United States Code.

(2) TRAINING AND EDUCATION.—For carrying out section 504 of title 23, United States Code—

(A) $27,000,000 for fiscal year 2004;

(B) $28,000,000 for fiscal year 2005;

(C) $29,000,000 for fiscal year 2006;

(D) $30,000,000 for fiscal year 2007;

(E) $31,000,000 for fiscal year 2008; and

(F) $32,000,000 for fiscal year 2009.

(3) BUREAU OF TRANSPORTATION STATISTICS.—For the Bureau of Transportation Statistics to carry out section 111 of title 49, United States Code, $28,000,000 for each of fiscal years 2004 through 2009.

(4) ITS STANDARDS, RESEARCH, OPERATIONAL TESTS, AND DEVELOPMENT.—For carrying out sections 524, 525, 526, 527, 528, and 529 of title 23, United States Code—

(A) $120,000,000 for fiscal year 2004;

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

(C) $126,000,000 for fiscal year 2006;

(D) $129,000,000 for fiscal year 2007;

(E) $132,000,000 for fiscal year 2008; and

(F) $135,000,000 for fiscal year 2009.

(5) UNIVERSITY TRANSPORTATION CENTERS.—For carrying out section 510 of title 23, United States Code—

(A) $40,000,000 for fiscal year 2004; and

(B) $45,000,000 for each of fiscal years 2005 through 2009.

(b) APPLICABILITY OF TITLE 23, UNITED STATES CODE.—Funds authorized to be appropriated by subsection (a)—

(1) shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share of the cost of a project or activity carried out using the funds shall be the share applicable under section 120(b) of title 23, United States

Code, as adjusted under subsection (d) of that section (unless otherwise specified or otherwise determined by the Secretary); and

(2) shall remain available until expended.

(c) ALLOCATIONS.—

(1) SURFACE TRANSPORTATION RESEARCH.—Of the amounts made available under subsection (a)(1)—

(A) $27,000,000 for each of fiscal years 2004 through 2009 shall be available to carry out advanced, high-risk, long-term research under section 502(d) of title 23, United States Code;

(B) $18,000,000 for fiscal years 2004 and 2005, $17,000,000 for fiscal year 2006, $15,000,000 for fiscal year 2007, $12,000,000 for fiscal year 2008, and $10,00,000 for fiscal year 2009 shall be available to carry out the long-term pavement performance program under section 502(e) of that title;

(C) $6,000,000 for each of fiscal years 2004 through 2009 shall be available to carry out the high-performance concrete bridge research and technology transfer program under section 502(i) of that title;

(D) $6,000,000 for each of fiscal years 2004 through 2009 shall be made available to carry out research on asphalt used in highway pavements;

(E) $6,000,000 for each of fiscal years 2004 through 2009 shall be made available to carry out research on concrete pavements;

(F) $3,000,000 for each of fiscal years 2004 through 2009 shall be made available to carry out research on aggregates used in highway pavements;

(G) $4,750,000 for each of fiscal years 2004 through 2009 shall be made available for further development and deployment of techniques to prevent and mitigate alkali silica reactivity; and

(H) $3,000,000 for each of fiscal years 2004 through 2009 shall be made available to carry out section 502(f)(3) of title 23, United States Code.

(2) TECHNOLOGY APPLICATION PROGRAM.—Of the amounts made available under subsection (a)(1), $60,000,000 for each of fiscal years 2004 through 2009 shall be available to carry out section 503 of title 23, United States Code.

(3) TRAINING AND EDUCATION.—Of the amounts made available under subsection (a)(2)—

(A) $12,000,000 for fiscal year 2004, $12,500,000 for fiscal year 2005, $13,000,000 for fiscal year 2006, $13,500,000 for fiscal year 2007, $14,000,000 for fiscal year 2008, and $14,500,000 for fiscal year 2009 shall be available to carry out section 504(a) of title 23, United States Code (relating to the National Highway Institute);

(B) $15,000,000 for each of fiscal years 2004 through 2009 shall be available to carry out section 504(b) of that title (relating to local technical assistance); and

(C) $3,000,000 for each of fiscal years 2004 through 2009 shall be available to carry out section 504(c)(2) of that title (relating to the Eisenhower Transportation Fellowship Program).

(4) INTERNATIONAL HIGHWAY TRANSPORTATION OUTREACH PROGRAM.—Of the amounts made available under subsection (a)(1), $500,000 for each of fiscal years 2004 through 2009 shall be available to carry out section 506 of title 23, United States Code.

(5) NEW STRATEGIC HIGHWAY RESEARCH PROGRAM.—For each of fiscal years 2004 through 2009, to carry out section 509 of title 23, United States Code, the Secretary shall set aside—

(A) $15,000,000 of the amounts made available to carry out the interstate maintenance program under section 119 of title 23, United States Code, for the fiscal year;

(B) $19,000,000 of the amounts made available for the National Highway System under section 101 of title 23, United States Code, for the fiscal year;

(C) $13,000,000 of the amounts made available to carry out the bridge program under section 144 of title 23, United States Code, for the fiscal year;

(D) $20,000,000 of the amounts made available to carry out the surface transportation program under section 133 of title 23, United States Code, for the fiscal year;

(E) $5,000,000 of the amounts made available to carry out the congestion mitigation and air quality improvement program under section 149 of title 23, United States Code, for the fiscal year; and

(F) $3,000,000 of the amounts made available to carry out the highway safety improvement program under section 148 of title 23, United States Code, for the fiscal year.

(6) COMMERCIAL VEHICLE INTELLIGENT TRANSPORTATION SYSTEM INFRASTRUCTURE PROGRAM.—Of the amounts made available under subsection (a)(4), not less than $30,000,000 for each of fiscal years 2004 through 2009 shall be available to carry out section 527 of title 23, United States Code.

(d) TRANSFERS OF FUNDS.—The Secretary may transfer—

(1) to an amount made available under paragraphs (1), (2), or (4) of subsection (c), not to exceed 10 percent of the amount allocated for a fiscal year under any other of those paragraphs; and

(2) to an amount made available under subparagraphs (A), (B), or (C) of subsection (c)(3), not to exceed 10 percent of the amount allocated for a fiscal year under any other of those subparagraphs.

SEC. 2002. OBLIGATION CEILING.

Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Highway Trust Fund (other than the Mass Transit Account) by section 2001(a) shall not exceed—

(1) $426,200,000 for fiscal year 2004;
(2) $435,200,000 for fiscal year 2005;
(3) $443,200,000 for fiscal year 2006;
(4) $450,200,000 for fiscal year 2007;
(5) $456,200,000 for fiscal year 2008; and
(6) $463,200,000 for fiscal year 2009.

SEC. 2003. NOTICE.

(a) NOTICE OF REPROGRAMMING.—If any funds authorized for carrying out this title or the amendments made by this title are subject to a reprogramming action that requires notice to be provided to the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate, notice of that action shall be concurrently provided to the Committee on Transportation and Infrastructure and the Committee on Science of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(b) NOTICE OF REORGANIZATION.—On or before the 15th day preceding the date of any major reorganization of a program, project, or activity of the Department of Transportation for which funds are authorized by this title or the amendments made by this title, the Secretary shall provide notice of the reorganization to the Committee on Transportation and Infrastructure and the Committee on Science of the House of Representatives and the Committee on Environment and Public Works of the Senate.

Subtitle B—Research and Technology

SEC. 2101. RESEARCH AND TECHNOLOGY PROGRAM.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is amended to read as follows:

"CHAPTER 5—RESEARCH AND TECHNOLOGY

''SUBCHAPTER I—SURFACE TRANSPORTATION

''Sec.
''501. Definitions.
''502. Surface transportation research.
''503. Technology application program.
''504. Training and education.
''505. State planning and research.
''506. International highway transportation outreach program.
''507. Surface transportation-environmental cooperative research program.
''508. Surface transportation research technology deployment and strategic planning.
''509. New strategic highway research program.
''510. University transportation centers.
''511. Multistate corridor operations and management.

''SUBCHAPTER II—INTELLIGENT TRANSPORTATION SYSTEM RESEARCH AND TECHNICAL ASSISTANCE PROGRAM

''521. Finding.
''522. Goals and purposes.
''523. Definitions.
''524. General authorities and requirements.
''525. National ITS Program Plan.
''526. National ITS architecture and standards.
''527. Commercial vehicle intelligent transportation system infrastructure program.
''528. Research and development.
''529. Use of funds.

''SUBCHAPTER I—SURFACE TRANSPORTATION

"§ 501. Definitions

''In this subchapter:

''(1) FEDERAL LABORATORY.—The term 'Federal laboratory' includes—

''(A) a Government-owned, Government-operated laboratory; and

''(B) a Government-owned, contractor-operated laboratory.

''(2) SAFETY.—The term 'safety' includes highway and traffic safety systems, research, and development relating to—

''(A) vehicle, highway, driver, passenger, bicyclist, and pedestrian characteristics;

''(B) accident investigations;

''(C) communications;

''(D) emergency medical care; and

''(E) transportation of the injured.

"§ 502. Surface transportation research

''(a) IN GENERAL.—

''(1) RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.—The Secretary may carry out research, development, and technology transfer activities with respect to—

''(A) all phases of transportation planning and development (including new technologies, construction, transportation systems management and operations development, design, maintenance, safety, security, financing, data collection and analysis, demand forecasting, multimodal assessment, and traffic conditions); and

''(B) the effect of State laws on the activities described in subparagraph (A).

''(2) TESTS AND DEVELOPMENT.—The Secretary may test, develop, or assist in testing and developing, any material, invention, patented article, or process.

''(3) COOPERATION, GRANTS, AND CONTRACTS.—

''(A) IN GENERAL.—The Secretary may carry out this section—

''(i) independently;

''(ii) in cooperation with—

''(I) any other Federal agency or instrumentality; and

''(II) any Federal laboratory; or

''(iii) by making grants to, or entering into contracts, cooperative agreements, and other transactions with—

''(I) the National Academy of Sciences;

''(II) the American Association of State Highway and Transportation Officials;

''(III) planning organizations;

''(IV) a Federal laboratory;

''(V) a State agency;

''(VI) an authority, association, institution, or organization;

''(VII) a for-profit or nonprofit corporation;

''(VIII) a foreign country; or

''(IX) any other person.

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

''(i) on a competitive basis; and

''(ii) on the basis of the results of peer review of proposals submitted to the Secretary.

''(4) TECHNOLOGICAL INNOVATION.—The programs and activities carried out under this section shall be consistent with the surface transportation research and technology development strategic plan developed under section 508(c).

''(5) FUNDS.—

''(A) SPECIAL ACCOUNT.—In addition to other funds made available to carry out this section, the Secretary shall use such funds as may be deposited by any cooperating organization or person in a special account of the Treasury established for this purpose.

''(B) USE OF FUNDS.—The Secretary shall use funds made available to carry out this section to develop, administer, communicate, and promote the use of products of research, development, and technology transfer programs under this section.

''(b) COLLABORATIVE RESEARCH AND DEVELOPMENT.—

''(1) IN GENERAL.—To encourage innovative solutions to surface transportation problems and stimulate the deployment of new 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, sole proprietorships, and trade associations that are incorporated or established under the laws of any State); and

''(B) Federal laboratories.

''(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)).

''(3) FEDERAL SHARE.—

''(A) IN GENERAL.—The Federal share of the cost of activities carried out under a cooperative research and development agreement entered into under this subsection shall not exceed 50 percent, except that if there is substantial public interest or benefit, the Secretary may approve a greater Federal share.

''(B) NON-FEDERAL SHARE.—All costs directly incurred by the non-Federal partners, including personnel, travel, and hardware 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.).

''(5) WAIVER OF ADVERTISING REQUIREMENTS.—Section 3709 of the Revised Statutes (41 U.S.C. 5) shall not apply to a contract or agreement entered into under this chapter.

''(c) CONTENTS OF RESEARCH PROGRAM.—The Secretary shall include as priority areas of effort within the surface transportation research program—

''(1) the development of new technologies and methods in materials, pavements, structures, design, and construction, with the objectives of—

''(A)(i) increasing to 50 years the expected life of pavements;

''(ii) increasing to 100 years the expected life of bridges; and

''(iii) significantly increasing the durability of other infrastructure;

''(B) lowering the life-cycle costs, including—

''(i) construction costs;

''(ii) maintenance costs;

''(iii) operations costs; and

''(vi) user costs.

''(2) the development, and testing for effectiveness, of nondestructive evaluation technologies for civil infrastructure using existing and new technologies;

''(3) the investigation of—

''(A) the application of current natural hazard mitigation techniques to manmade hazards; and

''(B) the continuation of hazard mitigation research combining manmade and natural hazards;

''(4) the improvement of safety—

''(A) at intersections;

''(B) with respect to accidents involving vehicles run off the road; and

''(C) on rural roads;

''(5) the reduction of work zone incursions and improvement of work zone safety;

''(6) the improvement of geometric design of roads for the purpose of safety;

''(7) the examination of data collected through the national bridge inventory conducted under section 144 using the national bridge inspection standards established under section 151, with the objectives of determining whether—

''(A) the most useful types of data are being collected; and

''(B) any improvement could be made in the types of data collected and the manner in which the data is collected, with respect to bridges in the United States;

''(8) the improvement of the infrastructure investment needs report described in subsection (g) through—

''(A) the study and implementation of new methods of collecting better quality data, particularly with respect to performance, congestion, and infrastructure conditions;

''(B) monitoring of the surface transportation system in a system-wide manner, through the use of—

''(i) intelligent transportation system technologies of traffic operations centers; and

''(ii) other new data collection technologies as sources of better quality performance data;

''(C) the determination of the critical metrics that should be used to determine the condition and performance of the surface transportation system; and

''(D) the study and implementation of new methods of statistical analysis and computer models to improve the prediction of future infrastructure investment requirements;

''(9) the development of methods to improve the determination of benefits from infrastructure improvements, including—

''(A) more accurate calculations of benefit-to-cost ratios, considering benefits and impacts throughout local and regional transportation systems;

''(B) improvements in calculating life-cycle costs; and

''(C) valuation of assets;

''(10) the improvement of planning processes to better predict outcomes of transportation projects, including the application of computer simulations in the planning process to predict outcomes of planning decisions;

''(11) the multimodal applications of Geographic Information Systems and remote sensing, including such areas of application as—

''(A) planning;

''(B) environmental decisionmaking and project delivery; and

''(C) freight movement;

''(12) the development and application of methods of providing revenues to the Highway Trust Fund with the objective of offsetting potential reductions in fuel tax receipts;

''(13) the development of tests and methods to determine the benefits and costs to communities of major transportation investments and projects;

''(14) the conduct of extreme weather research, including research to—

''(A) reduce contraction and expansion damage;

''(B) reduce or repair road damage caused by freezing and thawing;

''(C) improve deicing or snow removal techniques;

''(D) develop better methods to reduce the risk of thermal collapse, including collapse from changes in underlying permafrost;

''(E) improve concrete and asphalt installation in extreme weather conditions; and

''(F) make other improvements to protect highway infrastructure or enhance highway safety or performance;

''(15) the improvement of surface transportation planning;

''(16) environmental research;

''(17) transportation system management and operations; and

''(18) any other surface transportation research topics that the Secretary determines, in accordance with the strategic planning process under section 508, to be critical.

''(d) ADVANCED, HIGH-RISK RESEARCH.—

''(1) IN GENERAL.—The Secretary shall establish and carry out, in accordance with the surface transportation research and technology development strategic plan developed under section 508(c) and research priority areas described in subsection (c), an advanced research program that addresses longer-term, higher-risk research with potentially dramatic breakthroughs for improving the durability, efficiency, environmental impact, productivity, and safety (including bicycle and pedestrian safety) aspects of highway and intermodal transportation systems.

''(2) PARTNERSHIPS.—In carrying out the program, the Secretary shall seek to develop partnerships with the public and private sectors.

''(3) REPORT.—The Secretary shall include in the strategic plan required under section 508(c) a description of each of the projects, and the amount of funds expended for each project, carried out under this subsection during the fiscal year.

''(e) LONG-TERM PAVEMENT PERFORMANCE PROGRAM.—

''(1) AUTHORITY.—The Secretary shall continue, through September 30, 2009, the long-term pavement performance program tests, monitoring, and data analysis.

''(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.

''(3) CONCLUSION OF PROGRAM.—

''(A) SUMMARY REPORT.—The Secretary shall include in the strategic plan required under section 508(c) a report on the initial conclusions of the long-term pavement performance program that includes—

''(i) an analysis of any research objectives that remain to be achieved under the program;

''(ii) an analysis of other associated longer-term expenditures under the program that are in the public interest;

''(iii) a detailed plan regarding the storage, maintenance, and user support of the database, information management system, and materials reference library of the program;

''(iv) a schedule for continued implementation of the necessary data collection and analysis and project plan under the program; and

''(v) an estimate of the costs of carrying out each of the activities described in clauses (i) through (iv) for each fiscal year during which the program is carried out.

''(B) DEADLINE; USEFULNESS OF ADVANCES.—The Secretary shall, to the maximum extent practicable—

''(i) ensure that the long-term pavement performance program is concluded not later than September 30, 2009; and

''(ii) make such allowances as are necessary to ensure the usefulness of the technological advances resulting from the program.

''(f) SEISMIC RESEARCH.—The Secretary shall—

''(1) in consultation and cooperation with Federal agencies participating in the National Earthquake Hazards Reduction Program established by section 5 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704), coordinate the conduct of seismic research;

''(2) take such actions as are necessary to ensure that the coordination of the research is consistent with—

''(A) planning and coordination activities of the Director of the Federal Emergency Management Agency under section 5(b)(1) of that Act (42 U.S.C. 7704(b)(1)); and

''(B) the plan developed by the Director of the Federal Emergency Management Agency under section 8(b) of that Act (42 U.S.C. 7705b(b)); and

''(3) in cooperation with the Center for Civil Engineering Research at the University of Nevada, Reno, carry out a seismic research program—

''(A) to study the vulnerability of the Federal-aid highway system and other surface transportation systems to seismic activity;

''(B) to develop and implement cost-effective methods to reduce the vulnerability; and

''(C) to conduct seismic research and upgrade earthquake simulation facilities as necessary to carry out the program.

''(g) INFRASTRUCTURE INVESTMENT NEEDS REPORT.—

''(1) IN GENERAL.—Not later than July 31, 2004, and July 31 of every second year thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes—

''(A) estimates of the future highway and bridge needs of the United States; and

''(B) the backlog of current highway and bridge needs.

''(2) COMPARISON WITH PRIOR REPORTS.—Each report under paragraph (1) shall provide the means, including all necessary information, to relate and compare the conditions and service measures used in the previous biennial reports.

''(h) SECURITY RELATED RESEARCH AND TECHNOLOGY TRANSFER ACTIVITIES.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, the Secretary, in consultation with the Secretary of Homeland Security, with key stakeholder input (including State transportation departments) shall develop a 5-year strategic plan for research and technology transfer and deployment activities pertaining to the security aspects of highway infrastructure and operations.

''(2) COMPONENTS OF PLAN.—The plan shall include—

''(A) an identification of which agencies are responsible for the conduct of various research and technology transfer activities;

''(B) a description of the manner in which those activities will be coordinated; and

''(C) a description of the process to be used to ensure that the advances derived from relevant activities supported by the Federal Highway Administration are consistent with the operational guidelines, policies, recommendations, and regulations of the Department of Homeland Security; and

''(D) a systematic evaluation of the research that should be conducted to address, at a minimum—

''(i) vulnerabilities of, and measures that may be taken to improve, emergency response capabilities and evacuations;

''(ii) recommended upgrades of traffic management during crises;

''(iii) enhanced communications among the public, the military, law enforcement, fire and emergency medical services, and transportation agencies;

''(iv) protection of critical, security-related infrastructure; and

''(v) structural reinforcement of key facilities.

''(3) SUBMISSION.—On completion of the plan under this subsection, 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) a copy of the plan developed under paragraph (1); and

''(B) a copy of a memorandum of understanding specifying coordination strategies and assignment of responsibilities covered by the plan that is signed by the Secretary and the Secretary of Homeland Security.

''(i) HIGH-PERFORMANCE CONCRETE BRIDGE RESEARCH AND TECHNOLOGY TRANSFER PROGRAM.—In accordance with the objectives described in subsection (c)(1) and the requirements under sections 503(b)(4) and 504(b), the Secretary shall carry out a program to demonstrate the application of high-performance concrete in the construction and rehabilitation of bridges.

''(j) BIOBASED TRANSPORTATION RESEARCH.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) $18,000,000 for each of fiscal years 2004 through 2009 equally divided and available to carry out biobased research of national importance at the National Biodiesel Board and at research centers identified in section 9011 of Public Law 107–171.

''§ 503. Technology application program

''(a) TECHNOLOGY APPLICATION INITIATIVES AND PARTNERSHIPS PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary, in consultation with interested stakeholders, shall develop and administer a national technology and innovation application initiatives and partnerships program.

''(2) PURPOSE.—The purpose of the program shall be to significantly accelerate the adoption of technology and innovation by the surface transportation community.

''(3) APPLICATION GOALS.—

''(A) ESTABLISHMENT.—Not later than 180 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, the Secretary, in consultation with the Surface Transportation Research Technology Advisory Committee, State transportation departments, and other interested stakeholders, shall establish, as part of the surface transportation research and technology development strategic plan under section 508(c), goals to carry out paragraph (1).

''(B) DESIGN.—Each of the goals and the program developed to achieve the goals shall be designed to provide tangible benefits, with respect to transportation systems, in the areas of efficiency, safety, reliability, service life, environmental protection, and sustainability.

''(C) STRATEGIES FOR ACHIEVEMENT.—For each goal, the Secretary, in cooperation with representatives of the transportation community, such as States, local governments, the private sector, and academia, shall use domestic and international technology to develop strategies and initiatives to achieve the goal, including technical assistance in deploying technology and mechanisms for sharing information among program participants.

''(4) INTEGRATION WITH OTHER PROGRAMS.—The Secretary shall integrate activities carried out under this subsection with the efforts of the Secretary to—

''(A) disseminate the results of research sponsored by the Secretary; and

''(B) facilitate technology transfer.

''(5) LEVERAGING OF FEDERAL RESOURCES.—In selecting projects to be carried out under this subsection, the Secretary shall give preference to projects that leverage Federal funds with other significant public or private resources.

''(6) 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.

''(7) REPORTS.—The results and progress of activities carried out under this section shall be published as part of the annual transportation research report prepared by the Secretary under section 508(c)(5).

''(8) ALLOCATION.—To the extent appropriate to achieve the goals established under paragraph (3), the Secretary may further allocate funds made available to carry out this section to States for use by those States.

''(b) INNOVATIVE SURFACE TRANSPORTATION INFRASTRUCTURE RESEARCH AND CONSTRUCTION PROGRAM.—

''(1) IN GENERAL.—The Secretary shall establish and carry out a program for the application of innovative material, design, and construction technologies in the construction, preservation, and rehabilitation of elements of surface transportation infrastructure.

''(2) GOALS.—The goals of the program shall include—

''(A) the development of new, cost-effective, and innovative materials;

''(B) the reduction of maintenance costs and life-cycle costs of elements of infrastructure, including the costs of new construction, replacement, and rehabilitation;

''(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 surface transportation infrastructure;

''(E) the development of highway bridges and structures that will withstand natural disasters and disasters caused by human activity; and

''(F) the development of new, nondestructive technologies and techniques for the evaluation of elements of transportation infrastructure.

''(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—

''(i) 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 concerning innovative materials and methods; and

''(ii) States, to pay the Federal share of the cost of repair, rehabilitation, replacement, and new construction of elements of surface transportation infrastructure that demonstrate the application of innovative materials and methods.

''(B) APPLICATIONS.—

''(i) IN GENERAL.—To receive a grant under this subsection, an entity described in subparagraph (A) shall submit to the Secretary an application in such form and containing such information as the Secretary may require.

''(ii) APPROVAL.—The Secretary shall select and approve an application based on whether the proposed project that is the subject of the application would meet the goals described in paragraph (2).

''(4) TECHNOLOGY AND INFORMATION TRANSFER.—The Secretary shall take such action as is necessary to—

''(A) ensure that the information and technology resulting from research conducted under paragraph (3) is made available to State and local transportation departments and other interested parties, as specified by the Secretary; and

''(B) encourage the use of the information and technology.

''(5) FEDERAL SHARE.—The Federal share of the cost of a project under this section shall be determined by the Secretary.

''§ 504. Training and education

''(a) NATIONAL HIGHWAY INSTITUTE.—

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

''(A) operate, in the Federal Highway Administration, a National Highway Institute (referred to in this subsection as the 'Institute'); and

''(B) administer, through the Institute, the authority vested in the Secretary by this title or by any other law for the development and conduct of education and training programs relating to highways.

''(2) DUTIES OF THE INSTITUTE.—In cooperation with State transportation departments, industries in the United States, and national or international entities, the Institute shall develop and administer education and training programs of instruction for—

''(A) Federal Highway Administration, State, and local transportation agency employees;

''(B) regional, State, and metropolitan planning organizations;

''(C) State and local police, public safety, and motor vehicle employees; and

''(D) United States citizens and foreign nationals engaged or to be engaged in surface transportation work of interest to the United States.

''(3) COURSES.—

''(A) IN GENERAL.—The Institute shall—

''(i) develop or update existing courses in asset management, including courses that include such components as—

''(I) the determination of life-cycle costs;

''(II) the valuation of assets;

''(III) benefit-to-cost ratio calculations; and

''(IV) objective decisionmaking processes for project selection; and

''(ii) continually develop courses relating to the application of emerging technologies for—

''(I) transportation infrastructure applications and asset management;

''(II) intelligent transportation systems;

''(III) operations (including security operations);

''(IV) the collection and archiving of data;

''(V) expediting the planning and development of transportation projects; and

''(VI) the intermodal movement of individuals and freight.

''(B) ADDITIONAL COURSES.—In addition to the courses developed under subparagraph (A), the Institute, in consultation with State transportation departments, metropolitan planning organizations, and the American Association of State Highway and Transportation Officials, may develop courses relating to technology, methods, techniques, engineering, construction, safety, maintenance, environmental mitigation and compliance, regulations, management, inspection, and finance.

''(C) REVISION OF COURSES OFFERED.—The Institute shall periodically—

''(i) review the course inventory of the Institute; and

''(ii) revise or cease to offer courses based on course content, applicability, and need.

''(4) ELIGIBILITY; FEDERAL SHARE.—The funds apportioned to a State under section 104(b)(3) for the surface transportation program shall be available for expenditure by the State transportation department for the payment of not to exceed 80 percent of the cost of tuition and direct educational expenses (excluding salaries) in connection with the education and training of employees of State and local transportation agencies in accordance with this subsection.

''(5) FEDERAL RESPONSIBILITY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), education and training of employees of Federal, State, and local transportation (including highway) agencies authorized under this subsection may be provided—

''(i) by the Secretary, at no cost to the States and local governments, if the Secretary determines that provision at no cost is in the public interest; or

''(ii) by the State, through grants, cooperative agreements, and contracts with public and private agencies, institutions, individuals, and the Institute.

''(B) PAYMENT OF FULL COST BY PRIVATE PERSONS.—Private agencies, international or foreign entities, and individuals shall pay the full cost of any education and training (including the cost of course development) received by the agencies, entities, and individuals, unless the Secretary determines that payment of a lesser amount of the cost is of critical importance to the public interest.

''(6) TRAINING FELLOWSHIPS; COOPERATION.—The Institute may—

''(A) engage in training activities authorized under this subsection, including the granting of training fellowships; and

''(B) exercise the authority of the Institute independently or in cooperation with any—

''(i) other Federal or State agency;

''(ii) association, authority, institution, or organization;

''(iii) for-profit or nonprofit corporation;

''(iv) national or international entity;

''(v) foreign country; or

''(vi) person.

''(7) COLLECTION OF FEES.—

''(A) IN GENERAL.—In accordance with this subsection, the Institute may assess and collect fees to defray the costs of the Institute in developing or administering education and training programs under this subsection.

''(B) PERSONS SUBJECT TO FEES.—Fees may be assessed and collected under this subsection only with respect to—

''(i) persons and entities for whom education or training programs are developed or administered under this subsection; and

''(ii) persons and entities to whom education or training is provided under this subsection.

''(C) AMOUNT OF FEES.—The fees assessed and collected under this subsection shall be established in a manner that ensures that the liability of any person or entity for a fee is reasonably based on the proportion of the costs referred to in subparagraph (A) that relate to the person or entity.

''(D) USE.—All fees collected under this subsection shall be used, without further appropriation, to defray costs associated with the development or administration of education and training programs authorized under this subsection.

''(8) RELATION TO FEES.—The funds made available to carry out this subsection may be combined with or held separate from the fees collected under—

''(A) paragraph (7);

''(B) memoranda of understanding;

''(C) regional compacts; and

''(D) other similar agreements.

''(b) LOCAL TECHNICAL ASSISTANCE PROGRAM.—

''(1) AUTHORITY.—The Secretary shall carry out a local technical assistance program that will provide access to surface transportation technology to—

''(A) highway and transportation agencies in urbanized areas;

''(B) highway and transportation agencies in rural areas;

''(C) contractors that perform work for the agencies; and

''(D) infrastructure security.

''(2) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—The Secretary may make grants and enter into cooperative agreements and contracts to provide education and training, technical assistance, and related support services to—

''(A) assist rural, local transportation agencies and tribal governments, and the consultants and construction personnel working for the agencies and governments, to—

''(i) develop and expand expertise in road and transportation areas (including pavement, bridge, concrete structures, intermodal connections, safety management systems, intelligent transportation systems, incident response, operations, and traffic safety countermeasures);

''(ii) improve roads and bridges;

''(iii) enhance—

''(I) programs for the movement of passengers and freight; and

''(II) intergovernmental transportation planning and project selection; and

''(iv) deal effectively with special transportation-related problems by preparing and providing training packages, manuals, guidelines, and technical resource materials;

''(B) develop technical assistance for tourism and recreational travel;

''(C) identify, package, and deliver transportation technology and traffic safety information to local jurisdictions to assist urban transportation agencies in developing and expanding their ability to deal effectively

with transportation-related problems (particularly the promotion of regional cooperation);

''(D) operate, in cooperation with State transportation departments and universities—

''(i) local technical assistance program centers designated to provide transportation technology transfer services to rural areas and to urbanized areas; and

''(ii) local technical assistance program centers designated to provide transportation technical assistance to tribal governments; and

''(E) allow local transportation agencies and tribal governments, in cooperation with the private sector, to enhance new technology implementation.

''(c) RESEARCH FELLOWSHIPS.—

''(1) GENERAL AUTHORITY.—The Secretary, acting independently or in cooperation with other Federal agencies and instrumentalities, may make grants for research fellowships for any purpose for which research is authorized by this chapter.

''(2) DWIGHT DAVID EISENHOWER TRANSPORTATION FELLOWSHIP PROGRAM.—The Secretary shall establish and implement a transportation research fellowship program, to be known as the 'Dwight David Eisenhower Transportation Fellowship Program', for the purpose of attracting qualified students to the field of transportation.

''§ 505. State planning and research

''(a) IN GENERAL.—Two percent of the sums apportioned to a State for fiscal year 2004 and each fiscal year thereafter under sections 104 (other than subsections (f) and (h)) and 144 shall be available for expenditure by the State, in consultation with the Secretary, only for—

''(1) the conduct of engineering and economic surveys and investigations;

''(2) the planning of—

''(A) future highway programs and local public transportation systems; and

''(B) the financing of those programs and systems, including metropolitan and statewide planning under sections 134 and 135;

''(3) the development and implementation of management systems under section 303;

''(4) the conduct of studies on—

''(A) the economy, safety, and convenience of surface transportation systems; and

''(B) the desirable regulation and equitable taxation of those systems;

''(5) research, development, and technology transfer activities necessary in connection with the planning, design, construction, management, and maintenance of highway, public transportation, and intermodal transportation systems;

''(6) the conduct of studies, research, and training relating to the engineering standards and construction materials for surface transportation systems described in paragraph (5) (including the evaluation and accreditation of inspection and testing and the regulation of and charging for the use of the standards and materials); and

''(7) the conduct of activities relating to the planning of real-time monitoring elements.

''(b) MINIMUM EXPENDITURES ON RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.—

''(1) IN GENERAL.—Subject to paragraph (2), not less than 25 percent of the funds subject to subsection (a) that are apportioned to a State for a fiscal year shall be expended by the State for research, development, and technology transfer activities that—

''(A) are described in subsection (a); and

''(B) relate to highway, public transportation, and intermodal transportation systems.

''(2) WAIVERS.—The Secretary may waive the application of paragraph (1) with respect to a State for a fiscal year if—

''(A) the State certifies to the Secretary for the fiscal year that total expenditures by the State for transportation planning under sections 134 and 135 will exceed 75 percent of the funds described in paragraph (1); and

''(B) the Secretary accepts the certification of the State.

''(3) NONAPPLICABILITY OF ASSESSMENT.—Funds expended under paragraph (1) shall not be considered to be part of the extramural budget of the agency for the purpose of section 9 of the Small Business Act (15 U.S.C. 638).

''(c) FEDERAL SHARE.—The Federal share of the cost of a project carried out using funds subject to subsection (a) shall be the share applicable under section 120(b), as adjusted under subsection (d) of that section.

''(d) ADMINISTRATION OF SUMS.—Funds subject to subsection (a) shall be—

''(1) combined and administered by the Secretary as a single fund; and

''(2) available for obligation for the period described in section 118(b)(2).

''(e) ELIGIBLE USE OF STATE PLANNING AND RESEARCH FUNDS.—A State, in coordination with the Secretary, may obligate funds made available to carry out this section for any purpose authorized under section 506(a).

''§ 506. International highway transportation outreach program

''(a) ESTABLISHMENT.—The Secretary may establish an international highway transportation outreach program—

''(1) to inform the United States highway community of technological innovations in foreign countries that could significantly improve highway transportation in the United States;

''(2) to promote United States highway transportation expertise, goods, and services in foreign countries; and

''(3) to increase transfers of United States highway transportation technology to foreign countries.

''(b) ACTIVITIES.—Activities carried out under the program may include—

''(1) the development, monitoring, assessment, and dissemination in the United States of information about highway transportation innovations in foreign countries that could significantly improve highway transportation in the United States;

''(2) research, development, demonstration, training, and other forms of technology transfer and exchange;

''(3) the provision to foreign countries, through participation in trade shows, seminars, expositions, and other similar activities, of information relating to the technical quality of United States highway transportation goods and services;

''(4) the offering of technical services of the Federal Highway Administration that cannot be readily obtained from private sector firms in the United States for incorporation into the proposals of those firms undertaking highway transportation projects outside the United States, if the costs of the technical services will be recovered under the terms of the project;

''(5) the conduct of studies to assess the need for, or feasibility of, highway transportation improvements in foreign countries; and

''(6) the gathering and dissemination of information on foreign transportation markets and industries.

''(c) COOPERATION.—The Secretary may carry out this section in cooperation with any appropriate—

''(1) Federal, State, or local agency;

''(2) authority, association, institution, or organization;

''(3) for-profit or nonprofit corporation;

''(4) national or international entity;

''(5) foreign country; or

''(6) person.

''(d) FUNDS.—

''(1) CONTRIBUTIONS.—Funds available to carry out this section shall include funds deposited by any cooperating organization or person into a special account of the Treasury established for this purpose.

''(2) ELIGIBLE USES OF FUNDS.—The funds deposited into the account, and other funds available to carry out this section, shall be available to cover the cost of any activity eligible under this section, including the cost of—

''(A) promotional materials;

''(B) travel;

''(C) reception and representation expenses; and

''(D) salaries and benefits.

''(3) REIMBURSEMENTS FOR SALARIES AND BENEFITS.—Reimbursements for salaries and benefits of Department of Transportation employees providing services under this section shall be credited to the account.

''(e) REPORT—For each fiscal year, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes the destinations and individual trip costs of international travel conducted in carrying out activities described in this section.

''§ 507. Surface transportation-environmental cooperative research program

''(a) IN GENERAL.—The Secretary shall establish and carry out a surface transportation-environmental cooperative research program.

''(b) CONTENTS.—The program carried out under this section may include research—

''(1) to develop more accurate models for evaluating transportation control measures and transportation system designs that are appropriate for use by State and local governments (including metropolitan planning organizations) in designing implementation plans to meet Federal, State, and local environmental requirements;

''(2) to improve understanding of the factors that contribute to the demand for transportation;

''(3) to develop indicators of economic, social, and environmental performance of transportation systems to facilitate analysis of potential alternatives;

''(4) to meet additional priorities as determined by the Secretary in the strategic planning process under section 508; and

''(5) to refine, through the conduct of workshops, symposia, and panels, and in consultation with stakeholders (including the Department of Energy, the Environmental Protection Agency, and other appropriate Federal and State agencies and associations) the scope and research emphases of the program.

''(c) PROGRAM ADMINISTRATION.—The Secretary shall—

''(1) administer the program established under this section; and

''(2) ensure, to the maximum extent practicable, that—

''(A) the best projects and researchers are selected to conduct research in the priority areas described in subsection (b)—

''(i) on the basis of merit of each submitted proposal; and

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

''(B) a qualified, permanent core staff with the ability and expertise to manage a large multiyear budget is used;

''(C) the stakeholders are involved in the governance of the program, at the executive,

overall program, and technical levels, through the use of expert panels and committees; and

''(D) there is no duplication of research effort between the program established under this section and the new strategic highway research program established under section 509.

''(d) NATIONAL ACADEMY OF SCIENCES.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities relating to the research, technology, and technology transfer activities described in subsections (b) and (c) as the Secretary determines to be appropriate.

''§ 508. Surface transportation research technology deployment and strategic planning

''(a) PLANNING.—

''(1) ESTABLISHMENT.—The Secretary shall—

''(A) establish, in accordance with section 306 of title 5, a strategic planning process that—

''(i) enhances effective implementation of this section through the establishment in accordance with paragraph (2) of the Surface Transportation Research Technology Advisory Committee; and

''(ii) focuses on surface transportation research funded through paragraphs (1), (2), (4), and (5) of section 2001(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, taking into consideration national surface transportation system needs and intermodality requirements;

''(B) coordinate Federal surface transportation research, technology development, and deployment activities;

''(C) at such intervals as are appropriate and practicable, measure the results of those activities and the ways in which the activities affect the performance of the surface transportation systems of the United States; and

''(D) ensure, to the maximum extent practicable, that planning and reporting activities carried out under this section are coordinated with all other surface transportation planning and reporting requirements.

''(2) SURFACE TRANSPORTATION RESEARCH TECHNOLOGY ADVISORY COMMITTEE.—

''(A) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, the Secretary shall establish a committee to be known as the 'Surface Transportation Research Technology Advisory Committee' (referred to in this section as the 'Committee').

''(B) MEMBERSHIP.—The Committee shall be composed of 12 members appointed by the Secretary—

''(i) each of which shall have expertise in a particular area relating to Federal surface transportation programs, including—

''(I) safety;

''(II) operations;

''(III) infrastructure (including pavements and structures);

''(IV) planning and environment;

''(V) policy; and

''(VI) asset management; and

''(ii) of which—

''(I) 3 members shall be individuals representing the Federal Government;

''(II) 3 members—

''(aa) shall be exceptionally qualified to serve on the Committee, as determined by the Secretary, based on education, training, and experience; and

''(bb) shall not be officers or employees of the United States;

''(III) 3 members—

''(aa) shall represent the transportation industry (including the pavement industry); and

''(bb) shall not be officers or employees of the United States; and

''(IV) 3 members shall represent State transportation departments from 3 different geographical regions of the United States.

''(C) MEETINGS.—The advisory subcommittees shall meet on a regular basis, but not less than twice each year.

''(D) DUTIES.—The Committee shall provide to the Secretary, on a continuous basis, advice and guidance relating to—

''(i) the determination of surface transportation research priorities;

''(ii) the improvement of the research planning and implementation process;

''(iii) the design and selection of research projects;

''(iv) the review of research results;

''(v) the planning and implementation of technology transfer activities and

''(vi) the formulation of the surface transportation research and technology deployment and deployment strategic plan required under subsection (c).

''(E) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this paragraph $200,000 for each fiscal year.

''(b) IMPLEMENTATION.—The Secretary shall—

''(1) provide for the integrated planning, coordination, and consultation among the operating administrations of the Department of Transportation, all other Federal agencies with responsibility for surface transportation research and technology development, State and local governments, institutions of higher education, industry, and other private and public sector organizations engaged in surface transportation-related research and development activities; and

''(2) ensure that the surface transportation research and technology development programs of the Department do not duplicate other Federal, State, or private sector research and development programs.

''(c) SURFACE TRANSPORTATION RESEARCH AND TECHNOLOGY DEPLOYMENT STRATEGIC PLAN.—

''(1) IN GENERAL.—After receiving, and based on, extensive consultation and input from stakeholders representing the transportation community and the Surface Transportation Research Advisory Committee, the Secretary shall, not later than 1 year after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, complete, and shall periodically update thereafter, a strategic plan for each of the core surface transportation research areas, including—

''(A) safety;

''(B) operations;

''(C) infrastructure (including pavements and structures);

''(D) planning and environment;

''(E) policy; and

''(F) asset management.

''(2) COMPONENTS.—The strategic plan shall specify—

''(A) surface transportation research objectives and priorities;

''(B) specific surface transportation research projects to be conducted;

''(C) recommended technology transfer activities to promote the deployment of advances resulting from the surface transportation research conducted; and

''(D) short- and long-term technology development and deployment activities.

''(3) REVIEW AND SUBMISSION OF FINDINGS.—The Secretary shall enter into a contract with the Transportation Research Board of the National Academy of Sciences, on behalf of the Research and Technology Coordinating Committee of the National Research Council, under which—

''(A) the Transportation Research Board shall—

''(i) review the research and technology planning and implementation process used by Federal Highway Administration; and

''(ii) evaluate each of the strategic plans prepared under this subsection—

''(I) to ensure that sufficient stakeholder input is being solicited and considered throughout the preparation process; and

''(II) to offer recommendations relevant to research priorities, project selection, and deployment strategies; and

''(B) the Secretary shall ensure that the Research and Technology Coordinating Committee, in a timely manner, informs the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of the findings of the review and evaluation under subparagraph (A).

''(4) RESPONSES OF SECRETARY.—Not later than 60 days after the date of completion of the strategic plan under this subsection, 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 written responses to each of the recommendations of the Research and Technology Coordinating Committee under paragraph (3)(A)(ii)(II).

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

''§ 509. New strategic highway research program

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

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

''(1) the program shall be based on—

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

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

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

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

''(B) include an examination of—

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

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

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

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

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

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

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

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

''(3) the program shall consider, at a minimum, the results of studies relating to the

implementation of the Strategic Highway Safety Plan prepared by the American Association of State Highway and Transportation Officials; and

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

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

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

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

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

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

''(3) the stakeholders are involved in the governance of the program, at the executive, overall program, and technical levels, through the use of expert panels and committees; and

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

''(d) NATIONAL ACADEMY OF SCIENCES.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities relating to research, technology, and technology transfer described in subsections (b) and (c) as the Secretary determines to be appropriate.

''(e) REPORT ON IMPLEMENTATION OF RESULTS.—

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

''(2) COMPONENTS.—The report under paragraph (1) shall include, with respect to the new strategic highway research program—

''(A) an identification of the most promising results of research under the program (including the persons most likely to use the results);

''(B) a discussion of potential incentives for, impediments to, and methods of, implementing those results;

''(C) an estimate of costs that would be incurred in expediting implementation of those results; and

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

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

''(A) the American Association of State highway Officials;

''(B) the Federal Highway Administration; and

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

''(4) SUBMISSION.—Not later than February 1, 2009, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives the report under this subsection.

''§ 510. University transportation centers

''(a) CENTERS.—

''(1) IN GENERAL.—During fiscal year 2004, the Secretary shall provide grants to 40 nonprofit institutions of higher learning (or consortia of institutions of higher learning) to establish centers to address transportation design, management, research, development, and technology matters, especially the education and training of greater numbers of individuals to enter into the professional field of transportation.

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

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

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

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

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

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

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

''(i) [_____].
''(ii) [_____].
''(iii) [_____].
''(iv) [_____].
''(v) [_____].
''(vi) [_____].
''(vii) [_____].
''(viii) [_____]
''(ix) [_____].
''(x) [_____].
''(xi) [_____].

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

''(i) [_____].
''(ii) [_____].
''(iii) [_____].
''(iv) [_____].
''(v) [_____].
''(vi) [_____].
''(vii) [_____].
''(viii) [_____].
''(ix) [_____].
''(x) [_____].
''(xi) [_____].

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

''(i) [_____].
''(ii) [_____].
''(iii) [_____].
''(iv) [_____].
''(v) [_____].
''(vi) [_____].
''(vii) [_____].
''(viii) [_____].

''(b) REGIONAL CENTERS.—

''(1) IN GENERAL.—Not later than September 30, 2004, the Secretary shall provide to nonprofit institutions of higher learning (or consortia of institutions of higher learning) grants to be used during the period of fiscal years 2005 through 2009 to establish and operate 1 university transportation center in each of the 10 Federal regions that comprise the Standard Federal Regional Boundary System.

''(2) SELECTION OF REGIONAL CENTERS.—

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

''(B) REQUEST SCHEDULE.—The Secretary shall request proposals once for the period of fiscal years 2004 through 2006 and once for the period of fiscal years 2007 through 2009.

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

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

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

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

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

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

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

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

''(i) the Research and Special Programs Administration;

''(ii) the Federal Highway Administration; and

''(iii) the Federal Transit Administration.

''(c) CENTER REQUIREMENTS.—

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

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

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

''(i) civil engineering;

''(ii) transportation engineering;

''(iii) transportation systems management and operations; or

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

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

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

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

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

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

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

''(D) shall establish an advisory committee that—

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

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

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

''(2) PEER REVIEW.—

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

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

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

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

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

''(iv) the overall outcomes of the research.

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

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

''(ii) by the University Transportation Center.

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

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

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

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

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

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

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

''(A) multidisciplinary coursework; and

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

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

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

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

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

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

''(3) submit to the Secretary, in a timely manner, for use by the Secretary in the preparation of the annual research report under section 508(c)(5) of title 23, an annual report on the projects and activities of the university transportation center for which funds are made available under section 2001 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 that contains, at a minimum, for the fiscal year covered by the report, a description of—

''(A) the goals of the center;

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

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

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

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

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

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

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

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

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

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

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

''(g) FUNDING.—

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

''(A) GROUP A.—For each of fiscal years 2004 through 2009, the Secretary shall make a grant in the amount of $20,000,000 to each of the institutions in group A (as described in subsection (a)(4)(A)).

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

''(i) $4,000,000 for each of fiscal years 2004 and 2005; and

''(ii) $6,000,000 for each of fiscal years 2006 and 2007.

''(C) GROUP C.—For each of fiscal years 2004 through 2007, the Secretary shall make a grant in the amount of $10,000,000 to each of the institutions in group C (as described in subsection (a)(4)(C)).

''(D) GROUP D.—For each of fiscal years 2004 through 2009, the Secretary shall make a grant in the amount of $25,000,000 to each of the institutions in group D (as described in subsection (a)(4)(D)).

''(E) LIMITED GRANTS FOR GROUPS B AND C.—For each of fiscal years 2008 and 2009, of the institutions classified in groups B and C (as described in subsection (a)(4)(B)), the Secretary shall select and make a grant in the amount of $10,000,000 to each of not more than 15 institutions.

''(2) USE OF FUNDS—

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

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

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

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

''(B) FACILITIES AND ADMINISTRATION FEE.—Not more than 10 percent of any grant made available to a university transportation center (or any institution or consortium that establishes such a center) for a fiscal year may be used to pay to the appropriate nonprofit institution of higher learning any administration and facilities fee (or any similar overhead fee) for the fiscal year.

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

''§ 511. Multistate corridor operations and management

''(a) IN GENERAL.—The Secretary shall encourage multistate cooperative agreements, coalitions, or other arrangements to promote regional cooperation, planning, and shared project implementation for programs and projects to improve transportation system management and operations.

''(b) INTERSTATE ROUTE I–95 CORRIDOR COALITION TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.—

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

''(2) FUNDING.—Of the amounts made available under section 2001(a)(4) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, the Secretary shall use to carry out this subsection—

''(A) $8,000,000 for fiscal year 2004;

''(B) $10,000,000 for fiscal year 2005;

''(C) $12,000,000 for fiscal year 2006;

''(D) $12,000,000 for fiscal year 2007;

''(E) $12,000,000 for fiscal year 2008; and

''(F) $12,000,000 for fiscal year 2009.''.

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

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

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

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

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

(a) DEFINITIONS.—In this section:

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

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

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

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

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

(b) PRIORITY AREAS OF EFFORT.—

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

(2) STATISTICAL ANALYSIS EFFORT.—

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

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

(3) NATIONAL SECURITY.—The Bureau shall—

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

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

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

(c) STUDY.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall provide a grant to, or enter into a cooperative agreement or contract with, the Board for the conduct of a study of the data collection and statistical analysis efforts of the Department with respect to the modes of surface transportation for which funds are made available under this Act.

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

(3) CONTENT.—The study shall include—

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

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

(C) recommendations relating to—

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

(I) types of data collected;

(II) methods of data collection;

(III) types of analyses performed; and

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

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

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

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

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

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

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

(A) the Board shall submit to the Secretary, the Committee on Environment and Public Works of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a final report on the results of the study; and

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

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

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

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

(7) COMPLIANCE.—

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

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

(d) CONFORMING AMENDMENTS.—

(1) Section 111 of title 49, United States Code, is amended—

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

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

''(k) ANNUAL REPORT.—

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

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

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

''(2) AVAILABILITY.—The Bureau shall—

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

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

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

''(l) EXPENDITURE OF FUNDS.—Funds from the Highway Trust Fund (other than the Mass Transit Account) that are authorized to be appropriated, and made available, in accordance with section 2001(a)(3) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 shall be used only for the collection and statistical analysis of information relating to surface transportation systems.''; and

(C) in subsection (m) (as redesignated by subparagraph (A)), by inserting ''surface transportation'' after ''sale of''.

(2) The analysis for chapter 55 of title 49, United States Code, is amended by striking the item relating to section 5505 and inserting the following:

''5505. University transportation centers.''.

SEC. 2103. CENTERS FOR SURFACE TRANSPORTATION EXCELLENCE.

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

(1) the environment;

(2) operations;

(3) surface transportation safety;

(4) project finance; and

(5) asset management.

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

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

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

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

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

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

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

(4) a Center for Excellence in Project Finance—

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

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

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

(c) PROGRAM ADMINISTRATION.—

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

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

(3) CONTENT.—The plan shall include—

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

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

(4) COOPERATION AND COMPETITION.—

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

(i) the National Academy of Sciences;

(ii) the American Association of State Highway and Transportation Officials;

(iii) planning organizations;

(iv) a Federal laboratory;

(v) a State agency;

(vi) an authority, association, institution, or organization; or

(vii) a for-profit or nonprofit corporation.

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

(i) on a competitive basis; and

(ii) on the basis of the results of peer review of proposals submitted to the Secretary.

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

(d) ALLOCATIONS.—

(1) IN GENERAL.—For each of fiscal years 2004 through 2009, of the funds made available under section 2001(a)(1)(A), the Secretary shall set aside $10,000,000 to carry out this section.

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

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

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

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

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

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

(3) APPLICABILITY OF TITLE 23.—Funds made available under this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share shall be 100 percent.

SEC. 2104. MOTORCYCLE CRASH CAUSATION STUDY GRANTS.

(a) GRANTS.—The Secretary shall provide grants for the purpose of conducting a comprehensive, in-depth motorcycle crash causation study that employs the common international methodology for in-depth motorcycle accident investigation of the Organization for Economic Cooperation and Development.

(b) FUNDING.—Of the amounts made available under section 2001(a)(3), $1,500,000 for each of fiscal years 2004 and 2005 shall be available to carry out this section.

Subtitle C—Intelligent Transportation System Research

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

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

''SUBCHAPTER II—INTELLIGENT TRANSPORTATION SYSTEM RESEARCH AND TECHNICAL ASSISTANCE PROGRAM

''§ 521. Finding

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

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

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

''§ 522. Goals and purposes

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

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

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

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

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

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

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

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

''(C) individuals with disabilities; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''§ 523. Definitions

''In this subchapter:

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

''(2) COMMERCIAL VEHICLE OPERATIONS.—

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

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

''(i) the issuance of operating credentials;

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

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

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

''(4) INTELLIGENT TRANSPORTATION SYSTEM.—The term 'intelligent transportation system' means electronics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

''(5) NATIONAL ITS ARCHITECTURE.—The term 'national ITS architecture' means the common framework for interoperability adopted by the Secretary that defines—

''(A) the functions associated with intelligent transportation system user services;

''(B) the physical entities or subsystems within which the functions reside;

''(C) the data interfaces and information flows between physical subsystems; and

''(D) the communications requirements associated with the information flows.

''(6) STANDARD.—The term 'standard' means a document that—

''(A) contains technical specifications or other precise criteria for intelligent transportation systems that are to be used consistently as rules, guidelines, or definitions of characteristics so as to ensure that materials, products, processes, and services are fit for their purposes; and

''(B) may—

''(i) support the national ITS architecture; and

''(ii) promote—

''(I) the widespread use and adoption of intelligent transportation system technology as a component of the surface transportation systems of the United States; and

''(II) interoperability among intelligent transportation system technologies implemented throughout the States.

"§ 524. General authorities and requirements

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

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

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

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

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

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

''(2) the private sector;

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

''(4) colleges and universities, including historically black colleges and universities and other minority institutions of higher education.

''(d) CONSULTATION WITH FEDERAL OFFICIALS.—In carrying out the intelligent transportation system research program, the Secretary, as appropriate, shall consult with—

''(1) the Secretary of Commerce;

''(2) the Secretary of the Treasury;

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

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

''(5) the Secretary of Homeland Security.

''(e) TECHNICAL ASSISTANCE, TRAINING, AND INFORMATION.—The Secretary may provide technical assistance, training, and information to State and local governments seeking to implement, operate, maintain, or evaluate intelligent transportation system technologies and services.

''(f) TRANSPORTATION PLANNING.—The Secretary may provide funding to support adequate consideration of transportation system management and operations (including intelligent transportation systems) within metropolitan and statewide transportation planning processes.

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

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

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

''(h) ADVISORY COMMITTEES.—

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

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

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

''(2) FUNDING.—Of the amount made available to carry out this subchapter, the Secretary may use $1,500,000 for each fiscal year for advisory committees described in paragraph (1).

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

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

''(j) EVALUATIONS.—

''(1) GUIDELINES AND REQUIREMENTS.—

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

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

''(i) parties to any such test; or

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

''(C) FUNDING.—The guidelines and requirements issued under subparagraph (A) shall establish evaluation funding levels based on the size and scope of each test that ensure adequate evaluation of the results of the test or project.

''(2) SPECIAL RULE.—Any survey, questionnaire, or interview that the Secretary considers necessary to carry out the evaluation of any test or program assessment activity under this subchapter shall not be subject to chapter 35 of title 44.

"§ 525. National ITS Program Plan

''(a) IN GENERAL.—

''(1) UPDATES.—Not later than 1 year after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, the Secretary, in consultation with interested stakeholders (including State transportation departments) shall develop a 5-year National ITS Program Plan.

''(2) SCOPE.—The National ITS Program Plan shall—

''(A) specify the goals, objectives, and milestones for the research and deployment of intelligent transportation systems in the contexts of—

''(i) major metropolitan areas;

''(ii) smaller metropolitan and rural areas; and

''(iii) commercial vehicle operations;

''(B) specify the manner in which specific programs and projects will achieve the goals, objectives, and milestones referred to in subparagraph (A), including consideration of a 5-year timeframe for the goals and objectives;

''(C) identify activities that provide for the dynamic development, testing, and necessary revision of standards and protocols to promote and ensure interoperability in the implementation of intelligent transportation system technologies, including actions taken to establish standards; and

''(D) establish a cooperative process with State and local governments for—

''(i) determining desired surface transportation system performance levels; and

''(ii) developing plans for accelerating the incorporation of specific intelligent transportation system capabilities into surface transportation systems.

''(b) REPORTING.—The National ITS Program Plan shall be transmitted and biennially updated as part of the surface transportation research and technology development strategic plan developed under section 508(c).

"§ 526. National ITS architecture and standards

''(a) IN GENERAL.—

''(1) DEVELOPMENT, IMPLEMENTATION, AND MAINTENANCE.—In accordance with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note; 110 Stat. 783), the Secretary shall develop, implement, and maintain a national ITS architecture and supporting standards and protocols to promote the widespread use and evaluation of intelligent transportation system technology as a component of the surface transportation systems of the United States.

''(2) INTEROPERABILITY AND EFFICIENCY.—To the maximum extent practicable, the national ITS architecture shall promote interoperability among, and efficiency of, intelligent transportation system technologies implemented throughout the United States.

''(3) USE OF STANDARDS DEVELOPMENT ORGANIZATIONS.—In carrying out this section, the Secretary shall use the services of such standards development organizations as the Secretary determines to be appropriate.

''(b) PROVISIONAL STANDARDS.—

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

''(A) after consultation with affected parties; and

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

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

''(A) after consultation with affected parties; and

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

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

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

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

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

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

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

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

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

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

''(3) WITHDRAWAL OF WAIVER.—

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

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

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

''(ii) the reasons for withdrawing the waiver.

''(d) CONFORMITY WITH NATIONAL ITS ARCHITECTURE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall ensure that intelligent transportation system projects carried out using funds made available from the Highway Trust Fund conform to the national ITS architecture, applicable standards or provisional standards, and protocols developed under subsection (a).

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

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

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

''(3) EXCEPTIONS.—Paragraph (1) shall not apply to funds used for operation or maintenance of an intelligent transportation system in existence on the date of enactment of this subchapter.

''§ 527. Commercial vehicle information systems and networks deployment

''(a) DEFINITIONS.—In this section:

''(1) COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS.—The term 'commercial vehicle information systems and networks' means the information systems and communications networks that provide the capability to—

''(A) improve the safety of commercial vehicle operations;

''(B) increase the efficiency of regulatory inspection processes to reduce administrative burdens by advancing technology to facilitate inspections and increase the effectiveness of enforcement efforts;

''(C) advance electronic processing of registration information, driver licensing information, fuel tax information, inspection and crash data, and other safety information;

''(D) enhance the safe passage of commercial vehicles across the United States and across international borders; and

''(E) promote the communication of information among the States and encourage multistate cooperation and corridor development.

''(2) COMMERCIAL VEHICLE OPERATIONS.—

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

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

''(i) the issuance of operating credentials;

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

''(iii) the administration of roadside safety and border crossing inspection and regulatory compliance operations.

''(3) CORE DEPLOYMENT.—The term 'core deployment' means the deployment of systems in a State necessary to provide the State with—

''(A) safety information exchange to—

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

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

''(I) interstate carrier and commercial vehicle data;

''(II) summaries of past safety performance; and

''(III) commercial vehicle credentials information; and

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

''(B) interstate credentials administration to—

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

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

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

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

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

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

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

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

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

''(C) enhance transportation security.

''(b) PROGRAM.—The Secretary shall carry out a commercial vehicle information systems and networks program to—

''(1) improve the safety and productivity of commercial vehicles and drivers; and

''(2) reduce costs associated with commercial vehicle operations and Federal and State commercial vehicle regulatory requirements.

''(c) PURPOSE.—It is the purpose of the program to advance the technological capability and promote the deployment of intelligent transportation system applications for commercial vehicle operations, including commercial vehicle, commercial driver, and carrier-specific information systems and networks.

''(d) CORE DEPLOYMENT GRANTS.—

''(1) IN GENERAL.—The Secretary shall make grants to eligible States for the core deployment of commercial vehicle information systems and networks.

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

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

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

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

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

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

''(3) AMOUNT OF GRANTS.—The maximum aggregate amount a State may receive under this subsection for the core deployment of commercial vehicle information systems and networks may not exceed $2,500,000, including funds received under section 2001(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 for the core deployment of commercial vehicle information systems and networks.

''(4) USE OF FUNDS.—

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

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

''(e) EXPANDED DEPLOYMENT GRANTS.—

''(1) IN GENERAL.—For each fiscal year, from the funds remaining after the Secretary has made core deployment grants under subsection (d), the Secretary may make grants to each eligible State, on request, for the expanded deployment of commercial vehicle information systems and networks.

''(2) ELIGIBILITY.—Each State that has completed the core deployment of commercial vehicle information systems and networks shall be eligible for an expanded deployment grant.

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

''(4) USE OF FUNDS.—A State may use funds from a grant under this subsection only for the expanded deployment of commercial vehicle information systems and networks.

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

''(g) FUNDING.—Funds authorized to be appropriated to carry out this section shall be available for obligation in the same manner and to the same extent as if the funds were apportioned under chapter 1, except that the funds shall remain available until expended.

''§ 528. Research and development

''(a) IN GENERAL.—The Secretary shall carry out a comprehensive program of intelligent transportation system research, development, and operational tests of intelligent vehicles and intelligent infrastructure systems, and other similar activities that are necessary to carry out this subchapter.

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

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

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

''(B) supports national security;

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

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

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

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

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

''(B) ensuring that a national, interoperable 511 system, along with a national traffic information system that includes a user-friendly, comprehensive website, is fully implemented for use by travelers throughout the United States by September 30, 2010; and

''(C)(i) improving incident management response, particularly in rural areas, so that rural emergency response times are reduced by an average of 10 minutes; and

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

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

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

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

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

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

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

''(9) examine—

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

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

''(10) develop and test communication technologies that—

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

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

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

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

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

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

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

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

''(A) emergency services;

''(B) road pricing; and

''(C) local economic development; and

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

''(A) congestion-pricing;

''(B) real-time facility management;

''(C) rapid-emergency response; and

''(D) just-in-time transit.

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

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

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

''(3) the development and implementation of standards.

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

''§ 529. Use of funds

''(a) IN GENERAL.—For each fiscal year, not more than $5,000,000 of the funds made available to carry out this subchapter shall be used for intelligent transportation system outreach, public relations, displays, tours, and brochures.

''(b) APPLICABILITY.—Subsection (a) shall not apply to intelligent transportation system training, scholarships, or the publication or distribution of research findings, technical guidance, or similar documents.''.

(b) CONFORMING AMENDMENT.—Title V of the Transportation Equity Act for the 21st Century is amended by striking subtitle C (23 U.S.C. 502 note; 112 Stat. 452).

TITLE III—PUBLIC TRANSPORTATION

SEC. 3001. SHORT TITLE.

This title may be cited as the ''Federal Public Transportation Act of 2004''.

SEC. 3002. AMENDMENTS TO TITLE 49, UNITED STATES CODE; UPDATED TERMINOLOGY.

(a) AMENDMENTS TO TITLE 49.—Except as otherwise specifically provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

(b) UPDATED TERMINOLOGY.—Except for sections 5301(f), 5302(a)(7), and 5315, chapter 53, including the chapter analysis, is amended by striking ''mass transportation'' each place it appears and inserting ''public transportation''.

SEC. 3003. POLICIES, FINDINGS, AND PURPOSES.

(a) DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.—Section 5301(a) is amended to read as follows:

''(a) DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.—It is in the economic interest of the United States to foster the development and revitalization of public transportation systems that maximize the efficient, secure, and safe mobility of individuals and minimize environmental impacts.''.

(b) GENERAL FINDINGS.—Section 5301(b)(1) is amended—

(1) by striking ''70 percent'' and inserting ''two-thirds''; and

(2) by striking ''urban areas'' and inserting ''urbanized areas''.

(c) PRESERVING THE ENVIRONMENT.—Section 5301(e) is amended—

(1) by striking ''an urban'' and inserting ''a''; and

(2) by striking ''under sections 5309 and 5310 of this title''.

(d) GENERAL PURPOSES.—Section 5301(f) is amended—

(1) in paragraph (1)—

(A) by striking ''improved mass'' and inserting ''improved public''; and

(B) by striking ''public and private mass transportation companies'' and inserting ''public transportation companies and private companies engaged in public transportation'';

(2) in paragraph (2)—

(A) by striking ''urban mass'' and inserting ''public''; and

(B) by striking ''public and private mass transportation companies'' and inserting ''public transportation companies and private companies engaged in public transportation'';

(3) in paragraph (3)—

(A) by striking ''urban mass'' and inserting ''public''; and

(B) by striking ''public or private mass transportation companies'' and inserting ''public transportation companies or private companies engaged in public transportation''; and

(4) in paragraph (5), by striking ''urban mass'' and inserting ''public''.

SEC. 3004. DEFINITIONS.

Section 5302(a) is amended—

(1) in paragraph (1)—

(A) in subparagraph (G)(i), by inserting ''including the intercity bus portions of such facility or mall,'' after ''transportation mall,'';

(B) in subparagraph (G)(ii), by inserting '', except for the intercity bus portion of intermodal facilities or malls,'' after ''commercial revenue-producing facility'';

(C) in subparagraph (H)—

(i) by striking ''and'' after ''innovative'' and inserting ''or''; and

(ii) by striking ''or'' after the semicolon at the end;

(D) in subparagraph (I), by striking the period at the end and inserting a semicolon; and

(E) by adding at the end the following:

''(J) crime prevention and security, including—

''(i) projects to refine and develop security and emergency response plans; or

''(ii) projects to detect chemical or biological agents in public transportation;

''(K) conducting emergency response drills with public transportation agencies and local first response agencies or security training for public transportation employees, except for expenses relating to operations; or

''(L) establishing a debt service reserve, made up of deposits with a bondholder's trustee, to ensure the timely payment of principal and interest on bonds issued by a grant recipient to finance an eligible project under this chapter.'';

(2) by striking paragraph (16);

(3) by redesignating paragraphs (8) through (15) as paragraphs (9) through (16), respectively;

(4) by striking paragraph (7) and inserting the following:

''(7) MASS TRANSPORTATION.—The term 'mass transportation' means public transportation.

''(8) MOBILITY MANAGEMENT.—The term 'mobility management' means a short-range planning or management activity or project that does not include operating public transportation services and—

''(A) improves coordination among public transportation providers, including private companies engaged in public transportation;

''(B) addresses customer needs by tailoring public transportation services to specific market niches; or

''(C) manages public transportation demand.'';

(5) by amending paragraph (11), as redesignated, to read as follows:

''(11) PUBLIC TRANSPORTATION.—The term 'public transportation' means transportation by a conveyance that provides local regular and continuing general or special transportation to the public, but does not include school bus, charter bus, intercity passenger rail, or sightseeing transportation.'';

(6) in subparagraphs (A) and (E) of paragraph (16), as redesignated, by striking ''and'' each place it appears and inserting ''or''; and

(7) by amending paragraph (17) to read as follows:

''(17) URBANIZED AREA.—The term 'urbanized area' means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an 'urbanized area' by the Secretary of Commerce.''.

SEC. 3005. METROPOLITAN TRANSPORTATION PLANNING.

Section 5303 is amended to read as follows:

''§ 5303. Metropolitan transportation planning

''(a) DEFINITIONS.—As used in this section and in section 5304, the following definitions shall apply:

''(1) CONSULTATION.—A 'consultation' occurs when 1 party—

''(A) confers with another identified party in accordance with an established process;

''(B) prior to taking action, considers the views of the other identified party; and

''(C) periodically informs that party about action taken.

''(2) METROPOLITAN PLANNING AREA.—The term 'metropolitan planning area' means the geographic area determined by agreement between the metropolitan planning organization and the Governor under subsection (d).

''(3) METROPOLITAN PLANNING ORGANIZATION.—The term 'metropolitan planning organization' means the Policy Board of the organization designated under subsection (c).

''(4) NONMETROPOLITAN AREA.—The term 'nonmetropolitan area' means any geographic area outside all designated metropolitan planning areas.

''(5) NONMETROPOLITAN LOCAL OFFICIAL.—The term 'nonmetropolitan local official' means any elected or appointed official of general purpose local government located in a nonmetropolitan area who is responsible for transportation services for such local government.

''(b) GENERAL REQUIREMENTS.—

''(1) DEVELOPMENT OF PLANS.—To accomplish the objectives described in section 5301(a), each metropolitan planning organization, in cooperation with the State and public transportation operators, shall develop transportation plans for metropolitan planning areas of the State in which it is located.

''(2) CONTENTS.—The plans developed under paragraph (1) for each metropolitan planning area shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

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

''(4) PLANNING AND PROJECT DEVELOPMENT.—The metropolitan planning organization, the State Department of Transportation, and the appropriate public transportation provider shall agree upon the approaches that will be used to evaluate alternatives and identify transportation improvements that address the most complex problems and pressing transportation needs in the metropolitan area.

''(c) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

''(1) IN GENERAL.—To carry out the transportation planning process under this section, a metropolitan planning organization shall be designated for each urbanized area—

''(A) by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area); or

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

''(2) STRUCTURE.—Each metropolitan planning organization designated under paragraph (1) that serves an area identified as a transportation management area shall consist of—

''(A) local elected officials;

''(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and

''(C) appropriate State officials.

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

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

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

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

''(5) REDESIGNATION PROCEDURES.—A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the existing planning area population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area) as appropriate to carry out this section.

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

''(d) METROPOLITAN PLANNING AREA BOUNDARIES.—

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

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

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

''(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Office of Management and Budget.

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

''(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the boundaries of the metropolitan planning area in existence as of the date of enactment of the Federal Public Transportation Act of 2004 shall be retained, except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in accordance with paragraph (5).

''(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—If an urbanized area is designated after the date of enactment of this paragraph in a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

''(A) shall be established in accordance with subsection (c)(1);

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

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

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

''(e) COORDINATION IN MULTISTATE AREAS.—

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

''(2) INTERSTATE COMPACTS.—States are authorized—

''(A) to enter into agreements or compacts with other States, which agreements or compacts are not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

''(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

''(3) LAKE TAHOE REGION.—

''(A) DEFINITION.—In this paragraph, the term 'Lake Tahoe region' has the meaning given the term 'region' in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96–551 (94 Stat. 3234).

''(B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

''(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

''(ii) coordinate the transportation planning process with the planning process required of State and local governments under this section and section 5304.

''(C) INTERSTATE COMPACT.—

''(i) IN GENERAL.—Subject to clause (ii) and notwithstanding subsection (c), to carry out the transportation planning process required by this section, California and Nevada may

designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governor of the State of California, the Governor of the State of Nevada, and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area), or in accordance with procedures established by applicable State or local law.

''(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

''(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

''(II) FUNDING.—In addition to funds made available to the metropolitan planning organization under other provisions of title 23 and this chapter, not more than 1 percent of the funds allocated under section 202 of title 23 may be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.

''(D) ACTIVITIES.—Highway projects included in transportation plans developed under this paragraph—

''(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

''(ii) may, in accordance with chapter 2 of title 23, be funded using funds allocated under section 202 of title 23.

''(f) COORDINATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

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

''(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE METROPOLITAN PLANNING AREAS.—If a transportation improvement funded from the highway trust fund is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans regarding the transportation improvement.

''(3) INTERREGIONAL AND INTERSTATE PROJECT IMPACTS.—Planning for National Highway System, commuter rail projects, or other projects with substantial impacts outside a single metropolitan planning area or State shall be coordinated directly with the affected, contiguous, metropolitan planning organizations and States.

''(4) COORDINATION WITH OTHER PLANNING PROCESSES.—

''(A) IN GENERAL.—The Secretary shall encourage each metropolitan planning organization to coordinate its planning process, to the maximum extent practicable, with those officials responsible for other types of planning activities that are affected by transportation, including State and local land use planning, economic development, environmental protection, airport operations, housing, and freight.

''(B) OTHER CONSIDERATIONS.—The metropolitan planning process shall develop transportation plans with due consideration of, and in coordination with, other related planning activities within the metropolitan area. This should include the design and delivery of transportation services within the metropolitan area that are provided by—

''(i) recipients of assistance under this chapter;

''(ii) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

''(iii) recipients of assistance under section 204 of title 23.

''(g) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—The goals and objectives developed through the metropolitan planning process for a metropolitan planning area under this section shall address, in relation to the performance of the metropolitan area transportation systems—

''(A) supporting the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency, including through services provided by public and private operators;

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

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

''(D) increasing the accessibility and mobility of people and for freight, including through services provided by public and private operators;

''(E) protecting and enhancing the environment, promoting energy conservation, and promoting consistency between transportation improvements and State and local land use planning and economic development patterns;

''(F) enhancing the integration and connectivity of the transportation system, across and between modes, for people and freight, including through services provided by public and private operators;

''(G) promoting efficient system management and operation; and

''(H) emphasizing the preservation of the existing transportation system, including services provided by public and private operators.

''(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, this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a transportation improvement plan, a project or strategy, or the certification of a planning process.

''(h) DEVELOPMENT OF TRANSPORTATION PLAN.—

''(1) IN GENERAL.—

''(A) REQUIREMENT.—Each metropolitan planning organization shall develop, and update not less frequently than every 3 years, a transportation plan for its metropolitan planning area in accordance with this subsection.

''(B) COORDINATION FACTORS.—In developing the transportation plan under this section, each metropolitan planning organization shall consider the factors described in subsection (f) over a 20-year forecast period.

''(C) FINANCIAL ESTIMATES.—For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

''(2) CONTENTS.— A transportation plan under this subsection shall be in a form that the Secretary determines to be appropriate and shall contain—

''(A) an identification of transportation facilities, including major roadways, public transportation, multimodal and intermodal facilities, and intermodal connectors, that should function as an integrated metropolitan transportation system, emphasizing those facilities that serve important national and regional transportation functions;

''(B) a financial plan that—

''(i) demonstrates how the adopted transportation plan can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan;

''(iii) recommends any additional financing strategies for needed projects and programs; and

''(iv) may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if approved by the Secretary and reasonable additional resources beyond those identified in the financial plan were available;

''(C) operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods;

''(D) capital investment and other strategies to preserve the existing metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs; and

''(E) proposed transportation and transit enhancement activities.

''(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

''(4) PARTICIPATION BY INTERESTED PARTIES.—

''(A) DEVELOPMENT OF PARTICIPATION PLAN.—Not less frequently than every 3 years, each metropolitan planning organization shall develop and adopt a plan for participation in the process for developing the metropolitan transportation plan by—

''(i) citizens;

''(ii) affected public agencies;

''(iii) representatives of public transportation employees;

''(iv) freight shippers;

''(v) providers of freight transportation services;

''(vi) private providers of transportation;

''(vii) representatives of users of public transit;

''(viii) representatives of users of pedestrian walkways and bicycle transportation facilities; and

''(ix) other interested parties.

''(B) CONTENTS OF PARTICIPATION PLAN.—The participation plan—

''(i) shall be developed in a manner the Secretary determines to be appropriate;

''(ii) shall be developed in consultation with all interested parties; and

''(iii) shall provide that all interested parties have reasonable opportunities to comment on—

''(I) the process for developing the transportation plan; and

''(II) the contents of the transportation plan.

''(C) CERTIFICATION.—Before the Governor and metropolitan planning organizations approve a transportation plan, each metropolitan planning organization shall certify that it has complied with the requirements of the participation plan it has adopted.

''(5) APPROVAL OF THE TRANSPORTATION PLAN.—

''(A) IN GENERAL.—Each transportation plan prepared by a metropolitan planning organization shall be—

''(i) approved by the metropolitan planning organization; and

''(ii) submitted to the Governor for approval of the first 5 years of the plan.

''(B) PROJECT ADVANCEMENT.—The projects listed in the first 5 years of the plan may be selected for advancement consistent with the project selection requirements.

''(C) MAJOR AMENDMENTS.—Major amendments to the list described in subparagraph (B), including the addition, deletion, or concept and scope change of a regionally significant project, may not be advanced without—

''(i) appropriate public involvement;

''(ii) financial planning;

''(iii) transportation conformity analyses; and

''(iv) a finding by the Federal Highway Administration and Federal Transit Administration that the amended plan was produced in a manner consistent with this section.

''(6) INCLUDED PROJECTS.—

''(A) PROJECTS UNDER CHAPTER 1 OF TITLE 23 AND THIS CHAPTER.—A transportation plan developed under this section for a metropolitan area shall include the projects and strategies within the metropolitan area that are proposed for funding under chapter 1 of title 23 and this chapter.

''(B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the metropolitan transportation plan.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not regionally significant shall be grouped in 1 line item or identified individually in the metropolitan transportation plan.

''(7) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—Except as otherwise provided under subsection (i)(4), the selection of federally funded projects in metropolitan planning areas shall be carried out, from the approved transportation plan—

''(i) by the State, in the case of projects under chapter 1 of title 23 or section 5308, 5310, 5311, or 5317 of this title;

''(ii) by the designated recipient, in the case of projects under section 5307; and

''(iii) in cooperation with the metropolitan planning organization.

''(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project from the first 5 years of the approved transportation plan in place of another project in the same 5-year period.

''(8) PUBLICATION REQUIREMENTS.—

''(A) PUBLICATION OF TRANSPORTATION PLAN.—A transportation plan involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.

''(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding 5 years shall be published or otherwise made available for public review by the cooperative effort of the State, transit operator, and the metropolitan planning organization. This listing shall be consistent with the funding categories identified in the first 5 years of the transportation plan.

''(C) RULEMAKING.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations specifying—

''(i) the types of data to be included in the list described in subparagraph (B), including—

''(I) the name, type, purpose, and geocoded location of each project;

''(II) the Federal, State, and local identification numbers assigned to each project;

''(III) amounts obligated and expended on each project, sorted by funding source and transportation mode, and the date on which each obligation was made; and

''(IV) the status of each project; and

''(ii) the media through which the list described in subparagraph (B) will be made available to the public, including written and visual components for each of the projects listed.

''(i) TRANSPORTATION MANAGEMENT AREAS.—

''(1) REQUIRED IDENTIFICATION.—The Secretary shall identify each urbanized area with a population of more than 200,000 individuals as a transportation management area.

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

''(3) CONGESTION MANAGEMENT SYSTEM.—

''(A) IN GENERAL.—The transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 and this chapter through the use of travel demand reduction and operational management strategies.

''(B) PHASE-IN SCHEDULE.—The Secretary shall establish a phase-in schedule that provides for full compliance with the requirements of this section not later than 1 year after the identification of transportation management areas under paragraph (1).

''(4) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—All federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under title 23 (except for projects carried out on the National Highway System and projects carried out under the bridge program or the interstate maintenance program) or under this chapter shall be selected for implementation from the approved transportation plan by the metropolitan planning organization designated for the area in consultation with the State and any affected public transit operator.

''(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects on the National Highway System carried out within the boundaries of a metropolitan planning area serving a transportation management area and projects carried out within such boundaries under the bridge program or the interstate maintenance program under title 23 shall be selected for implementation from the approved transportation plan by the State in cooperation with the metropolitan planning organization designated for the area.

''(5) CERTIFICATION.—

''(A) IN GENERAL.—The Secretary shall—

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

''(ii) subject to subparagraph (B), certify, not less frequently than once every 3 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 all other applicable Federal law; and

''(ii) a transportation plan for the metropolitan planning area has been approved by the metropolitan planning organization and the Governor.

''(C) PENALTY FOR FAILING TO CERTIFY.—

''(i) WITHHOLDING PROJECT FUNDS.—If the metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold any funds otherwise available to the metropolitan planning area for projects funded under title 23 and this chapter.

''(ii) RESTORATION OF WITHHELD FUNDS.—Any funds withheld under clause (i) shall be restored to the metropolitan planning area when the metropolitan planning process is certified by the Secretary.

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

''(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 for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, after considering the complexity of transportation problems in the area.

''(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

''(k) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

''(1) IN GENERAL.—Notwithstanding any other provisions of title 23 or this chapter, Federal funds may not be advanced for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) for any highway project that will result in a significant increase in carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

''(2) APPLICABILITY.—This subsection applies to any nonattainment area within the metropolitan planning area boundaries determined under subsection (d).

''(*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 that is not eligible under title 23 or this chapter.

''(m) AVAILABILITY OF FUNDS.—Funds set aside under section 104(f) of title 23 or section 5308 of this title shall be available to carry out this section.

''(n) CONTINUATION OF CURRENT REVIEW PRACTICE.—Any decision by the Secretary concerning a plan described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''.

SEC. 3006. STATEWIDE TRANSPORTATION PLANNING.

Section 5304 is amended to read as follows:

''§ 5304. Statewide transportation planning

''(a) GENERAL REQUIREMENTS.—

''(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To support the policies described in section 5301(a), each State shall develop a statewide transportation plan (referred to in this section as a ''Plan'') and a statewide transportation improvement program (referred to in this section as a ''Program'') for all areas of the State subject to section 5303.

''(2) CONTENTS.—The Plan and the Program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing the Plan and the Program shall—

''(A) provide for the consideration of all modes of transportation and the policies described in section 5301(a); and

''(B) be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

''(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—Each State shall—

''(1) coordinate planning under this section with—

''(A) the transportation planning activities under section 5303 for metropolitan areas of the State; and

''(B) other related statewide planning activities, including trade and economic development and related multistate planning efforts; and

''(2) develop the transportation portion of the State implementation plan, as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

''(c) INTERSTATE AGREEMENTS.—States may enter into agreements or compacts with other States for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

''(d) SCOPE OF PLANNING PROCESS.—

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

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

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

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

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

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

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

''(G) promote efficient system management and operation; and

''(H) emphasize the preservation of the existing transportation system.

''(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under title 23, this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a Plan, a Program, a project or strategy, or the certification of a planning process.

''(e) ADDITIONAL REQUIREMENTS.—In carrying out planning under this section, each State shall consider—

''(1) with respect to nonmetropolitan areas, the concerns of affected local officials with responsibility for transportation;

''(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

''(3) coordination of Plans, Programs, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

''(f) STATEWIDE TRANSPORTATION PLAN.—

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

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN PLANNING AREAS.—The Plan shall be developed for each metropolitan planning area in the State in cooperation with the metropolitan planning organization designated for the metropolitan planning area under section 5303.

''(B) NONMETROPOLITAN AREAS.—With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in consultation with affected nonmetropolitan officials with responsibility for transportation. The consultation process shall not require the review or approval of the Secretary.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the Plan, the State shall—

''(A) provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed Plan; and

''(B) identify transportation strategies necessary to efficiently serve the mobility needs of people.

''(4) FINANCIAL PLAN.—The Plan may include a financial plan that—

''(A) demonstrates how the adopted Plan can be implemented;

''(B) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Plan;

''(C) recommends any additional financing strategies for needed projects and programs; and

''(D) may include, for illustrative purposes, additional projects that would be included in the adopted Plan if reasonable additional resources beyond those identified in the financial plan were available.

''(5) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects described in paragraph (4)(D).

''(6) EXISTING SYSTEM.—The Plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

''(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—

''(1) DEVELOPMENT.—Each State shall develop a Program for all areas of the State.

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN PLANNING AREAS.—With respect to each metropolitan planning area in the State, the Program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan planning area under section 5303.

''(B) NONMETROPOLITAN AREAS.—With respect to each nonmetropolitan area in the State, the Program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation. The consultation process shall not require the review or approval of the Secretary.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Program shall be developed in consultation with the tribal government and the Secretary of the Interior.

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

''(4) INCLUDED PROJECTS.—

''(A) IN GENERAL.—A Program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

''(B) LISTING OF PROJECTS.—

''(i) IN GENERAL.—The Program shall cover a minimum of 5 years, identify projects by year, be fiscally constrained by year, and be updated not less than once every 5 years.

''(ii) PUBLICATION.—An annual listing of projects for which funds have been obligated in the preceding 5 years in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review. The listing shall be consistent with the funding categories identified in the first 5 years of each metropolitan transportation plan.

''(C) INDIVIDUAL IDENTIFICATION.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually.

''(D) CONSISTENCY WITH STATEWIDE TRANSPORTATION PLAN.—Each project included in the list described in subparagraph (B) shall be—

''(i) consistent with the Plan developed under this section for the State;

''(ii) identical to the project or phase of the project as described in each year of the initial 5 years of 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.

''(E) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The Program shall not include a project, or an identified phase of a project, unless full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(F) FINANCIAL PLAN.—The Program may include a financial plan that—

''(i) demonstrates how the approved Program can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Program;

''(iii) recommends any additional financing strategies for needed projects and programs; and

''(iv) may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

''(G) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

''(i) NO REQUIRED SELECTION.—Notwithstanding subparagraph (F), a State shall not be required to select any project from the illustrative list of additional projects described in subparagraph (F)(iv).

''(ii) REQUIRED APPROVAL BY THE SECRETARY.—A State shall not include any project from the illustrative list of additional projects described in subparagraph (F)(iv) in an approved Program without the approval of the Secretary.

''(H) PRIORITIES.—The Program shall reflect the priorities for programming and expenditures of funds, including transportation and transit enhancement activities, required by title 23 and this chapter, and transportation control measures included in the State's air quality implementation plan.

''(5) PROJECT SELECTION FOR AREAS WITH FEWER THAN 50,000 INDIVIDUALS.—

''(A) IN GENERAL.—Each State, in cooperation with the affected nonmetropolitan local officials with responsibility for transportation, shall select projects to be carried out in areas with fewer than 50,000 individuals from the approved Program (excluding projects carried out under the National Highway System, the bridge program, or the interstate maintenance program under title 23 or sections 5310 and 5311 of this title).

''(B) CERTAIN PROGRAMS.—Each State, in consultation with the affected nonmetropolitan local officials with responsibility for transportation, shall select, from the approved Program, projects to be carried out in areas with fewer than 50,000 individuals under the National Highway System, the bridge program, or the Interstate maintenance program under title 23 or under sections 5310 and 5311 of this title.

''(6) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL.—A Program developed under this subsection shall be reviewed and based on a current planning finding approved by the Secretary not less frequently than once every 5 years.

''(7) PLANNING FINDING.—Not less frequently than once every 5 years, the Secretary shall determine whether the transportation planning process through which Plans and Programs are developed are consistent with this section and section 5303.

''(8) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, a project included in the approved Program may be advanced in place of another project in the program without the approval of the Secretary.

''(h) FUNDING.—Funds set aside pursuant to section 104(i) of title 23 and 5308 of this title shall be available to carry out this section.

''(i) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT SYSTEMS.—For purposes of this section and section 5303, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management system under section 5303(i)(3) if the Secretary determines that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of section 5303.

''(j) CONTINUATION OF CURRENT REVIEW PRACTICE.—Any decision by the Secretary under this section, regarding a metropolitan or statewide transportation plan or the Program, shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''.

SEC. 3007. TRANSPORTATION MANAGEMENT AREAS.

Section 5305 is repealed.

SEC. 3008. PRIVATE ENTERPRISE PARTICIPATION.

Section 5306 is amended—

(1) in subsection (a)—

(A) by striking ''5305 of this title'' and inserting ''5308''; and

(B) by inserting '', as determined by local policies, criteria, and decision making,'' after ''feasible'';

(2) in subsection (b) by striking ''5303–5305 of this title'' and inserting ''5303, 5304, and 5308''; and

(3) by adding at the end the following:

''(c) REGULATIONS.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations describing how the requirements under this chapter relating to subsection (a) shall be enforced.

SEC. 3009. URBANIZED AREA FORMULA GRANTS.

(a) TECHNICAL AMENDMENTS.—Section 5307 is amended—

(1) by striking subsections (h), (j) and (k); and

(2) by redesignating subsections (i), (*l*), (m), and (n) as subsections (h), (i), (j), and (k), respectively.

(b) DEFINITIONS.—Section 5307(a) is amended—

(1) by amending paragraph (2)(A) to read as follows:

''(A) an entity designated, in accordance with the planning process under sections 5303, 5304, and 5306, by the chief executive officer of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under sections 5336 and 5337 that are attributable to transportation management areas designated under section 5303; or''; and

(2) by adding at the end the following:

''(3) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, a nonprofit organization, or a private operator of public transportation service that may receive a Federal transit program grant indirectly through a recipient, rather than directly from the Federal Government.''.

(c) GENERAL AUTHORITY.—Section 5307(b) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—The Secretary of Transportation may award grants under this section for—

''(A) capital projects, including associated capital maintenance items;

''(B) planning, including mobility management;

''(C) transit enhancements;

''(D) operating costs of equipment and facilities for use in public transportation in an urbanized area with a population of less than 200,000; and

''(E) operating costs of equipment and facilities for use in public transportation in a portion or portions of an urbanized area with a population of at least 200,000, but not more than 225,000, if—

''(i) the urbanized area includes parts of more than 1 State;

''(ii) the portion of the urbanized area includes only 1 State;

''(iii) the population of the portion of the urbanized area is less than 30,000; and

''(iv) the grants will not be used to provide public transportation outside of the portion of the urbanized area.'';

(2) by amending paragraph (2) to read as follows:

''(2) SPECIAL RULE FOR FISCAL YEARS 2004 THROUGH 2006—

''(A) INCREASED FLEXIBILITY.—The Secretary may award grants under this section, from funds made available to carry out this section for each of the fiscal years 2004 through 2006, to finance the operating cost of equipment and facilities for use in mass transportation in an urbanized area with a population of at least 200,000, as determined by the 2000 decennial census of population if—

''(i) the urbanized area had a population of less than 200,000, as determined by the 1990 decennial census of population;

''(ii) a portion of the urbanized area was a separate urbanized area with a population of less than 200,000, as determined by the 1990 decennial census of population;

''(iii) the area was not designated as an urbanized area, as determined by the 1990 decennial census of population; or

''(iv) a portion of the area was not designated as an urbanized area, as determined by the 1990 decennial census, and received assistance under section 5311 in fiscal year 2002.

''(B) MAXIMUM AMOUNTS IN FISCAL YEAR 2004.—In fiscal year 2004—

''(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

''(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than the amount apportioned to the urbanized area under this section for fiscal year 2003; and

''(iii) each portion of any area not designated as an urbanized area, as determined by the 1990 decennial census, and eligible to receive funds under subparagraph (A)(iv), shall receive an amount of funds to carry out this section that is not less than the amount the portion of the area received under section 5311 for fiscal year 2002.

''(C) MAXIMUM AMOUNTS IN FISCAL YEAR 2005.—In fiscal year 2005—

''(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 50 percent of the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

''(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 50 percent of the amount apportioned to the urbanized area under this section for fiscal year 2003; and

''(iii) each portion of any area not designated as an urbanized area, as determined by the 1990 decennial census, and eligible to receive funds under subparagraph (A)(iv), shall receive an amount of funds to carry out this section that is not less 50 percent of the

amount the portion of the area received under section 5311 for fiscal year 2002.

''(D) MAXIMUM AMOUNTS IN FISCAL YEAR 2006.—In fiscal year 2006—

''(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 25 percent of the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

''(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 25 percent of the amount apportioned to the urbanized area under this section for fiscal year 2003; and

''(iii) each portion of any area not designated as an urbanized area, as determined by the 1990 decennial census, and eligible to receive funds under subparagraph (A)(iv), shall receive an amount of funds to carry out this section that is not less than 25 percent of the amount the portion of the area received under section 5311 in fiscal year 2002.''; and

(3) by striking paragraph (4).

(d) PUBLIC PARTICIPATION REQUIREMENTS.—Section 5307(c)(5) is amended by striking ''section 5336'' and inserting ''sections 5336 and 5337''.

(e) GRANT RECIPIENT REQUIREMENTS.—Section 5307(d)(1) is amended—

(1) in subparagraph (A), by inserting '', including safety and security aspects of the program'' after ''program'';

(2) in subparagraph (E), by striking ''section'' and all that follows and inserting ''section, the recipient will comply with sections 5323 and 5325;'';

(3) in subparagraph (H), by striking ''sections 5301(a) and (d), 5303-5306, and 5310(a)-(d) of this title'' and inserting ''subsections (a) and (d) of section 5301 and sections 5303 through 5306'';

(4) in subparagraph (I) by striking ''and'' at the end;

(5) in subparagraph (J), by striking the period at the end and inserting ''; and''; and

(6) by adding at the end the following:

''(K) if located in an urbanized area with a population of at least 200,000, will expend not less than 1 percent of the amount the recipient receives each fiscal year under this section for transit enhancement activities described in section 5302(a)(15).''.

(f) GOVERNMENT'S SHARE OF COSTS.—Section 5307(e) is amended—

(1) by striking the first sentence and inserting the following:

''(1) CAPITAL PROJECTS.—A grant for a capital project under this section shall cover 80 percent of the net project cost.'';

(2) by striking ''A grant for operating expenses'' and inserting the following:

''(2) OPERATING EXPENSES.—A grant for operating expenses'';

(3) by striking the fourth sentence and inserting the following:

''(3) REMAINING COSTS.—The remainder of the net project cost shall be provided in cash from non-Federal sources or revenues derived from the sale of advertising and concessions and amounts received under a service agreement with a State or local social service agency or a private social service organization.''; and

(4) by adding at the end the following: ''The prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to the remainder.''.

(g) UNDERTAKING PROJECTS IN ADVANCE.—Section 5307(g) is amended by striking paragraph (4).

(h) RELATIONSHIP TO OTHER LAWS.—Section 5307(k), as redesignated, is amended to read as follows:

''(k) RELATIONSHIP TO OTHER LAWS.—

''(1) APPLICABLE PROVISIONS.—Sections 5301, 5302, 5303, 5304, 5306, 5315(c), 5318, 5319, 5323, 5325, 5327, 5329, 5330, 5331, 5332, 5333 and 5335 apply to this section and to any grant made under this section.

''(2) INAPPLICABLE PROVISIONS.—

''(A) IN GENERAL.—Except as provided under this section, no other provision of this chapter applies to this section or to a grant made under this section.

''(B) TITLE 5.—The provision of assistance under this chapter shall not be construed as bringing within the application of chapter 15 of title 5, any nonsupervisory employee of a public transportation system (or any other agency or entity performing related functions) to which such chapter is otherwise inapplicable.''.

SEC. 3010. PLANNING PROGRAMS.

(a) IN GENERAL.—Section 5308 is amended to read as follows:

''§ 5308. Planning programs

''(a) GRANTS AUTHORIZED.—Under criteria established by the Secretary, the Secretary may award grants to States, authorities of the States, metropolitan planning organizations, and local governmental authorities, make agreements with other departments, agencies, or instrumentalities of the Government, or enter into contracts with private nonprofit or for-profit entities to—

''(1) develop transportation plans and programs;

''(2) plan, engineer, design, and evaluate a public transportation project; or

''(3) conduct technical studies relating to public transportation, including—

''(A) studies related to management, planning, operations, capital requirements, and economic feasibility;

''(B) evaluations of previously financed projects;

''(C) peer reviews and exchanges of technical data, information, assistance, and related activities in support of planning and environmental analyses among metropolitan planning organizations and other transportation planners; and

''(D) other similar and related activities preliminary to, and in preparation for, constructing, acquiring, or improving the operation of facilities and equipment.

''(b) PURPOSE.—To the extent practicable, the Secretary shall ensure that amounts appropriated pursuant to section 5338 to carry out this section and sections 5303, 5304, and 5306 are used to support balanced and comprehensive transportation planning that considers the relationships among land use and all transportation modes, without regard to the programmatic source of the planning amounts.

''(c) METROPOLITAN PLANNING PROGRAM.—

''(1) ALLOCATIONS TO STATES.—

''(A) IN GENERAL.—The Secretary shall allocate 80 percent of the amount made available under subsection (g)(3)(A) to States to carry out sections 5303 and 5306 in a ratio equal to the population in urbanized areas in each State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census of population.

''(B) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the total amount allocated under this paragraph.

''(2) AVAILABILITY OF FUNDS.—A State receiving an allocation under paragraph (1) shall promptly distribute such funds to metropolitan planning organizations in the State under a formula—

''(A) developed by the State in cooperation with the metropolitan planning organizations;

''(B) approved by the Secretary of Transportation;

''(C) that considers population in urbanized areas; and

''(D) that provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section.

''(3) SUPPLEMENTAL ALLOCATIONS.—

''(A) IN GENERAL.—The Secretary shall allocate 20 percent of the amount made available under subsection (g)(3)(A) to States to supplement allocations made under paragraph (1) for metropolitan planning organizations.

''(B) ALLOCATION FORMULA.—Amounts under this paragraph shall be allocated under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities in complex metropolitan planning areas under sections 5303, 5304, and 5306.

''(d) STATE PLANNING AND RESEARCH PROGRAM.—

''(1) IN GENERAL.—The Secretary shall allocate amounts made available pursuant to subsection (g)(3)(B) to States for grants and contracts to carry out sections 5304, 5306, 5315, and 5322 so that each State receives an amount equal to the ratio of the population in urbanized areas in that State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census.

''(2) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the amount allocated under this subsection.

''(3) REALLOCATION.—A State may authorize part of the amount made available under this subsection to be used to supplement amounts available under subsection (c).

''(e) PLANNING CAPACITY BUILDING PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary shall establish a Planning Capacity Building Program (referred to in this subsection as the ''Program'') to support and fund innovative practices and enhancements in transportation planning.

''(2) PURPOSE.—The purpose of the Program shall be to promote activities that support and strengthen the planning processes required under this section and sections 5303 and 5304.

''(3) ADMINISTRATION.—The Program shall be administered by the Federal Transit Administration in cooperation with the Federal Highway Administration.

''(4) USE OF FUNDS.—

''(A) IN GENERAL.—Appropriations authorized under subsection (g)(1) to carry out this subsection may be used—

''(i) to provide incentive grants to States, metropolitan planning organizations, and public transportation operators; and

''(ii) to conduct research, disseminate information, and provide technical assistance.

''(B) GRANTS, CONTRACTS, COOPERATIVE AGREEMENTS.—In carrying out the activities described in subparagraph (A), the Secretary may—

''(i) expend appropriated funds directly; or

''(ii) award grants to, or enter into contracts, cooperative agreements, and other transactions with, a Federal agency, State agency, local governmental authority, association, nonprofit or for-profit entity, or institution of higher education.

''(f) GOVERNMENT'S SHARE OF COSTS.—Amounts made available to carry out subsections (c), (d), and (e) may not exceed 80 percent of the costs of the activity unless the Secretary of Transportation determines that it is in the interest of the Government not to require State or local matching funds.

''(g) ALLOCATION OF FUNDS.—Of the amounts made available under section 5338(b)(2)(B) for fiscal year 2005 and each fiscal year thereafter to carry out this section—

''(1) $5,000,000 shall be allocated for the Planning Capacity Building Program established under subsection (e);

''(2) $20,000,000 shall be allocated for grants under subsection (a)(2) for alternatives analyses required by section 5309(e)(2)(A); and

''(3) of the remaining amount—

''(A) 82.72 percent shall be allocated for the metropolitan planning program described in subsection (d); and

''(B) 17.28 percent shall be allocated to carry out subsection (b).

''(h) REALLOCATIONS.—Any amount allocated under this section that has not been used 3 years after the end of the fiscal year in which the amount was allocated shall be reallocated among the States.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5308 in the table of sections for chapter 53 is amended to read as follows:

''5308. Planning programs.''.

SEC. 3011. CAPITAL INVESTMENT PROGRAM.

(a) SECTION HEADING.—The section heading of section 5309 is amended to read as follows:

''§ 5309. Capital investment grants''.

(b) GENERAL AUTHORITY.—Section 5309(a) is amended—

(1) in paragraph (1)—

(A) by striking ''(1) The Secretary of Transportation may make grants and loans'' and inserting the following:

''(1) GRANTS AUTHORIZED.—The Secretary may award grants'';

(B) in subparagraph (A), by striking ''alternatives analysis related to the development of systems,'';

(C) by striking subparagraphs (B), (C), (D), and (G);

(D) by redesignating subparagraphs (E), (F), and (H) as subparagraphs (B), (C), and (D), respectively;

(E) in subparagraph (C), as redesignated, by striking the semicolon at the end and inserting '', including programs of bus and bus-related projects for assistance to subrecipients which are public agencies, private companies engaged in public transportation, or private nonprofit organizations; and''; and

(F) in subparagraph (D), as redesignated—

(i) by striking ''to support fixed guideway systems''; and

(ii) by striking ''dedicated bus and high occupancy vehicle'';

(2) by amending paragraph (2) to read as follows:

''(2) GRANTEE REQUIREMENTS.—

''(A) GRANTEE IN URBANIZED AREA.—The Secretary shall require that any grants awarded under this section to a recipient located in an urbanized area shall be subject to all terms, conditions, requirements, and provisions that the Secretary determines to be necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in the value of real property resulting from the project assisted under this section.

''(B) GRANTEE NOT IN URBANIZED AREA.—The Secretary shall require that any grants awarded under this section to a recipient not located in an urbanized area shall be subject to the same terms, conditions, requirements, and provisions as a recipient or subrecipient of assistance under section 5311.

''(C) SUBRECIPIENT.—The Secretary shall require that any private, nonprofit organization that is a subrecipient of a grant awarded under this section shall be subject to the same terms, conditions, requirements, and provisions as a subrecipient of assistance under section 5310.''; and

(3) by adding at the end the following:

''(3) CERTIFICATION.—An applicant that has submitted the certifications required under subparagraphs (A), (B), (C), and (H) of section 5307(d)(1) shall be deemed to have provided sufficient information upon which the Secretary may make the findings required under this subsection.''.

(c) DEFINED TERM.—Section 5309(b) is amended to read as follows:

''(b) DEFINED TERM.—As used in this section, the term 'alternatives analysis' means a study conducted as part of the transportation planning process required under sections 5303 and 5304, which includes—

''(1) an assessment of a wide range of public transportation alternatives designed to address a transportation problem in a corridor or subarea;

''(2) sufficient information to enable the Secretary to make the findings of project justification and local financial commitment required under this section;

''(3) the selection of a locally preferred alternative; and

''(4) the adoption of the locally preferred alternative as part of the long-range transportation plan required under section 5303.''.

(d) GRANT REQUIREMENTS.—Section 5309(d) is amended to read as follows:

''(d) GRANT REQUIREMENTS.—The Secretary may not approve a grant for a project under this section unless the Secretary determines that—

''(1) the project is part of an approved transportation plan and program of projects required under sections 5303, 5304, and 5306; and

''(2) the applicant has, or will have—

''(A) the legal, financial, and technical capacity to carry out the project, including safety and security aspects of the project;

''(B) satisfactory continuing control over the use of the equipment or facilities; and

''(C) the capability and willingness to maintain the equipment or facilities.''.

(e) MAJOR CAPITAL INVESTMENT PROJECTS OF $75,000,000 OR MORE.—Section 5309(e) is amended to read as follows:

''(e) MAJOR CAPITAL INVESTMENT PROJECTS OF $75,000,000 OR MORE.—

''(1) FULL FUNDING GRANT AGREEMENT.—The Secretary shall enter into a full funding grant agreement, based on the evaluations and ratings required under this subsection, with each grantee receiving not less than $75,000,000 under this subsection for a new fixed guideway or corridor improvement capital project that—

''(A) is authorized for final design and construction; and

''(B) has been rated as medium, medium-high, or high, in accordance with paragraph (5)(B).

''(2) DETERMINATIONS.—The Secretary may not award a grant under this subsection for a new fixed guideway or corridor improvement capital project unless the Secretary determines that the proposed project is—

''(A) based on the results of an alternatives analysis and preliminary engineering;

''(B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost-effectiveness, operating efficiencies, economic development effects, and public transportation supportive land use patterns and policies; and

''(C) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct the project, and maintain and operate the entire public transportation system, while ensuring that the extent and quality of existing public transportation services are not degraded.

''(3) EVALUATION OF PROJECT JUSTIFICATION.—In making the determinations under paragraph (2)(B) for a major capital investment grant, the Secretary shall analyze, evaluate, and consider—

''(A) the results of the alternatives analysis and preliminary engineering for the proposed project;

''(B) the reliability of the forecasts of costs and utilization made by the recipient and the contractors to the recipient;

''(C) the direct and indirect costs of relevant alternatives;

''(D) factors such as—

''(i) congestion relief;

''(ii) improved mobility;

''(iii) air pollution;

''(iv) noise pollution;

''(v) energy consumption; and

''(vi) all associated ancillary and mitigation costs necessary to carry out each alternative analyzed;

''(E) reductions in local infrastructure costs achieved through compact land use development;

''(F) the cost of suburban sprawl;

''(G) the degree to which the project increases the mobility of the public transportation dependent population or promotes economic development;

''(H) population density and current transit ridership in the transportation corridor;

''(I) the technical capability of the grant recipient to construct the project;

''(J) any adjustment to the project justification necessary to reflect differences in local land, construction, and operating costs; and

''(K) other factors that the Secretary determines to be appropriate to carry out this chapter.

''(4) EVALUATION OF LOCAL FINANCIAL COMMITMENT.—

''(A) IN GENERAL.—In evaluating a project under paragraph (2)(C), the Secretary shall require that—

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

''(ii) each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable; and

''(iii) local resources are available to recapitalize and operate the overall proposed public transportation system, including essential feeder bus and other services necessary to achieve the projected ridership levels, while ensuring that the extent and quality of existing public transportation services are not degraded.

''(B) EVALUATION CRITERIA.—In assessing the stability, reliability, and availability of proposed sources of local financing under paragraph (2)(C), the Secretary shall consider—

''(i) the reliability of the forecasts of costs and utilization made by the recipient and the contractors to the recipient;

''(ii) existing grant commitments;

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

''(iv) any debt obligation that exists, or is proposed by the recipient, for the proposed project or other public transportation purpose; and

''(v) the extent to which the project has a local financial commitment that exceeds the required non-Federal share of the cost of the project, provided that if the Secretary gives priority to financing projects that include more than the non-Federal share required under subsection (h), the Secretary shall give equal consideration to differences in the fiscal capacity of State and local governments.

''(5) PROJECT ADVANCEMENT AND RATINGS.—

''(A) PROJECT ADVANCEMENT.—A proposed project under this subsection shall not advance from alternatives analysis to preliminary engineering or from preliminary engineering to final design and construction unless the Secretary determines that the project meets the requirements of this section and there is a reasonable likelihood that

the project will continue to meet such requirements.

''(B) RATINGS.—In making a determination under subparagraph (A), the Secretary shall evaluate and rate the project on a 5-point scale (high, medium-high, medium, medium-low, or low) based on the results of the alternatives analysis, the project justification criteria, and the degree of local financial commitment, as required under this subsection. In rating the projects, the Secretary shall provide, in addition to the overall project rating, individual ratings for each of the criteria established by regulation.

''(6) APPLICABILITY.—This subsection shall not apply to projects for which the Secretary has issued a letter of intent or entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 2004.

''(7) RULEMAKING.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations on the manner by which the Secretary shall evaluate and rate projects based on the results of alternatives analysis, project justification, and local financial commitment, in accordance with this subsection.

''(8) POLICY GUIDANCE.—

''(A) PUBLICATION.—The Secretary shall publish policy guidance regarding the new starts project review and evaluation process—

''(i) not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2004; and

''(ii) each time significant changes are made by the Secretary to the new starts project review and evaluation process and criteria, but not less frequently than once every 2 years.

''(B) PUBLIC COMMENT AND RESPONSE.—The Secretary shall—

''(i) invite public comment to the policy guidance published under subparagraph (A); and

''(ii) publish a response to the comments received under clause (i).''.

(f) MAJOR CAPITAL INVESTMENT PROJECTS OF LESS THAN $75,000,000.— Section 5309(f) is amended to read as follows:

''(f) MAJOR CAPITAL INVESTMENT PROJECTS OF LESS THAN $75,000,000.—

''(1) PROJECT CONSTRUCTION GRANT AGREEMENT.—

''(A) IN GENERAL.—The Secretary shall enter into a project construction grant agreement, based on evaluations and ratings required under this subsection, with each grantee receiving less than $75,000,000 under this subsection for a new fixed guideway or corridor improvement capital project that—

''(i) is authorized by law; and

''(ii) has been rated as medium, medium-high, or high, in accordance with paragraph (3)(B).

''(B) CONTENTS.—

''(i) IN GENERAL.—An agreement under this paragraph shall specify—

''(I) the scope of the project to be constructed;

''(II) the estimated net cost of the project;

''(III) the schedule under which the project shall be constructed;

''(IV) the maximum amount of funding to be obtained under this subsection;

''(V) the proposed schedule for obligation of future Federal grants; and

''(VI) the sources of non-Federal funding.

''(ii) ADDITIONAL FUNDING.—The agreement may include a commitment on the part of the Secretary to provide funding for the project in future fiscal years.

''(C) FULL FUNDING GRANT AGREEMENT.—An agreement under this paragraph shall be considered a full funding grant agreement for the purposes of subsection (g).

''(2) SELECTION PROCESS.—

''(A) SELECTION CRITERIA.—The Secretary may not award a grant under this subsection for a proposed project unless the Secretary determines that the project is—

''(i) based on the results of planning and alternatives analysis;

''(ii) justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development; and

''(iii) supported by an acceptable degree of local financial commitment.

''(B) PLANNING AND ALTERNATIVES.—In evaluating a project under subparagraph (A)(i), the Secretary shall analyze and consider the results of planning and alternatives analysis for the project.

''(C) PROJECT JUSTIFICATION.—In making the determinations under subparagraph (A)(ii), the Secretary shall—

''(i) determine the degree to which local land use policies are supportive of the public transportation project and the degree to which the project is likely to achieve local developmental goals;

''(ii) determine the cost effectiveness of the project at the time of the initiation of revenue service;

''(iii) determine the degree to which the project will have a positive effect on local economic development;

''(iv) consider the reliability of the forecasts of costs and ridership associated with the project; and

''(v) consider other factors that the Secretary determines to be appropriate to carry out this subsection.

''(D) LOCAL FINANCIAL COMMITMENT.—For purposes of subparagraph (A)(iii), the Secretary shall require that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable.

''(3) ADVANCEMENT OF PROJECT TO DEVELOPMENT AND CONSTRUCTION.—

''(A) IN GENERAL.—A proposed project under this subsection may not advance from the planning and alternatives analysis stage to project development and construction unless—

''(i) the Secretary finds that the project meets the requirements of this subsection and there is a reasonable likelihood that the project will continue to meet such requirements; and

''(ii) the metropolitan planning organization has adopted the locally preferred alternative for the project into the long-range transportation plan.

''(B) EVALUATION.—In making the findings under subparagraph (A), the Secretary shall evaluate and rate the project as high, medium-high, medium, medium-low, or low, based on the results of the analysis of the project justification criteria and the degree of local financial commitment, as required under this subsection.

''(4) IMPACT REPORT.—

''(A) IN GENERAL.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2004, the Federal Transit Administration shall submit a report on the methodology to be used in evaluating the land use and economic development impacts of non-fixed guideway or partial fixed guideway projects to—

''(i) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(ii) the Committee on Transportation and Infrastructure of the House of Representatives.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall address any qualitative and quantitative differences between fixed guideway and non-fixed guideway projects with respect to land use and economic development impacts.

''(5) REGULATIONS.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 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.''.

(g) FULL FUNDING GRANT AGREEMENTS.—Section 5309(g)(2) is amended by adding at the end the following:

''(C) BEFORE AND AFTER STUDY.—

''(i) IN GENERAL.—Each full funding grant agreement shall require the applicant to conduct a study that—

''(I) describes and analyzes the impacts of the new start project on transit services and transit ridership;

''(II) evaluates the consistency of predicted and actual project characteristics and performance; and

''(III) identifies sources of differences between predicted and actual outcomes.

''(ii) INFORMATION COLLECTION AND ANALYSIS PLAN.—

''(I) SUBMISSION OF PLAN.—Applicants seeking a full funding grant agreement shall submit a complete plan for the collection and analysis of information to identify the impacts of the new start project and the accuracy of the forecasts prepared during the development of the project. Preparation of this plan shall be included in the full funding grant agreement as an eligible activity.

''(II) CONTENTS OF PLAN.—The plan submitted under subclause (I) shall provide for—

''(aa) the collection of data on the current transit system regarding transit service levels and ridership patterns, including origins and destinations, access modes, trip purposes, and rider characteristics;

''(bb) documentation of the predicted scope, service levels, capital costs, operating costs, and ridership of the project;

''(cc) collection of data on the transit system 2 years after the opening of the new start project, including analogous information on transit service levels and ridership patterns and information on the as-built scope and capital costs of the new start project; and

''(dd) analysis of the consistency of predicted project characteristics with the after data.

''(D) COLLECTION OF DATA ON CURRENT SYSTEM.—To be eligible for a full funding grant agreement, recipients shall have collected data on the current system, according to the plan required, before the beginning of construction of the proposed new start project. Collection of this data shall be included in the full funding grant agreement as an eligible activity.

''(E) PUBLIC PRIVATE PARTNERSHIP PILOT PROGRAM.—

''(i) AUTHORIZATION.—The Secretary may establish a pilot program to demonstrate the advantages of public-private partnerships for certain fixed guideway systems development projects.

''(ii) IDENTIFICATION OF QUALIFIED PROJECTS.—The Secretary shall identify qualified public-private partnership projects as permitted by applicable State and local enabling laws and work with project sponsors to enhance project delivery and reduce overall costs.''.

(h) FEDERAL SHARE OF NET PROJECT COST.—Section 5309(h) is amended to read as follows:

''(h) FEDERAL SHARE OF ADJUSTED NET PROJECT COST.—

''(1) IN GENERAL.—The Secretary shall estimate the net project cost based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities.

''(2) ADJUSTMENT FOR COMPLETION UNDER BUDGET.—The Secretary may adjust the final net project cost of a major capital investment project evaluated under subsections (e) and (f) to include the cost of eligible activities not included in the originally defined project if the Secretary determines that the originally defined project has been completed at a cost that is significantly below the original estimate.

''(3) MAXIMUM FEDERAL SHARE.—

''(A) IN GENERAL.—A grant for the project shall be for 80 percent of the net project cost, or the net project cost as adjusted under paragraph (2), unless the grant recipient requests a lower grant percentage.

''(B) EXCEPTIONS.—The Secretary may provide a higher grant percentage than requested by the grant recipient if—

''(i) the Secretary determines that the net project cost of the project is not more than 10 percent higher than the net project cost estimated at the time the project was approved for advancement into preliminary engineering; and

''(ii) the ridership estimated for the project is not less than 90 percent of the ridership estimated for the project at the time the project was approved for advancement into preliminary engineering.

''(4) OTHER SOURCES.—The costs not funded by a grant under this section may be funded from—

''(A) an undistributed cash surplus;

''(B) a replacement or depreciation cash fund or reserve; or

''(C) new capital, including any Federal funds that are eligible to be expended for transportation.

''(5) PLANNED EXTENSION TO FIXED GUIDEWAY SYSTEM.—In addition to amounts allowed under paragraph (1), a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the Secretary determines that only non-Federal funds were used and that the purchase was made for use on the extension. A refund or reduction of the costs not funded by a grant under this section may be made only if a refund of a proportional amount of the grant is made at the same time.

''(6) EXCEPTION.—The prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to amounts allowed under paragraph (4).''.

(i) LOAN PROVISIONS AND FISCAL CAPACITY CONSIDERATIONS.—Section 5309 is amended—

(1) by striking subsections (i), (j), (k), and (*l*);

(2) by redesignating subsections (m) and (n) as subsections (i) and (j), respectively;

(3) by striking subsection (o) (as added by section 3009(i) of the Federal Transit Act of 1998); and

(4) by redesignating subsections (o) and (p) as subsections (k) and (*l*), respectively.

(j) ALLOCATING AMOUNTS.—Section 5309(i), as redesignated, is amended to read as follows:

''(i) ALLOCATING AMOUNTS.—

''(1) FISCAL YEAR 2004.—Of the amounts made available or appropriated for fiscal year 2004 under section 5338(a)(3)—

''(A) $1,315,983,615 shall be allocated for projects of not less than $75,000,000 for major capital projects for new fixed guideway systems and extensions of such systems under subsection (e) and projects for new fixed guideway or corridor improvement capital projects under subsection (f);

''(B) $1,199,387,615 shall be allocated for capital projects for fixed guideway modernization; and

''(C) $603,617,520 shall be allocated for capital projects for buses and bus-related equipment and facilities.

''(2) IN GENERAL.—Of the amounts made available or appropriated for fiscal year 2005 and each fiscal year thereafter for grants under this section pursuant to subsections (b)(4) and (c) of section 5338—

''(A) the amounts appropriated under section 5338(c) shall be allocated for major capital projects for—

''(i) new fixed guideway systems and extensions of not less than $75,000,000, in accordance with subsection (e); and

''(ii) projects for new fixed guideway or corridor improvement capital projects, in accordance with subsection (f); and

''(B) the amounts made available under section 5338(b)(4) shall be allocated for capital projects for buses and bus-related equipment and facilities.

''(3) FIXED GUIDEWAY MODERNIZATION.—The amounts made available for fixed guideway modernization under section 5338(b)(2)(K) for fiscal year 2005 and each fiscal year thereafter shall be allocated in accordance with section 5337.

''(4) PRELIMINARY ENGINEERING.—Not more that 8 percent of the allocation described in paragraphs (1)(A) and (2)(A) may be expended on preliminary engineering.

''(5) FUNDING FOR FERRY BOATS.—Of the amounts described in paragraphs (1)(A) and (2)(A), $10,400,000 shall be available in each of the fiscal years 2004 through 2009 for capital projects in Alaska and Hawaii for new fixed guideway systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals.

''(6) BUS AND BUS FACILITY GRANTS.—

''(A) CONSIDERATIONS.—In making grants under paragraphs (1)(C) and (2)(B), the Secretary shall consider the age and condition of buses, bus fleets, related equipment, and bus-related facilities.

''(B) PROJECTS NOT IN URBANIZED AREAS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than 5.5 percent shall be available in each fiscal year for projects that are not in urbanized areas.

''(C) INTERMODAL TERMINALS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than $75,000,000 shall be available in each fiscal year for intermodal terminal projects, including the intercity bus portion of such projects.''.

(k) REPORTS.—Section 5309 is amended by inserting at the end the following:

''(m) REPORTS.—

''(1) ANNUAL REPORT ON FUNDING RECOMMENDATIONS.—

''(A) IN GENERAL.—Not later than the first Monday of February of each year, the Secretary shall submit a report on funding recommendations to—

''(i) the Committee on Transportation and Infrastructure of the House of Representatives;

''(ii) the Committee on Banking, Housing, and Urban Affairs of the Senate;

''(iii) the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

''(iv) the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall contain—

''(i) a proposal on the allocation of amounts to finance grants for capital investment projects among grant applicants;

''(ii) a recommendation of projects to be funded based on—

''(I) the evaluations and ratings determined under subsection (e) and (f); and

''(II) existing commitments and anticipated funding levels for the subsequent 3 fiscal years; and

''(iii) detailed ratings and evaluations on each project recommended for funding.

''(2) TRIENNIAL REPORTS ON PROJECT RATINGS.—

''(A) IN GENERAL.—Not later than the first Monday of February, the first Monday of June, and the first Monday of October of each year, the Secretary shall submit a report on project ratings to—

''(i) the Committee on Transportation and Infrastructure of the House of Representatives;

''(ii) the Committee on Banking, Housing, and Urban Affairs of the Senate;

''(iii) the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

''(iv) the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

''(B) CONTENTS.—Each report submitted under subparagraph (A) shall contain—

''(i) a summary of the ratings of all capital investment projects for which funding was requested under this section;

''(ii) detailed ratings and evaluations on the project of each applicant that had significant changes to the finance or project proposal or has completed alternatives analysis or preliminary engineering since the date of the latest report; and

''(iii) all relevant information supporting the evaluation and rating of each updated project, including a summary of the financial plan of each updated project.

''(3) BEFORE AND AFTER STUDY REPORTS.—Not later than the first Monday of August of each year, the Secretary shall submit a report containing a summary of the results of the studies conducted under subsection (g)(2) to—

''(A) the Committee on Transportation and Infrastructure of the House of Representatives;

''(B) the Committee on Banking, Housing, and Urban Affairs of the Senate;

''(C) the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

''(D) the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

''(4) CONTRACTOR PERFORMANCE ASSESSMENT REPORT.—

''(A) IN GENERAL.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2004, and each year thereafter, the Secretary shall submit a report analyzing the consistency and accuracy of cost and ridership estimates made by each contractor to public transportation agencies developing major investment projects to the committees and subcommittees listed under paragraph (3).

''(B) CONTENTS.—The report submitted under subparagraph (A) shall compare the cost and ridership estimates made at the time projects are approved for entrance into preliminary engineering with—

''(i) estimates made at the time projects are approved for entrance into final design;

''(ii) costs and ridership when the project commences revenue operation; and

''(iii) costs and ridership when the project has been in operation for 2 years.

''(5) ANNUAL GENERAL ACCOUNTING OFFICE REVIEW.—

''(A) REVIEW.—The Comptroller General of the United States shall conduct an annual review of the processes and procedures for evaluating and rating projects and recommending projects and the Secretary's implementation of such processes and procedures.

''(B) REPORT.—Not later than 90 days after the submission of each report required under paragraph (1), the Comptroller General shall submit a report to Congress that summarizes the results of the review conducted under subparagraph (A).

''(6) CONTRACTOR PERFORMANCE INCENTIVE REPORT.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2004, the Secretary shall submit a report to the committees and subcommittees listed under paragraph (3) on the suitability of allowing contractors to public transportation agencies that undertake major capital investments under this section to receive performance incentive awards if a project is completed for less than the original estimated cost.''.

SEC. 3012. NEW FREEDOM FOR ELDERLY PERSONS AND PERSONS WITH DISABILITIES.

(a) IN GENERAL.—Section 5310 is amended to read as follows:

''§ 5310. New freedom for elderly persons and persons with disabilities

''(a) GENERAL AUTHORITY.—

''(1) AUTHORIZATION.—The Secretary may award grants to a State for capital public transportation projects that are planned, designed, and carried out to meet the needs of elderly individuals and individuals with disabilities, with priority given to the needs of these individuals to access necessary health care.

''(2) ACQUISITION OF PUBLIC TRANSPORTATION SERVICES.—A capital public transportation project under this section may include acquiring public transportation services as an eligible capital expense.

''(3) ADMINISTRATIVE COSTS.—A State may use not more than 15 percent of the amounts received under this section to administer, plan, and provide technical assistance for a project funded under this section.

''(b) ALLOTMENTS AMONG STATES.—

''(1) IN GENERAL.—From amounts made available or appropriated in each fiscal year under subsections (a)(1)(C)(iv) and (b)(2)(D) of section 5338 for grants under this section, the Secretary shall allot amounts to each State under a formula based on the number of elderly individuals and individuals with disabilities in each State.

''(2) TRANSFER OF FUNDS.—Any funds allotted to a State under paragraph (1) may be transferred by the State to the apportionments made under sections 5311(c) and 5336 if such funds are only used for eligible projects selected under this section.

''(3) REALLOCATION OF FUNDS.—A State receiving a grant under this section may reallocate such grant funds to—

''(A) a private nonprofit organization;

''(B) a public transportation agency or authority; or

''(C) a governmental authority that—

''(i) has been approved by the State to coordinate services for elderly individuals and individuals with disabilities;

''(ii) certifies that nonprofit organizations are not readily available in the area that can provide the services described under this subsection; or

''(iii) will provide services to persons with disabilities that exceed those services required by the Americans with Disabilities Act.

''(c) FEDERAL SHARE.—

''(1) MAXIMUM.—

''(A) IN GENERAL.—A grant for a capital project under this section may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

''(B) EXCEPTION.—A State described in section 120(d) of title 23 shall receive an increased Federal share in accordance with the formula under that section.

''(2) REMAINING COSTS.—The costs of a capital project under this section that are not funded through a grant under this section—

''(A) may be funded from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and

''(B) may be derived from amounts appropriated to or made available to any Federal agency (other than the Department of Transportation, except for Federal Lands Highway funds) that are eligible to be expended for transportation.

''(3) EXCEPTION.—For purposes of paragraph (2), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

''(d) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—A grant recipient under this section shall be subject to the requirements of a grant recipient under section 5307 to the extent the Secretary determines to be appropriate.

''(2) CERTIFICATION REQUIREMENTS.—

''(A) FUND TRANSFERS.—A grant recipient under this section that transfers funds to a project funded under section 5336 in accordance with subsection (b)(2) shall certify that the project for which the funds are requested has been coordinated with private nonprofit providers of services under this section.

''(B) PROJECT SELECTION AND PLAN DEVELOPMENT.—Each grant recipient under this section shall certify that—

''(i) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and

''(ii) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

''(C) ALLOCATIONS TO SUBRECIPIENTS.—Each grant recipient under this section shall certify that allocations of the grant to subrecipients, if any, are distributed on a fair and equitable basis.

''(e) STATE PROGRAM OF PROJECTS.—

''(1) SUBMISSION TO SECRETARY.—Each State shall annually submit a program of transportation projects to the Secretary for approval with an assurance that the program provides for maximum feasible coordination between transportation services funded under this section and transportation services assisted by other Federal sources.

''(2) USE OF FUNDS.—Each State may use amounts made available to carry out this section to provide transportation services for elderly individuals and individuals with disabilities if such services are included in an approved State program of projects.

''(f) LEASING VEHICLES.—Vehicles acquired under this section may be leased to local governmental authorities to improve transportation services designed to meet the needs of elderly individuals and individuals with disabilities.

''(g) MEAL DELIVERY FOR HOMEBOUND INDIVIDUALS.—Public transportation service providers receiving assistance under this section or section 5311(c) may coordinate and assist in regularly providing meal delivery service for homebound individuals if the delivery service does not conflict with providing public transportation service or reduce service to public transportation passengers.

''(h) TRANSFERS OF FACILITIES AND EQUIPMENT.—With the consent of the recipient in possession of a facility or equipment acquired with a grant under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment will continue to be used as required under this section.

''(i) FARES NOT REQUIRED.—This section does not require that elderly individuals and individuals with disabilities be charged a fare.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5310 in the table of sections for chapter 53 is amended to read as follows:

''5310. New freedom for elderly persons and persons with disabilities.''.

SEC. 3013. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.

(a) DEFINITIONS.—Section 5311(a) is amended to read as follows:

''(a) DEFINITIONS.—As used in this section, the following definitions shall apply:

''(1) RECIPIENT.—The term 'recipient' means a State that receives a Federal transit program grant directly from the Federal Government.

''(2) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, a nonprofit organization, or a private operator of public transportation service that receives Federal transit program grant funds indirectly through a recipient.''.

(b) GENERAL AUTHORITY.—Section 5311(b) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) GRANTS AUTHORIZED.—Except as provided under paragraph (2), the Secretary may award grants under this section to recipients located in areas other than urbanized areas for—

''(A) public transportation capital projects;

''(B) operating costs of equipment and facilities for use in public transportation; and

''(C) the acquisition of public transportation services.'';

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following:

''(2) STATE PROGRAM.—

''(A) IN GENERAL.—A project eligible for a grant under this section shall be included in a State program for public transportation service projects, including agreements with private providers of public transportation service.

''(B) SUBMISSION TO SECRETARY.—Each State shall annually submit the program described in subparagraph (A) to the Secretary.

''(C) APPROVAL.—The Secretary may not approve the program unless the Secretary determines that—

''(i) the program provides a fair distribution of amounts in the State;

''(ii) the program provides the maximum feasible coordination of public transportation service assisted under this section with transportation service assisted by other Federal sources; and

''(iii) amounts provided for projects on Indian reservations are not less than amounts attributable to the population and land area of Indian reservations in the State, as published under subsection (c)(4).'';

(4) in paragraph (3), as redesignated—

(A) by striking ''(3) The Secretary of Transportation'' and inserting the following:

''(3) RURAL TRANSPORTATION ASSISTANCE PROGRAM.—

''(A) ESTABLISHMENT.—The Secretary'';

(B) by striking ''make'' and inserting ''use not more than 2 percent of the amount made available to carry out this section to award''; and

(C) by adding at the end the following:

''(B) DATA COLLECTION.—

''(i) REPORT.—Each grantee under this section shall submit an annual report to the Secretary containing information on capital investment, operations, and service provided with funds received under this section, including—

''(I) total annual revenue;

''(II) sources of revenue;

''(III) total annual operating costs;

''(IV) total annual capital costs;

''(V) fleet size and type, and related facilities;

''(VI) revenue vehicle miles; and

''(VII) ridership.''; and

(5) by adding after paragraph (3) the following:

''(4) Of the amount made available to carry out paragraph (3)—

''(A) not more than 15 percent may be used to carry out projects of a national scope; and

''(B) any amounts not used under subparagraph (A) shall be allocated to the States.''.

(c) APPORTIONMENTS.—Section 5311(c) is amended to read as follows:

''(c) APPORTIONMENTS.—

''(1) IN GENERAL.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(F) of section 5338—

''(A) 20 percent shall be apportioned to the States in accordance with paragraph (2); and

''(B) 80 percent shall be apportioned to the States in accordance with paragraph (3).

''(2) APPORTIONMENTS BASED ON LAND AREA IN NONURBANIZED AREAS.—

''(A) IN GENERAL.—Subject to subparagraph (B), each State shall receive an amount that is equal to the amount apportioned under paragraph (1)(A) multiplied by the ratio of the land area in areas other than urbanized areas in that State and divided by the land area in all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.

''(B) MAXIMUM APPORTIONMENT.—No State shall receive more than 5 percent of the amount apportioned under this paragraph.

''(3) APPORTIONMENTS BASED ON POPULATION IN NONURBANIZED AREAS.—Each State shall receive an amount equal to the amount apportioned under paragraph (1)(B) multiplied by the ratio of the population of areas other than urbanized areas in that State divided by the population of all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.

''(4) PUBLICATION OF APPORTIONMENTS.—The Secretary shall publish the total amount apportioned to each State under this subsection and the amounts attributable to the population and land area of Indian reservations in each State.''.

(d) USE FOR ADMINISTRATIVE, PLANNING, AND TECHNICAL ASSISTANCE.—Section 5311(e) is amended—

(1) by striking ''AND TECHNICAL ASSISTANCE.—(1) The Secretary of Transportation'' and inserting '', PLANNING, AND TECHNICAL ASSISTANCE.—The Secretary'';

(2) by striking ''to a recipient''; and

(3) by striking paragraph (2).

(e) INTERCITY BUS TRANSPORTATION.—Section 5311(f) is amended—

(1) in paragraph (1)—

(A) by striking ''(1)'' and inserting the following:

''(1) IN GENERAL.—''; and

(B) by striking ''after September 30, 1993,''; and

(2) in paragraph (2)—

(A) by striking ''A State'' and inserting ''After consultation with affected intercity bus service providers, a State''; and

(B) by striking ''of Transportation''.

(f) FEDERAL SHARE OF COSTS.—Section 5311(g) is amended to read as follows:

''(g) FEDERAL SHARE OF COSTS.—

''(1) MAXIMUM FEDERAL SHARE.—

''(A) CAPITAL PROJECTS.—

''(i) IN GENERAL.—Except as provided under clause (ii), a grant awarded under this section for any purpose other than operating assistance may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

''(ii) EXCEPTION.—A State described in section 120(d) of title 23 shall receive a Federal share of the net capital costs in accordance with the formula under that section.

''(B) OPERATING ASSISTANCE.—

''(i) IN GENERAL.—Except as provided under clause (ii), a grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

''(ii) EXCEPTION.—A State described in section 120(d) of title 23 shall receive a Federal share of the net operating costs equal to 62.5 percent of the Federal share provided for under subparagraph (A)(ii).

''(2) OTHER FUNDING SOURCES.—Funds for a project under this section that are not provided for by a grant under this section—

''(A) may be provided from—

''(i) an undistributed cash surplus;

''(ii) a replacement or depreciation cash fund or reserve;

''(iii) a service agreement with a State or local social service agency or a private social service organization; or

''(iv) new capital; and

''(B) may be derived from amounts appropriated to or made available to a Federal agency (other than the Department of Transportation, except for Federal Land Highway funds) that are eligible to be expended for transportation.

''(3) USE OF FEDERAL GRANT.—A State carrying out a program of operating assistance under this section may not limit the level or extent of use of the Federal grant for the payment of operating expenses.

''(4) EXCEPTION.—For purposes of paragraph (2)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(c)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(c)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.''.

(g) WAIVER CONDITION.—Section 5311(j)(1) is amended by striking ''but the Secretary of Labor may waive the application of section 5333(b)'' and inserting ''if the Secretary of Labor utilizes a Special Warranty that provides a fair and equitable arrangement to protect the interests of employees''.

SEC. 3014. RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.

(a) IN GENERAL.—Section 5312 is amended—

(1) by amending subsection (a) to read as follows:

''(a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—The Secretary may make grants, contracts, cooperative agreements, or other transactions (including agreements with departments, agencies, and instrumentalities of the United States Government) for research, development, demonstration or deployment projects, or evaluation of technology of national significance to public transportation that the Secretary determines will improve public transportation service or help public transportation service meet the total transportation needs at a minimum cost.

''(2) INFORMATION.—The Secretary may request and receive appropriate information from any source.

''(3) SAVINGS PROVISION.—This subsection does not limit the authority of the Secretary under any other law.'';

(2) by striking subsections (b) and (c);

(3) by redesignating subsections (d) and (e) as (b) and (c), respectively.

(4) in subsection (b), as redesignated—

(A) in paragraph (2), by striking ''other agreements'' and inserting ''other transactions''; and

(B) in paragraph (5), by striking ''within the Mass Transit Account of the Highway Trust Fund''; and

(5) in subsection (c), as redesignated—

(A) in paragraph (2), by striking ''public and private'' and inserting ''public or private''; and

(B) in paragraph (3), by striking ''within the Mass Transit Account of the Highway Trust Fund'' .

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 5312 is amended to read as follows:

''§ 5312. Research, development, demonstration, and deployment projects''.

(2) TABLE OF SECTIONS.—The item relating to section 5312 in the table of sections for chapter 53 is amended to read as follows:

''5312. Research, development, demonstration, and deployment projects.''.

SEC. 3015. TRANSIT COOPERATIVE RESEARCH PROGRAM.

(a) IN GENERAL.—Section 5313 is amended—

(1) by striking subsection (b);

(2) in subsection (a)—

(A) in paragraph (1), by striking ''(1) The amounts made available under paragraphs (1) and (2)C)(ii) of section 5338(c) of this title'' and inserting ''The amounts made available under subsections (a)(5)(C)(iii) and (b)(2)(G)(i) of section 5338''; and

(B) in paragraph (2), by striking ''(2)'' and inserting the following:

''(b) FEDERAL ASSISTANCE.—''; and

(3) by amending subsection (c) to read as follows:

''(c) FEDERAL SHARE.—If there would be a clear and direct financial benefit to an entity under a grant or contract financed under this section, the Secretary shall establish a Federal share consistent with such benefit.''.

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 5313 is amended to read as follows:

''§ 5313. Transit cooperative research program''.

(2) TABLE OF SECTIONS.—The item relating to section 5313 in the table of sections for chapter 53 is amended to read as follows:

''5313. Transit cooperative research program.''.

SEC. 3016. NATIONAL RESEARCH PROGRAMS.

(a) IN GENERAL.—Section 5314 is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

''(1) AVAILABILITY OF FUNDS.—The Secretary may use amounts made available under subsections (a)(5)(C)(iv) and (b)(2)(G)(iv) of section 5338 for grants, contracts, cooperative agreements, or other transactions for the purposes described in sections 5312, 5315, and 5322.'';

(B) in paragraph (2), by striking ''(2) Of'' and inserting the following:

''(2) ADA COMPLIANCE.—From'';

(C) by amending paragraph (3) to read as follows:

''(3) SPECIAL DEMONSTRATION INITIATIVES.—The Secretary may use not more than 25 percent of the amounts made available under paragraph (1) for special demonstration initiatives, subject to terms that the Secretary determines to be consistent with this chapter. For a nonrenewable grant of not more than $100,000, the Secretary shall provide expedited procedures for complying with the requirements of this chapter.''; and

(D) in paragraph (4)—

(i) by striking subparagraph (B); and

(ii) by redesignating subparagraph (C) as subparagraph (B); and

(2) by amending subsection (b) to read as follows:

''(b) FEDERAL SHARE.—If there would be a clear and direct financial benefit to an entity under a grant, contract, cooperative agreement, or other transaction financed

under subsection (a) or section 5312, 5313, 5315, or 5322, the Secretary shall establish a Federal share consistent with such benefit.''.

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading for section 5314 is amended to read as follows:

''§ 5314. National research programs''.

(2) TABLE OF SECTIONS.—The item relating to section 5314 in the table of sections for chapter 53 is amended to read as follows:

''5314. National research programs.''.

SEC. 3017. NATIONAL TRANSIT INSTITUTE.

(a) Section 5315 is amended—

(1) by striking subsections (a) and (b) and inserting the following:

''(a) ESTABLISHMENT.—The Secretary shall award a grant to Rutgers University to conduct a national transit institute.

''(b) DUTIES.—

''(1) IN GENERAL.—In cooperation with the Federal Transit Administration, State transportation departments, public transportation authorities, and national and international entities, the institute established pursuant to subsection (a) shall develop and conduct training programs for Federal, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Government-aid public transportation work.

''(2) TRAINING PROGRAMS.—The training programs developed under paragraph (1) may include courses in recent developments, techniques, and procedures related to—

''(A) intermodal and public transportation planning;

''(B) management;

''(C) environmental factors;

''(D) acquisition and joint use rights of way;

''(E) engineering and architectural design;

''(F) procurement strategies for public transportation systems;

''(G) turnkey approaches to delivering public transportation systems;

''(H) new technologies;

''(I) emission reduction technologies;

''(J) ways to make public transportation accessible to individuals with disabilities;

''(K) construction, construction management, insurance, and risk management;

''(L) maintenance;

''(M) contract administration;

''(N) inspection;

''(O) innovative finance;

''(P) workplace safety; and

''(Q) public transportation security.''; and

(2) in subsection (d), by striking ''mass'' each place it appears.

SEC. 3018. BUS TESTING FACILITY.

Section 5318 is amended—

(1) in subsection (a)—

(A) by striking ''ESTABLISHMENT.—The Secretary of Transportation shall establish one facility'' and inserting ''IN GENERAL.—The Secretary shall maintain 1 facility''; and

(B) by striking ''established by renovating'' and inserting ''maintained at''; and

(2) in subsection (d), by striking ''section 5309(m)(1)(C) of this title'' and inserting ''paragraphs (1)(C) and (2)(B) of section 5309(i)''.

SEC. 3019. BICYCLE FACILITIES.

Section 5319 is amended by striking ''5307(k)'' and inserting ''5307(d)(1)(K)''.

SEC. 3020. SUSPENDED LIGHT RAIL TECHNOLOGY PILOT PROJECT.

Section 5320 is repealed.

SEC. 3021. CRIME PREVENTION AND SECURITY.

Section 5321 is repealed.

SEC. 3022. GENERAL PROVISIONS ON ASSISTANCE.

Section 5323 is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—Financial assistance provided under this chapter to a State or a local governmental authority may be used to acquire an interest in, or to buy property of, a private company engaged in public transportation, for a capital project for property acquired from a private company engaged in public transportation after July 9, 1964, or to operate a public transportation facility or equipment in competition with, or in addition to, transportation service provided by an existing public transportation company, only if—

''(A) the Secretary determines that such financial assistance is essential to a program of projects required under sections 5303, 5304, and 5306;

''(B) the Secretary determines that the program provides for the participation of private companies engaged in public transportation to the maximum extent feasible; and

''(C) just compensation under State or local law will be paid to the company for its franchise or property.''; and

(B) in paragraph (2), by striking ''(2)'' and inserting the following:

''(2) LIMITATION.—'';

(2) by amending subsection (b) to read as follows:

''(b) NOTICE AND PUBLIC HEARING.—

''(1) IN GENERAL.—An application for a grant under this chapter for a capital project that will substantially affect a community, or the public transportation service of a community, shall include, in the environmental record for the project, evidence that the applicant has—

''(A) provided an adequate opportunity for public review and comment on the project;

''(B) held a public hearing on the project if the project affects significant economic, social, or environmental interests;

''(C) considered the economic, social, and environmental effects of the project; and

''(D) found that the project is consistent with official plans for developing the urban area.

''(2) CONTENTS OF NOTICE.—Notice of a hearing under this subsection—

''(A) shall include a concise description of the proposed project; and

''(B) shall be published in a newspaper of general circulation in the geographic area the project will serve.'';

(3) by amending subsection (c) to read as follows:

''(c) NEW TECHNOLOGY.—A grant for financial assistance under this chapter for new technology, including innovative or improved products, techniques, or methods, shall be subject to the requirements of section 5309 to the extent the Secretary determines to be appropriate.'';

(4) by amending subsection (d) to read as follows:

''(d) CONDITIONS ON BUS TRANSPORTATION SERVICE.—Financial assistance under this chapter may be used to buy or operate a bus only if the recipient agrees to comply with the following conditions on bus transportation service:

''(1) CHARTER BUS SERVICE.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), a recipient may provide incidental charter bus service only within its lawful service area if—

''(i) the recipient annually publishes, by electronic and other appropriate means, a notice—

''(I) indicating its intent to offer incidental charter bus service within its lawful service area; and

''(II) soliciting notices from private bus operators that wish to appear on a list of carriers offering charter bus service in that service area;

''(ii) the recipient provides private bus operators with an annual opportunity to notify the recipient of its desire to appear on a list of carriers offering charter bus service in such service area;

''(iii) upon receiving a request for charter bus service, the recipient electronically notifies the private bus operators listed as offering charter service in that service area with the name and contact information of the requestor and the nature of the charter service request; and

''(iv) the recipient does not offer to provide charter bus service unless no private bus operator indicates that it is willing and able to provide the service within a 72-hour period after the receipt of such notice.

''(B) EXCEPTION.—A recipient that operates 2,000 or fewer vehicles in fixed-route peak hour service may provide incidental charter bus transportation directly to—

''(i) local governments; and

''(ii) social service entities with limited resources.

''(C) IRREGULARLY SCHEDULED EVENTS.—Service, other than commuter service, by a recipient to irregularly scheduled events, where the service is conducted in whole or in part outside the service area of the recipient, regardless of whether the service is contracted for individually with passengers, is subject to a rebuttable presumption that such service is charter service.

''(2) VIOLATION OF AGREEMENTS.—

''(A) COMPLAINTS.—A complaint regarding the violation of a charter bus service agreement shall be submitted to the Regional Administrator of the Federal Transit Administration, who shall—

''(i) provide a reasonable opportunity for the recipient to respond to the complaint;

''(ii) provide the recipient with an opportunity for an informal hearing; and

''(iii) issue a written decision not later than 60 days after the parties have completed their submissions.

''(B) APPEALS.—

''(i) IN GENERAL.—A decision by the Regional Administrator may be appealed to a panel comprised of the Federal Transit Administrator, personnel in the Office of the Secretary of Transportation, and other persons with expertise in surface passenger transportation issues.

''(ii) STANDARD OF REVIEW.—The panel described in clause (i) shall consider the complaint de novo on all issues of fact and law.

''(iii) WRITTEN DECISION.—The appeals panel shall issue a written decision on an appeal not later than 60 days after the completion of submissions. This decision shall be the final order of the agency and subject to judicial review in district court.

''(C) CORRECTION.—If the Secretary determines that a violation of an agreement relating to the provision of charter service has occurred, the Secretary shall correct the violation under terms of the agreement.

''(D) REMEDIES.—The Secretary may issue orders to recipients to cease and desist in actions that violate the agreement, and such orders shall be binding upon the parties. In addition to any remedy spelled out in the agreement, if a recipient has failed to correct a violation within 60 days after the receipt of a notice of violation from the Secretary, the Secretary shall withhold from the recipient the lesser of—

''(i) 5 percent of the financial assistance available to the recipient under this chapter for the next fiscal year; or

''(ii) $200,000.

''(3) REGULATIONS.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue amended regulations that—

''(A) implement this subsection, as revised by such Act; and

''(B) impose restrictions, procedures, and remedies in connection with sightseeing service by a recipient.

''(4) PUBLIC NOTICE.—The Secretary shall make all written decisions, guidance, and other pertinent materials relating to the procedures in this subsection available to the public in electronic and other appropriate formats in a timely manner.'';

(5) by striking subsection (e);

(6) by redesignating subsection (f) as subsection (e);

(7) in subsection (e), as redesignated—

(A) by striking ''(1)'' and inserting the following:

''(1) IN GENERAL.—'';

(B) by striking paragraph (2);

(C) by striking ''This subsection'' and inserting the following:

''(2) EXCEPTIONS.—This subsection; and

(D) by adding at the end the following:

''(3) PENALTY.—If the Secretary determines that an applicant, governmental authority, or publicly owned operator has violated the agreement required under paragraph (1), the Secretary shall bar the applicant, authority, or operator from receiving Federal transit assistance in an amount the Secretary determines to be appropriate.'';

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

''(f) BOND PROCEEDS ELIGIBLE FOR LOCAL SHARE.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, a recipient of assistance under section 5307 or 5309, may use the proceeds from the issuance of revenue bonds as part of the local matching funds for a capital project.

''(2) REIMBURSEMENT BY SECRETARY.—The Secretary may reimburse an eligible recipient for deposits of bond proceeds in a debt service reserve that the recipient established pursuant to section 5302(a)(1)(K) from amounts made available to the recipient under section 5307 or 5309.'';

(9) in subsection (g)—

(A) by striking ''(f)'' each place it appears and inserting ''(e)''; and

(B) by striking ''103(e)(4) and 142 (a) or (c)'' each place it appears and inserting ''133 and 142'';

(10) by amending subsection (h) to read as follows:

''(h) TRANSFER OF LANDS OR INTERESTS IN LANDS OWNED BY THE UNITED STATES.—

(1) REQUEST BY SECRETARY.—If the Secretary determines that any part of the lands or interests in lands owned by the United States and made available as a result of a military base closure is necessary for transit purposes eligible under this chapter, including corridor preservation, the Secretary shall submit a request to the head of the Federal agency supervising the administration of such lands or interests in lands. Such request shall include a map showing the portion of such lands or interests in lands, which is desired to be transferred for public transportation purposes.

''(2) TRANSFER OF LAND.—If 4 months after submitting a request under paragraph (1), the Secretary does not receive a response from the Federal agency described in paragraph (1) that certifies that the proposed appropriation of land is contrary to the public interest or inconsistent with the purposes for which such land has been reserved, or if the head of such agency agrees to the utilization or transfer under conditions necessary for the adequate protection and utilization of the reserve, such land or interests in land may be utilized or transferred to a State, local governmental authority, or public transportation operator for such purposes and subject to the conditions specified by such agency.

''(3) REVERSION.—If at any time the lands or interests in land utilized or transferred under paragraph (2) are no longer needed for public transportation purposes, the State, local governmental authority, or public transportation operator that received the land shall notify to the Secretary, and such lands shall immediately revert to the control of the head of the Federal agency from which the land was originally transferred.'';

(11) in subsection (j)(5), by striking ''Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 1914)'' and inserting ''Federal Public Transportation Act of 2004'';

(12) by amending subsection (*l*) to read as follows:

''(*l*) RELATIONSHIP TO OTHER LAWS.—Section 1001 of title 18 applies to a certificate, submission, or statement provided under this chapter. The Secretary may terminate financial assistance under this chapter and seek reimbursement directly, or by offsetting amounts, available under this chapter, if the Secretary determines that a recipient of such financial assistance has made a false or fraudulent statement or related act in connection with a Federal transit program.'';

(13) in subsection (m), by inserting at the end the following: ''Requirements to perform preaward and postdelivery reviews of rolling stock purchases to ensure compliance with subsection (j) shall not apply to private nonprofit organizations or to grantees serving urbanized areas with a population of fewer than 1,000,000.'';

(14) in subsection (*o*), by striking ''the Transportation Infrastructure Finance and Innovation Act of 1998'' and inserting ''sections 181 through 188 of title 23''; and

(15) by adding at the end the following:

''(p) PROHIBITED USE OF FUNDS.—Grant funds received under this chapter may not be used to pay ordinary governmental or nonproject operating expenses.''.

SEC. 3023. SPECIAL PROVISIONS FOR CAPITAL PROJECTS.

(a) IN GENERAL.—Section 5324 is amended to read as follows:

''§ 5324. Special provisions for capital projects

''(a) REAL PROPERTY AND RELOCATION SERVICES.—Whenever real property is acquired or furnished as a required contribution incident to a project, the Secretary shall not approve the application for financial assistance unless the applicant has made all payments and provided all assistance and assurances that are required of a State agency under sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630 and 4655). The Secretary must be advised of specific references to any State law that are believed to be an exception to section 301 or 302 of such Act (42 U.S.C. 4651 and 4652).

''(b) ADVANCE REAL PROPERTY ACQUISITIONS.—

(1) IN GENERAL.—The Secretary may participate in the acquisition of real property for any project that may use the property if the Secretary determines that external market forces are jeopardizing the potential use of the property for the project and if—

''(A) there are offers on the open real estate market to convey that property for a use that is incompatible with the project under study;

''(B) there is an imminent threat of development or redevelopment of the property for a use that is incompatible with the project under study;

''(C) recent appraisals reflect a rapid increase in the fair market value of the property;

''(D) the property, because it is located near an existing transportation facility, is likely to be developed and to be needed for a future transportation improvement; or

''(E) the property owner can demonstrate that, for health, safety, or financial reasons, retaining ownership of the property poses an undue hardship on the owner in comparison to other affected property owners and requests the acquisition to alleviate that hardship.

''(2) ENVIRONMENTAL REVIEWS.—Property acquired in accordance with this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

''(3) LIMITATION.—The Secretary shall limit the size and number of properties acquired under this subsection as necessary to avoid any prejudice to the Secretary's objective evaluation of project alternatives.

''(4) EXEMPTION.—An acquisition under this section shall be considered an exempt project under section 176 of the Clean Air Act (42 U.S.C. 7506).

''(c) RAILROAD CORRIDOR PRESERVATION.—

''(1) IN GENERAL.—The Secretary may assist an applicant to acquire railroad right-of-way before the completion of the environmental reviews for any project that may use the right-of-way if the acquisition is otherwise permitted under Federal law. The Secretary may establish restrictions on such an acquisition as the Secretary determines to be necessary and appropriate.

''(2) ENVIRONMENTAL REVIEWS.—Railroad right-of-way acquired under this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

''(d) CONSIDERATION OF ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—

''(1) IN GENERAL.—The Secretary may not approve an application for financial assistance for a capital project under this chapter unless the Secretary determines that the project has been developed in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary's findings under this paragraph shall be made a matter of public record.

''(2) COOPERATION AND CONSULTATION.—In carrying out section 5301(e), the Secretary shall cooperate and consult with the Secretary of the Interior and the Administrator of the Environmental Protection Agency on each project that may have a substantial impact on the environment.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5324 in the table of sections for chapter 53 is amended to read as follows:

''5324. Special provisions for capital projects.''.

SEC. 3024. CONTRACT REQUIREMENTS.

(a) IN GENERAL.—Section 5325 is amended to read as follows:

''§ 5325. Contract requirements

''(a) COMPETITION.—Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary.

''(b) ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS.—

''(1) IN GENERAL.—A contract or requirement for program management, architectural engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which Federal assistance is provided under this chapter shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, or an equivalent qualifications-based requirement of a State. This subsection does not apply to the extent a State has adopted or adopts by law a formal procedure for procuring those services.

''(2) ADDITIONAL REQUIREMENTS.—When awarding a contract described in paragraph

(1), recipients of assistance under this chapter shall comply with the following requirements:

''(A) Any contract or subcontract awarded under this chapter shall be performed and audited in compliance with cost principles contained in part 31 of title 48, Code of Federal Regulations (commonly known as the Federal Acquisition Regulation).

''(B) A recipient of funds under a contract or subcontract awarded under this chapter shall accept indirect cost rates established in accordance with the Federal Acquisition Regulation for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

''(C) After a firm's indirect cost rates are accepted under subparagraph (B), the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment, and shall not be limited by administrative or de facto ceilings.

''(D) A recipient requesting or using the cost and rate data described in subparagraph (C) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided by the group of agencies sharing cost data under this subparagraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

''(c) EFFICIENT PROCUREMENT.—A recipient may award a procurement contract under this chapter to other than the lowest bidder if the award furthers an objective consistent with the purposes of this chapter, including improved long-term operating efficiency and lower long-term costs.

''(d) DESIGN-BUILD PROJECTS.—

''(1) DEFINED TERM.—As used in this subsection, the term 'design-build project'—

''(A) means a project under which a recipient enters into a contract with a seller, firm, or consortium of firms to design and build an operable segment of a public transportation system that meets specific performance criteria; and

''(B) may include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment.

''(2) FINANCIAL ASSISTANCE FOR CAPITAL COSTS.—Federal financial assistance under this chapter may be provided for the capital costs of a design-build project after the recipient complies with Government requirements.

''(e) ROLLING STOCK.—

''(1) ACQUISITION.—A recipient of financial assistance under this chapter may enter into a contract to expend that assistance to acquire rolling stock—

''(A) with a party selected through a competitive procurement process; or

''(B) based on—

''(i) initial capital costs; or

''(ii) performance, standardization, life cycle costs, and other factors.

''(2) MULTIYEAR CONTRACTS.—A recipient procuring rolling stock with Federal financial assistance under this chapter may make a multiyear contract, including options, to buy not more than 5 years of requirements for rolling stock and replacement parts. The Secretary shall allow a recipient to act on a cooperative basis to procure rolling stock under this paragraph and in accordance with other Federal procurement requirements.

''(f) EXAMINATION OF RECORDS.—Upon request, the Secretary and the Comptroller General, or any of their representatives, shall have access to and the right to examine and inspect all records, documents, and papers, including contracts, related to a project for which a grant is made under this chapter.

''(g) GRANT PROHIBITION.—A grant awarded under this chapter may not be used to support a procurement that uses an exclusionary or discriminatory specification.

''(h) BUS DEALER REQUIREMENTS.—No State law requiring buses to be purchased through in-State dealers shall apply to vehicles purchased with a grant under this chapter.

''(i) AWARDS TO RESPONSIBLE CONTRACTORS.—

''(1) IN GENERAL.—Federal financial assistance under this chapter may be provided for contracts only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement.

''(2) CRITERIA.—Before making an award to a contractor under paragraph (1), a recipient shall consider—

''(A) the integrity of the contractor;

''(B) the contractor's compliance with public policy;

''(C) the contractor's past performance, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(m)(4); and

''(D) the contractor's financial and technical resources.''.

(b) CONFORMING AMENDMENTS.—Chapter 53 is amended by striking section 5326.

SEC. 3025. PROJECT MANAGEMENT OVERSIGHT AND REVIEW.

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—Section 5327(a) is amended—

(1) in paragraph (11), by striking ''and'' at the end;

(2) in paragraph (12), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(13) safety and security management.''.

(b) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—Section 5327(c) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—The Secretary may not use more than 1 percent of amounts made available for a fiscal year to carry out any of sections 5307 through 5311, 5316, or 5317, or a project under the National Capital Transportation Act of 1969 (Public Law 91–143) to make a contract to oversee the construction of major projects under any of sections 5307 through 5311, 5316, or 5317 or under that Act.'';

(2) in paragraph (2)—

(A) by striking ''(2)'' and inserting the following:

''(2) OTHER ALLOWABLE USES.—''; and

(B) by inserting ''and security'' after ''safety''; and

(3) in paragraph (3), by striking ''(3) The Government shall'' and inserting the following:

''(3) FEDERAL SHARE.—Federal funds shall be used to''.

SEC. 3026. PROJECT REVIEW.

Section 5328 is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking ''(1) When the Secretary of Transportation allows a new fixed guideway project to advance into the alternatives analysis stage of project review, the Secretary shall cooperate with the applicant'' and inserting the following:

''(1) ALTERNATIVES ANALYSIS.—The Secretary shall cooperate with an applicant undertaking an alternatives analysis under subsections (e) and (f) of section 5309'';

(B) in paragraph (2)—

(i) by striking ''(2)'' and inserting the following:

''(2) ADVANCEMENT TO PRELIMINARY ENGINEERING STAGE.—''; and

(ii) by striking ''is consistent with'' and inserting ''meets the requirements of'';

(C) in paragraph (3)—

(i) by striking ''(3)'' and inserting the following:

''(3) RECORD OF DECISION.—'';

(ii) by striking ''of construction''; and

(iii) by adding before the period at the end the following: ''if the Secretary determines that the project meets the requirements of subsection (e) or (f) of section 5309''; and

(D) by striking paragraph (4); and

(2) by striking subsection (c).

SEC. 3027. INVESTIGATIONS OF SAFETY AND SECURITY RISK.

(a) IN GENERAL.—Section 5329 is amended to read as follows:

''§ 5329. Investigation of safety hazards and security risks

''(a) IN GENERAL.—The Secretary may conduct investigations into safety hazards and security risks associated with a condition in equipment, a facility, or an operation financed under this chapter to establish the nature and extent of the condition and how to eliminate, mitigate, or correct it.

''(b) SUBMISSION OF CORRECTIVE PLAN.—If the Secretary establishes that a safety hazard or security risk warrants further protective measures, the Secretary shall require the local governmental authority receiving amounts under this chapter to submit a plan for eliminating, mitigating, or correcting it.

''(c) WITHHOLDING OF FUNDS.—Financial assistance under this chapter, in an amount to be determined by the Secretary, may be withheld until a plan is approved and carried out.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5329 in the table of sections for chapter 53 is amended to read as follows:

''5329. Investigation of safety hazards and security risks.''.

SEC. 3028. STATE SAFETY OVERSIGHT.

(a) IN GENERAL.—Section 5330 is amended—

(1) by amending the heading to read as follows:

''§ 5330. Withholding amounts for noncompliance with State safety oversight requirements'';

(2) by amending subsection (a) to read as follows:

''(a) APPLICATION.—This section shall only apply to—

''(1) States that have rail fixed guideway public transportation systems that are not subject to regulation by the Federal Railroad Administration; and

''(2) States that are designing rail fixed guideway public transportation systems that will not be subjected to regulation by the Federal Railroad Administration.'';

(3) in subsection (d), by striking ''affected States'' and inserting the following: ''affected States—

''(1) shall ensure uniform safety standards and enforcement; or

''(2) may designate''; and

(4) in subsection (f), by striking ''Not later than December 18, 1992, the'' and inserting ''The''.

(b) CONFORMING AMENDMENT.—The item relating to section 5330 in the table of sections for chapter 53 is amended to read as follows:

''5330. Withholding amounts for noncompliance with State safety oversight requirements.''.

SEC. 3029. SENSITIVE SECURITY INFORMATION.

Section 40119(b) is amended—

(1) in paragraph (1)(C), by inserting '', transportation facilities or infrastructure, or transportation employees'' before the period at the end; and

(2) by adding at the end the following:

''(3) A State or local government may not enact, enforce, prescribe, issue, or continue in effect any law, regulation, standard, or order to the extent it is inconsistent with

this section or regulations prescribed under this section.''.

SEC. 3030. TERRORIST ATTACKS AND OTHER ACTS OF VIOLENCE AGAINST PUBLIC TRANSPORTATION SYSTEMS.

(a) IN GENERAL.—Section 1993 of title 18, United States Code, is amended—

(1) by striking ''mass'' each place it appears and inserting ''public'';

(2) in subsection (a)(5), by inserting ''controlling,'' after ''operating''; and

(3) in subsection (c)(5), by striking ''5302(a)(7) of title 49, United States Code,'' and inserting ''5302(a) of title 49,''.

(b) CONFORMING AMENDMENT.—The table of contents for chapter 97 of title 18, United States Code is amended by amending the item related to section 1993 to read as follows:

''1993. Terrorist attacks and other acts of violence against public transportation systems.''.

SEC. 3031. CONTROLLED SUBSTANCES AND ALCOHOL MISUSE TESTING.

Section 5331 is amended—

(1) in subsection (a)(3), by inserting before the period at the end the following: ''or sections 2303a, 7101(i), or 7302(e) of title 46. The Secretary may also decide that a form of public transportation is covered adequately, for employee alcohol and controlled substances testing purposes, under the alcohol and controlled substance statutes or regulations of an agency within the Department of Transportation or other Federal agency''; and

(2) in subsection (f), by striking paragraph (3).

SEC. 3032. EMPLOYEE PROTECTIVE ARRANGEMENTS.

Section 5333(b) is amended—

(1) in paragraph (3), by striking the period at the end and inserting '', if—

''(A) the protective period does not exceed 4 years; and

''(B) the separation allowance does not exceed 12 months.''; and

(2) by adding at the end the following:

''(4) An arrangement under this subsection shall not guarantee continuation of employment as a result of a change in private contractors through competitive bidding unless such continuation is otherwise required under subparagraph (A), (B), or (D) of paragraph (2).

''(5) Fair and equitable arrangements to protect the interests of employees utilized by the Secretary of Labor for assistance to purchase like-kind equipment or facilities, and amendments to existing assistance agreements, shall be certified without referral.''.

SEC. 3033. ADMINISTRATIVE PROCEDURES.

Section 5334 is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''5309–5311 of this title'' and all that follows and inserting ''5309 through 5311;'';

(B) in paragraph (9), by striking ''and'' at the end;

(C) in paragraph (10), by striking the period at the end and inserting ''; and''; and

(D) by inserting at the end the following:

''(11) issue regulations as necessary to carry out the purposes of this chapter.'';

(2) by redesignating subsections (b), (c), (d), (e), (f), (g), (h), (i), and (j) as subsections (c), (d), (e), (f), (g), (h), (i), (j), and (k), respectively;

(3) by adding after subsection (a) the following:

''(b) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—

''(1) IN GENERAL.—Except as directed by the President for purposes of national defense or in the event of a national or regional emergency, the Secretary may not regulate—

''(A) the operation, routes, or schedules of a public transportation system for which a grant is made under this chapter; or

''(B) the rates, fares, tolls, rentals, or other charges prescribed by any public or private transportation provider.

''(2) COMPLIANCE WITH AGREEMENT.—Nothing in this subsection shall prevent the Secretary from requiring a recipient of funds under this chapter to comply with the terms and conditions of its Federal assistance agreement.''; and

(4) in subsection (j)(1), as redesignated, by striking ''carry out section 5312(a) and (b)(1) of this title'' and inserting ''advise and assist the Secretary in carrying out section 5312(a)''.

SEC. 3034. REPORTS AND AUDITS.

Section 5335 is amended—

(1) by striking subsection (b); and

(2) in subsection (a)—

(A) in paragraph (1), by striking ''(1)''; and

(B) in paragraph (2), by striking ''(2) The Secretary may make a grant under section 5307 of this title'' and inserting the following:

''(b) REPORTING AND UNIFORM SYSTEMS.—The Secretary may award a grant under section 5307 or 5311''.

SEC. 3035. APPORTIONMENTS OF APPROPRIATIONS FOR FORMULA GRANTS.

Section 5336 is amended—

(1) by striking subsection (d);

(2) by striking subsection (h);

(3) by striking subsection (k);

(4) by redesignating subsections (a) through (c) as subsections (b) through (d), respectively;

(5) by adding before subsection (b), as redesignated, the following:

''(a) APPORTIONMENTS.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(vi) and (b)(2)(L) of section 5338—

''(1) there shall be apportioned, in fiscal year 2005 and each fiscal year thereafter, $35,000,000 to certain urbanized areas with populations of less than 200,000 in accordance with subsection (k); and

''(2) any amount not apportioned under paragraph (1) shall be apportioned to urbanized areas in accordance with subsections (b) through (d).'';

(6) in subsection (b), as redesignated—

(A) by striking ''Of the amount made available or appropriated under section 5338(a) of this title'' and inserting ''Of the amount apportioned under subsection (a)(3)''; and

(B) in paragraph (2), by striking ''subsections (b) and (c) of this section'' and inserting ''subsections (c) and (d)'';

(7) in subsection (c)(2), as redesignated, by striking ''subsection (a)(2) of this section'' and inserting ''subsection (b)(2)'';

(8) in subsection (d), as redesignated, by striking ''subsection (a)(2) of this section'' and inserting ''subsection (b)(2)'';

(9) in subsection (e)(1), by striking ''subsections (a) and (h)(2) of section 5338 of this title'' and inserting ''subsections (a) and (b) of section 5338'';

(10) in subsection (g), by striking ''subsection (a)(1) of this section'' each place it appears and inserting ''subsection (b)(1)''; and

(11) by adding at the end the following:

''(k) SMALL TRANSIT INTENSIVE CITIES FACTORS.—The amount apportioned under subsection (a)(1) shall be apportioned to urbanized areas as follows:

''(1) The Secretary shall calculate a factor equal to the sum of revenue vehicle hours operated within urbanized areas with a population of between 200,000 and 1,000,000 divided by the sum of the population of all such urbanized areas.

''(2) The Secretary shall designate as eligible for an apportionment under this subsection all urbanized areas with a population of under 200,000 for which the number of revenue vehicle hours operated within the urbanized area divided by the population of the urbanized area exceeds the factor calculated under paragraph (1).

''(3) For each urbanized area qualifying for an apportionment under paragraph (2), the Secretary shall calculate an amount equal to the product of the population of that urbanized area and the factor calculated under paragraph (1).

''(4) For each urbanized area qualifying for an apportionment under paragraph (2), the Secretary shall calculate an amount equal to the difference between the number of revenue vehicle hours within that urbanized area less the amount calculated in paragraph (3).

''(5) Each urbanized area qualifying for an apportionment under paragraph (2) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for that urbanized area under paragraph (4) divided by the sum of the amounts calculated under paragraph (4) for all urbanized areas qualifying for an apportionment under paragraph (2).

''(*l*) STUDY ON INCENTIVES IN FORMULA PROGRAMS.—

''(1) STUDY.—The Secretary shall conduct a study to assess the feasibility and appropriateness of developing and implementing an incentive funding system under sections 5307 and 5311 for operators of public transportation.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall submit a report on the results of the study conducted under paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall include—

''(i) an analysis of the availability of appropriate measures to be used as a basis for the distribution of incentive payments;

''(ii) the optimal number and size of any incentive programs;

''(iii) what types of systems should compete for various incentives;

''(iv) how incentives should be distributed; and

''(v) the likely effects of the incentive funding system.''.

SEC. 3036. APPORTIONMENTS FOR FIXED GUIDEWAY MODERNIZATION.

Section 5337 is amended—

(1) in subsection (a), by striking ''for each of fiscal years 1998 through 2003''; and

(2) by striking ''section 5336(b)(2)(A)'' each place it appears and inserting ''section 5336(c)(2)(A)''.

SEC. 3037. AUTHORIZATIONS.

Section 5338 is amended to read as follows:

''§ 5338. Authorizations

''(a) FISCAL YEAR 2004.—

''(1) FORMULA GRANTS.—

''(A) TRUST FUND.—For fiscal year 2004, $3,053,079,920 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5309, 5310, and 5311 of this chapter and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $763,269,980 for fiscal year 2004 to carry out sections 5307, 5309, 5310, and 5311 of this chapter and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) $4,821,335 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307;

''(ii) $6,908,995 shall be available to provide over-the-road bus accessibility grants under section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note);

''(iii) $90,117,950 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310;

''(iv) $239,188,058 shall be available to provide financial assistance for other than urbanized areas under section 5311;

''(v) $3,425,608,562 shall be available to provide financial assistance for urbanized areas under section 5307; and

''(vi) $49,705,000 shall be available to provide financial assistance for buses and bus facilities under section 5309..

''(2) JOB ACCESS AND REVERSE COMMUTE.—

''(A) TRUST FUND.—For fiscal year 2004, $99,410,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 3037 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5309 note).

''(B) GENERAL FUND.—In addition to the amounts made available under paragraph (A), there are authorized to be appropriated $24,852,500 for fiscal year 2004 to carry out section 3037 of the Transportation Equity Act of the 21st Century (49 U.S.C. 5309 note).

''(3) CAPITAL PROGRAM GRANTS.—

''(A) TRUST FUND.—For fiscal year 2004, $2,495,191,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $623,797,750 for fiscal year 2004 to carry out section 5309.

''(4) PLANNING.—

''(A) TRUST FUND.—For fiscal year 2004, $58,254,260 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5308.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $14,315,040 for fiscal year 2004 to carry out section 5308.

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) 82.72 percent shall be allocated for metropolitan planning under section 5308(c); and

''(ii) 17.28 percent shall be allocated for State planning under section 5308(d).

''(5) RESEARCH.—

''(A) TRUST FUND.—For fiscal year 2004, $41,951,020 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5311(b), 5312, 5313, 5314, 5315, and 5322.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $10,736,280 for fiscal year 2004 to carry out sections 5311(b), 5312, 5313, 5314, 5315, and 5322.

''(C) ALLOCATION OF FUNDS.—Of the funds made available or appropriated under this paragraph—

''(i) not less than $3,976,400 shall be available to carry out programs of the National Transit Institute under section 5315;

''(ii) not less than $5,219,025 shall be available to carry out section 5311(b)(2);

''(iii) not less than $8,201,325 shall be available to carry out section 5313; and

''(iv) the remainder shall be available to carry out national research and technology programs under sections 5312, 5314, and 5322.

''(6) UNIVERSITY TRANSPORTATION RESEARCH.—

''(A) TRUST FUND.—For fiscal year 2004, $4,771,680 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5505 and 5506.

''(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated $1,192,920 for fiscal year 2004 to carry out sections 5505 and 5506.

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) $1,988,200 shall be available for grants under 5506(f)(5) to the institution identified in section 5505(j)(3)(E), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2004;

''(ii) $1,988,200 shall be available for grants under section 5505(d) to the institution identified in section 5505(j)(4)(A), as in effect on the date specified in clause (i); and

''(iii) $1,988,200 shall be available for grants under section 5505(d) to the institution identified in section 5505(j)(4)(F), as in effect on the date specified in subclause (I).

''(C) SPECIAL RULE.—Nothing in this paragraph shall be construed to limit the transportation research conducted by the centers receiving financial assistance under this section.

''(7) ADMINISTRATION.—

''(A) TRUST FUND.—For fiscal year 2004, $60,043,640 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334.

''(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated $15,010,910 for fiscal year 2004 to carry out section 5334.

''(8) GRANTS AS CONTRACTUAL OBLIGATIONS.—

''(A) GRANTS FINANCED FROM HIGHWAY TRUST FUND.—A grant or contract that is approved by the Secretary and financed with amounts made available under paragraph (1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), or (7)(A) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project.

''(B) GRANTS FINANCED FROM GENERAL FUND.—A grant or contract that is approved by the Secretary and financed with amounts appropriated in advance under paragraph (1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), or (7)(B) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project only to the extent that amounts are appropriated for such purpose by an Act of Congress.

''(9) AVAILABILITY OF AMOUNTS.—Amounts made available or appropriated under paragraphs (1) through (6) shall remain available until expended.''.

''(b) FORMULA GRANTS AND RESEARCH.—

''(1) IN GENERAL.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5308, 5309, 5310 through 5316, 5322, 5335, 5340, and 5505 of this title, and sections 3037 and 3038 of the Federal Transit Act of 1998 (112 Stat. 387 et seq.)—

''(A) $6,262,600,000 for fiscal year 2005;

''(B) $6,577,629,000 for fiscal year 2006;

''(C) $6,950,400,000 for fiscal year 2007;

''(D) $7,594,760,000 for fiscal year 2008; and

''(E) $8,275,320,000 for fiscal year 2009.

''(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1) for each fiscal year—

''(A) 0.092 percent shall be available for grants to the Alaska Railroad under section 5307 for improvements to its passenger operations;

''(B) 1.75 percent shall be available to carry out section 5308;

''(C) 2.05 percent shall be available to provide financial assistance for job access and reverse commute projects under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note);

''(D) 3.00 percent shall be available to provide financial assistance for services for elderly persons and persons with disabilities under section 5310;

''(E) 0.125 percent shall be available to carry out section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note);

''(F) 6.25 percent shall be available to provide financial assistance for other than urbanized areas under section 5311;

''(G) 0.89 percent shall be available to carry out transit cooperative research programs under section 5313, the National Transit Institute under section 5315, university research centers under section 5505, and national research programs under sections 5312, 5313, 5314, and 5322, of which—

''(i) 17.0 percent shall be allocated to carry out transit cooperative research programs under section 5313;

''(ii) 7.5 percent shall be allocated to carry out programs under the National Transit Institute under section 5315, including not more than $1,000,000 to carry out section 5315(a)(16);

''(iii) 11.0 percent shall be allocated to carry out the university centers program under section 5505; and

''(iv) any funds made available under this subparagraph that are not allocated under clauses (i) through (iii) shall be allocated to carry out national research programs under sections 5312, 5313, 5314, and 5322;

''(H) $25,000,000 shall be available for each of the fiscal years 2005 through 2009 to carry out section 5316;

''(I) there shall be available to carry out section 5335—

''(i) $3,700,000 in fiscal year 2005;

''(iii) $3,900,000 in fiscal year 2006;

''(iv) $4,200,000 in fiscal year 2007;

''(v) $4,600,000 in fiscal year 2008; and

''(vi) $5,000,000 in fiscal year 2009;

''(J) 6.25 percent shall be allocated in accordance with section 5340 to provide financial assistance for urbanized areas under section 5307 and other than urbanized areas under section 5311; and

''(K) 22.0 percent shall be allocated in accordance with section 5337 to provide financial assistance under section 5309(i)(3); and

''(L) any amounts not made available under subparagraphs (A) through (K) shall be allocated in accordance with section 5336 to provide financial assistance for urbanized areas under section 5307.

''(3) UNIVERSITY CENTERS PROGRAM.—

''(A) ALLOCATION.—Of the amounts allocated under paragraph (2)(G)(iii), $1,000,000 shall be available in each of the fiscal years 2005 through 2009 for Morgan State University to provide transportation research, training, and curriculum development.

''(B) REQUIREMENTS.—The university specified under subparagraph (A) shall be considered a University Transportation Center under section 510 of title 23, and shall be subject to the requirements under subsections (c), (d), (e), and (f) of such section.

''(C) REPORT.—In addition to the report required under section 510(e)(3) of title 23, the university specified under subparagraph (A) shall annually submit a report to the Secretary that describes the university's contribution to public transportation.

''(4) BUS GRANTS.—In addition to the amounts made available under paragraph (1), there shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309(i)(2)(B)—

''(A) $839,829,000 for fiscal year 2005;

''(B) $882,075,000 for fiscal year 2006;

''(C) $932,064,000 for fiscal year 2007;

''(D) $1,018,474,000 for fiscal year 2008; and

''(E) $1,109,739,000 for fiscal year 2009.

''(c) MAJOR CAPITAL INVESTMENT GRANTS.—There are authorized to be appropriated to carry out section 5309(i)(2)(A)—

''(1) $1,461,072,000 for fiscal year 2005;

''(2) $1,534,568,000 for fiscal year 2006;

''(3) $1,621,536,000 for fiscal year 2007;

''(4) $1,771,866,000 for fiscal year 2008; and

''(5) $1,930,641,000 for fiscal year 2009.

''(d) ADMINISTRATION.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334—

''(1) $86,500,000 for fiscal year 2005;

''(2) $90,851,000 for fiscal year 2006;

''(3) $96,000,000 for fiscal year 2007;

''(4) $104,900,000 for fiscal year 2008; and

''(5) $114,300,000 for fiscal year 2009.

''(e) GRANTS AS CONTRACTUAL OBLIGATIONS.—

''(1) MASS TRANSIT ACCOUNT FUNDS.—A grant or contract approved by the Secretary that is financed with amounts made available under subsection (b)(1) or (d) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project.

''(2) APPROPRIATED FUNDS.—A grant or contract approved by the Secretary that is financed with amounts made available under subsection (b)(2) or (c) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project only to the extent that amounts are appropriated in advance for such purpose by an Act of Congress.

''(f) AVAILABILITY OF AMOUNTS.—Amounts made available by or appropriated under subsections (b) and (c) shall remain available until expended.''.

SEC. 3038. APPORTIONMENTS BASED ON GROWING STATES FORMULA FACTORS.

(a) IN GENERAL.—Chapter 53 is amended by adding at the end the following:

''§ 5340. Apportionments based on growing States and high density State formula factors

''(a) ALLOCATION.—Of the amounts made available for each fiscal year under section 5338(b)(2)(J), the Secretary shall apportion—

''(1) 50 percent to States and urbanized areas in accordance with subsection (b); and

''(2) 50 percent to States and urbanized areas in accordance with subsection (c).

''(b) GROWING STATE APPORTIONMENTS.—

''(1) APPORTIONMENT AMONG STATES.—The amounts apportioned under paragraph (a)(1) shall provide each State with an amount equal to the total amount apportioned multiplied by a ratio equal to the population of that State forecast for the year that is 15 years after the most recent decennial census, divided by the total population of all States forecast for the year that is 15 years after the most recent decennial census.

''(2) APPORTIONMENTS BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.—

''(A) IN GENERAL.—The Secretary shall apportion amounts to each State under paragraph (1) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the forecast population of all urbanized areas in that State divided by the total forecast population of that State. In making the apportionment under this subparagraph, the Secretary shall utilize any available forecasts made by the State. If no forecasts are available, the Secretary shall utilize data on urbanized areas and total population from the most recent decennial census.

''(B) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under subparagraph (A) shall be apportioned to that State and added to the amount made available for grants under section 5311.

''(3) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to urbanized areas in each State under subsection (b)(2)(A) so that each urbanized area receives an amount equal to the amount apportioned under subsection (b)(2)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307.

''(c) HIGH DENSITY STATE APPORTIONMENTS.—Amounts to be apportioned under subsection (a)(2) shall be apportioned as follows:

''(1) ELIGIBLE STATES.—The Secretary shall designate as eligible for an apportionment under this subsection all States with a population density in excess of 370 persons per square mile.

''(2) STATE URBANIZED LAND FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the product of the urban land area of urbanized areas in the State times 370 persons per square mile.

''(3) STATE APPORTIONMENT FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the difference between the total population of the State less the amount calculated in paragraph (2).

''(4) STATE APPORTIONMENT.—Each State qualifying for an apportionment under paragraph (1) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for the State under paragraph (3) divided by the sum of the amounts calculated under paragraph (3) for all States qualifying for an apportionment under paragraph (1).

''(5) APPORTIONMENTS BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.—

''(A) IN GENERAL.—The Secretary shall apportion amounts apportioned to each State under paragraph (4) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the population of all urbanized areas in that State divided by the total population of that State.

''(B) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under subparagraph (a) shall be apportioned to that State and added to the amount made available for grants under section 5311.

''(6) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to urbanized areas in each State under subsection (c)(5)(A) so that each urbanized area receives an amount equal to the amount apportioned under subsection (c)(5)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 53 is amended by adding at the end the following:

''5340. Apportionments based on growing States and high density States formula factors.''.

SEC. 3039. JOB ACCESS AND REVERSE COMMUTE GRANTS.

Section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by striking ''means an individual'' and inserting the following: ''means—

''(A) an individual''; and

(ii) by striking the period at the end and inserting ''; or

''(B) an individual who is eligible for assistance under the State program of Temporary Assistance to Needy Families funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et. seq.) in the State in which the recipient of a grant under this section is located.''; and

(B) in paragraph (2), by striking ''development of'' each place it appears and inserting ''development and provision of'';

(2) in subsection (i), by amending paragraph (2) to read as follows:

''(2) COORDINATION.—

''(A) IN GENERAL.—The Secretary shall coordinate activities under this section with related activities under programs of other Federal departments and agencies.

''(B) CERTIFICATION.—A recipient of funds under this section shall certify that—

''(i) the project has been derived from a locally developed, coordinated public transit human services transportation plan; and

''(ii) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.'';

(3) by amending subsection (j) to read as follows:

''(j) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—

''(A) URBANIZED AREAS.—A grant awarded under this section to a public agency or private company engaged in public transportation in an urbanized area shall be subject to the all of the terms and conditions to which a grant awarded under section 5307 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

''(B) OTHER THAN URBANIZED AREAS.—A grant awarded under this section to a public agency or a private company engaged in public transportation in an area other than urbanized areas shall be subject to all of the terms and conditions to which a grant awarded under section 5311 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

''(C) NONPROFIT ORGANIZATIONS.—A grant awarded under this section to a private nonprofit organization shall be subject to all of the terms and conditions to which a grant made under section 5310 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

''(2) SPECIAL WARRANTY.—

''(A) IN GENERAL.—Section 5333(b) of title 49, United States Code, shall apply to grants under this section if the Secretary of Labor utilizes a Special Warranty that provides a fair and equitable arrangement to protect the interests of employees.

''(B) WAIVER.—The Secretary may waive the applicability of the Special Warranty under subparagraph (A) for private non-profit recipients on a case-by-case basis as the Secretary considers appropriate.''; and

(4) by striking subsections (k) and (*l*).

SEC. 3040. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.

(a) SECTION HEADING.—The section heading for section 3038 of the Federal Transit Act of 1998 (49 U.S.C. 5310 note), is amended to read as follows:

''SEC. 3038. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.''.

(b) FUNDING.—Section 3038(g) of the Federal Transit Act of 1998 (49 U.S.C. 5310 note) is amended to read as follows:

''(g) FUNDING.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(iii) and (b)(2)(E) of section 5338 of title 49, United States Code—

''(1) 75 percent shall be available, and shall remain available until expended, for operators of over-the-road buses, used substantially or exclusively in intercity, fixed-route over-the-road bus service, to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses; and

''(2) 25 percent shall be available, and shall remain available until expended, for operators of over-the-road bus service not described in paragraph (1), to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses.''.

(b) CONFORMING AMENDMENT.—The item relating to section 3038 in the table of contents for the Transportation Equity Act for the 21st Century (Public Law 105–178) is amended to read as follows:

''Sec. 3038. Over-the-road bus accessibility program.''.

SEC. 3041. ALTERNATIVE TRANSPORTATION IN PARKS AND PUBLIC LANDS.

(a) IN GENERAL.—Chapter 53 is amended by inserting after section 5315 the following:

''§ 5316. Alternative transportation in parks and public lands

''(a) IN GENERAL.—

''(1) AUTHORIZATION.—

''(A) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, may award a grant or enter into a contract, cooperative agreement, interagency agreement, intraagency agreement, or other transaction to carry out a qualified project under this section to enhance the protection of America's National Parks and public lands and increase the enjoyment of those visiting the parks and public lands by ensuring access to all, including persons with disabilities, improving conservation and park and public land opportunities in urban areas through partnering with state and local governments, and improving park and public land transportation infrastructure.

''(B) CONSULTATION WITH OTHER AGENCIES.—To the extent that projects are proposed or funded in eligible areas that are not within the jurisdiction of the Department of the Interior, the Secretary of the Interior shall consult with the heads of the relevant Federal land management agencies in carrying out the responsibilities under this section.

''(2) USE OF FUNDS.—A grant, cooperative agreement, interagency agreement, intraagency agreement, or other transaction for a qualified project under this section shall be available to finance the leasing of equipment and facilities for use in public transportation, subject to any regulation that the Secretary may prescribe limiting the grant or agreement to leasing arrangements that are more cost-effective than purchase or construction.

''(b) DEFINITIONS.—As used in this section, the following definitions shall apply:

''(1) ELIGIBLE AREA.—The term 'eligible area' means any federally owned or managed park, refuge, or recreational area that is open to the general public, including—

''(A) a unit of the National Park System;

''(B) a unit of the National Wildlife Refuge System;

''(C) a recreational area managed by the Bureau of Land Management; and

''(D) a recreation area managed by the Bureau of Reclamation.

''(2) FEDERAL LAND MANAGEMENT AGENCY.—The term 'Federal land management agency' means a Federal agency that manages an eligible area.

''(3) ALTERNATIVE TRANSPORTATION.—The term 'alternative transportation' means transportation by bus, rail, or any other publicly or privately owned conveyance that provides to the public general or special service on a regular basis, including sightseeing service.

''(4) QUALIFIED PARTICIPANT.—The term 'qualified participant' means—

''(A) a Federal land management agency; or

''(B) a State, tribal, or local governmental authority with jurisdiction over land in the vicinity of an eligible area acting with the consent of the Federal land management agency, alone or in partnership with a Federal land management agency or other Governmental or nongovernmental participant.

''(5) QUALIFIED PROJECT.—The term 'qualified project' means a planning or capital project in or in the vicinity of an eligible area that—

''(A) is an activity described in section 5302, 5303, 5304, 5308, or 5309(a)(1)(A);

''(B) involves—

''(i) the purchase of rolling stock that incorporates clean fuel technology or the replacement of buses of a type in use on the date of enactment of this section with clean fuel vehicles; or

''(ii) the deployment of alternative transportation vehicles that introduce innovative technologies or methods;

''(C) relates to the capital costs of coordinating the Federal land management agency public transportation systems with other public transportation systems;

''(D) provides a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and nonmotorized watercraft);

''(E) provides waterborne access within or in the vicinity of an eligible area, as appropriate to and consistent with this section; or

''(F) is any other alternative transportation project that—

''(i) enhances the environment;

''(ii) prevents or mitigates an adverse impact on a natural resource;

''(iii) improves Federal land management agency resource management;

''(iv) improves visitor mobility and accessibility and the visitor experience;

''(v) reduces congestion and pollution (including noise pollution and visual pollution); or

''(vi) conserves a natural, historical, or cultural resource (excluding rehabilitation or restoration of a non-transportation facility).

''(c) FEDERAL AGENCY COOPERATIVE ARRANGEMENTS.—The Secretary shall develop cooperative arrangements with the Secretary of the Interior that provide for—

''(1) technical assistance in alternative transportation;

''(2) interagency and multidisciplinary teams to develop Federal land management agency alternative transportation policy, procedures, and coordination; and

''(3) the development of procedures and criteria relating to the planning, selection, and funding of qualified projects and the implementation and oversight of the program of projects in accordance with this section.

''(d) LIMITATION ON USE OF AVAILABLE AMOUNTS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, may use not more than 10 percent of the amount made available for a fiscal year under section 5338(a)(2)(I) to carry out planning, research, and technical assistance under this section, including the development of technology appropriate for use in a qualified project.

''(2) ADDITIONAL AMOUNTS.—Amounts made available under this subsection are in addition to amounts otherwise available to the Secretary to carry out planning, research, and technical assistance under this title or any other provision of law.

''(3) MAXIMUM AMOUNT.—No qualified project shall receive more than 12 percent of the total amount made available to carry out this section under section 5338(a)(2)(I) for any fiscal year.

''(e) PLANNING PROCESS.—In undertaking a qualified project under this section,

''(1) if the qualified participant is a Federal land management agency—

''(A) the Secretary, in cooperation with the Secretary of the Interior, shall develop transportation planning procedures that are consistent with—

''(i) the metropolitan planning provisions under section 5303 of this title;

''(ii) the statewide planning provisions under section 5304 of this title; and

''(iii) the public participation requirements under section 5307(e); and

''(B) in the case of a qualified project that is at a unit of the National Park system, the planning process shall be consistent with the general management plans of the unit of the National Park system; and

''(2) if the qualified participant is a State or local governmental authority, or more than one State or local governmental authority in more than one State, the qualified participant shall—

''(A) comply with the metropolitan planning provisions under section 5303 of this title;

''(B) comply with the statewide planning provisions under section 5304 of this title;

''(C) comply with the public participation requirements under section 5307(e) of this title; and

''(D) consult with the appropriate Federal land management agency during the planning process.

''(f) COST SHARING.—

''(1) The Secretary, in cooperation with the Secretary of the Interior, shall establish the agency share of net project cost to be provided under this section to a qualified participant.

''(2) In establishing the agency share of net project cost to be provided under this section, the Secretary shall consider—

''(A) visitation levels and the revenue derived from user fees in the eligible area in which the qualified project is carried out;

''(B) the extent to which the qualified participant coordinates with a public transportation authority or private entity engaged in public transportation;

''(C) private investment in the qualified project, including the provision of contract services, joint development activities, and the use of innovative financing mechanisms;

''(D) the clear and direct benefit to the qualified participant; and

''(E) any other matters that the Secretary considers appropriate to carry out this section.

''(3) Notwithstanding any other provision of law, Federal funds appropriated to any Federal land management agency may be counted toward the non-agency share of the net project cost of a qualified project.

''(g) SELECTION OF QUALIFIED PROJECTS.—

''(1) The Secretary of the Interior, after consultation with and in cooperation with the Secretary, shall determine the final selection and funding of an annual program of qualified projects in accordance with this section.

''(2) In determining whether to include a project in the annual program of qualified projects, the Secretary of the Interior shall consider—

''(A) the justification for the qualified project, including the extent to which the qualified project would conserve resources,

prevent or mitigate adverse impact, and enhance the environment;

''(B) the location of the qualified project, to ensure that the selected qualified projects—

''(i) are geographically diverse nationwide; and

''(ii) include qualified projects in eligible areas located in both urban areas and rural areas;

''(C) the size of the qualified project, to ensure that there is a balanced distribution;

''(D) the historical and cultural significance of a qualified project;

''(E) safety;

''(F) the extent to which the qualified project would-

''(i) enhance livable communities;

''(ii) reduce pollution (including noise pollution, air pollution, and visual pollution);

''(iii) reduce congestion; and

''(iv) improve the mobility of people in the most efficient manner; and

''(G) any other matters that the Secretary considers appropriate to carry out this section, including-

''(i) visitation levels;

''(ii) the use of innovative financing or joint development strategies; and

''(iii) coordination with gateway communities.

''(h) QUALIFIED PROJECTS CARRIED OUT IN ADVANCE.—

''(1) When a qualified participant carries out any part of a qualified project without assistance under this section in accordance with all applicable procedures and requirements, the Secretary, in consultation with the Secretary of the Interior, may pay the share of the net capital project cost of a qualified project if—

''(A) the qualified participant applies for the payment;

''(B) the Secretary approves the payment; and

''(C) before carrying out that part of the qualified project, the Secretary approves the plans and specifications in the same manner as plans and specifications are approved for other projects assisted under this section.

''(2)(A) The cost of carrying out part of a qualified project under paragraph (1) includes the amount of interest earned and payable on bonds issued by a State or local governmental authority, to the extent that proceeds of the bond are expended in carrying out that part.

''(B) The rate of interest under this paragraph may not exceed the most favorable rate reasonably available for the qualified project at the time of borrowing.

''(C) The qualified participant shall certify, in a manner satisfactory to the Secretary, that the qualified participant has exercised reasonable diligence in seeking the most favorable interest rate.

''(i) RELATIONSHIP TO OTHER LAWS.—

''(1) SECTION 5307.—A qualified participant under this section shall be subject to the requirements of sections 5307 and 5333(a) to the extent the Secretary determines to be appropriate.

''(2) OTHER REQUIREMENTS.—A qualified participant under this section is subject to any other terms, conditions, requirements, and provisions that the Secretary determines to be appropriate to carry out this section, including requirements for the distribution of proceeds on disposition of real property and equipment resulting from a qualified project assisted under this section.

''(3) PROJECT MANAGEMENT PLAN.—If the amount of assistance anticipated to be required for a qualified project under this section is not less than $25,000,000—

''(A) the qualified project shall, to the extent the Secretary considers appropriate, be carried out through a full funding grant agreement, in accordance with section 5309(g); and

''(B) the qualified participant shall prepare a project management plan in accordance with section 5327(a).

''(i) ASSET MANAGEMENT.—The Secretary, in consultation with the Secretary of the Interior, may transfer the interest of the Department of Transportation in, and control over, all facilities and equipment acquired under this section to a qualified participant for use and disposition in accordance with any property management regulations that the Secretary determines to be appropriate.

''(j) COORDINATION OF RESEARCH AND DEPLOYMENT OF NEW TECHNOLOGIES.—

''(1) The Secretary, in cooperation with the Secretary of the Interior, may undertake, or make grants, cooperative agreements, contracts (including agreements with departments, agencies, and instrumentalities of the Federal Government) or other transactions for research, development, and deployment of new technologies in eligible areas that will—

''(A) conserve resources;

''(B) prevent or mitigate adverse environmental impact;

''(C) improve visitor mobility, accessibility, and enjoyment; and

''(D) reduce pollution (including noise pollution and visual pollution).

''(2) The Secretary may request and receive appropriate information from any source.

''(3) Grants, cooperative agreements, contracts or other transactions under paragraph (1) shall be awarded from amounts allocated under subsection (c)(1).

''(k) INNOVATIVE FINANCING.—A qualified project receiving financial assistance under this section shall be eligible for funding through a state infrastructure bank or other innovative financing mechanism available to finance an eligible project under this chapter.

''(*l*) REPORTS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, shall annually submit a report on the allocation of amounts made available to assist qualified projects under this section to—

''(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(B) the Committee on Transportation and Infrastructure of the House of Representatives.

''(2) ANNUAL AND SUPPLEMENTAL REPORTS.—The report required under paragraph (1) shall be included in the report submitted under section 5309(m).''.

(b) CONFORMING AMENDMENTS.—The table of sections for chapter 53 is amended by inserting after the item relating to section 5315 the following:

''5316. Alternative transportation in parks and public lands.''.

SEC. 3042. OBLIGATION CEILING.

Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Mass Transit Account of the Highway Trust Fund by, and amounts appropriated under, subsections (a) through (c) of section 5338 of title 49, United States Code, shall not exceed—

(1) $7,265,876,900 for fiscal year 2004;

(2) $8,650,000,000 for fiscal year 2005;

(3) $9,085,123,000 for fiscal year 2006;

(4) $9,600,000,000 for fiscal year 2007;

(5) $10,490,000,000 for fiscal year 2008; and

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

SEC. 3043. ADJUSTMENTS FOR THE SURFACE TRANSPORTATION EXTENSION ACT OF 2003.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall reduce the total apportionments and allocations made for fiscal year 2004 to each grant recipient under section 5338 of title 49, United States Code, by the amount apportioned to that recipient pursuant to section 8 of the Surface Transportation Extension Act of 2003 (117 Stat. 1121).

(b) FIXED GUIDEWAY MODERNIZATION ADJUSTMENT.—In making the apportionments described in subsection (a), the Secretary shall adjust the amount apportioned for fiscal year 2004 to each urbanized area for fixed guideway modernization to reflect the apportionment method set forth in 5337(a) of title 49, United States Code.

SEC. 3044. INTERMODAL PASSENGER FACILITIES.

(a) IN GENERAL.—Chapter 55 of title 49, United States Code, is amended by adding at the end the following:

''SUBCHAPTER III—INTERMODAL PASSENGER FACILITIES

§ 5571. Policy and purposes

''(a) DEVELOPMENT AND ENHANCEMENT OF INTERMODAL PASSENGER FACILITIES.—It is in the economic interest of the United States to improve the efficiency of public surface transportation modes by ensuring their connection with and access to intermodal passenger terminals, thereby streamlining the transfer of passengers among modes, enhancing travel options, and increasing passenger transportation operating efficiencies.

''(b) GENERAL PURPOSES.—The purposes of this subchapter are to accelerate intermodal integration among North America's passenger transportation modes through—

''(1) ensuring intercity public transportation access to intermodal passenger facilities;

''(2) encouraging the development of an integrated system of public transportation information; and

''(3) providing intercity bus intermodal passenger facility grants.

§ 5572. Definitions

''In this subchapter—

''(1) 'capital project' means a project for—

''(A) acquiring, constructing, improving, or renovating an intermodal facility that is related physically and functionally to intercity bus service and establishes or enhances coordination between intercity bus service and transportation, including aviation, commuter rail, intercity rail, public transportation, seaports, and the National Highway System, such as physical infrastructure associated with private bus operations at existing and new intermodal facilities, including special lanes, curb cuts, ticket kiosks and counters, baggage and package express storage, employee parking, office space, security, and signage; and

''(B) establishing or enhancing coordination between intercity bus service and transportation, including aviation, commuter rail, intercity rail, public transportation, and the National Highway System through an integrated system of public transportation information.

''(2) 'commuter service' means service designed primarily to provide daily work trips within the local commuting area.

''(3) 'intercity bus service' means regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity, which has the capacity for transporting baggage carried by passengers, and which makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available and may include package express service, if incidental to passenger transportation, but does not include air, commuter, water or rail service.

''(4) 'intermodal passenger facility' means passenger terminal that does, or can be modified to, accommodate several modes of

transportation and related facilities, including some or all of the following: intercity rail, intercity bus, commuter rail, intracity rail transit and bus transportation, airport limousine service and airline ticket offices, rent-a-car facilities, taxis, private parking, and other transportation services.

''(5) 'local governmental authority' includes—

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

''(B) an authority of at least one State or political subdivision of a State;

''(C) an Indian tribe; and

''(D) a public corporation, board, or commission established under the laws of the State.

''(6) 'owner or operator of a public transportation facility' means an owner or operator of intercity-rail, intercity-bus, commuter-rail, commuter-bus, rail-transit, bus-transit, or ferry services.

''(7) 'recipient' means a State or local governmental authority or a nonprofit organization that receives a grant to carry out this section directly from the Federal government.

''(8) 'Secretary' means the Secretary of Transportation.

''(9) 'State' means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

''(10) '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 public transportation system to serve individuals in the locality.

''§ 5573. Assurance of access to intermodal passenger facilities

''Intercity buses and other modes of transportation shall, to the maximum extent practicable, have access to publicly funded intermodal passenger facilities, including those passenger facilities seeking funding under section 5574.

''§ 5574. Intercity bus intermodal passenger facility grants

''(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants under this section to recipients in financing a capital project only if the Secretary finds that the proposed project is justified and has adequate financial commitment.

''(b) 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.

''(c) SHARE OF NET PROJECT COSTS.—A grant shall not exceed 50 percent of the net project cost, as determined by the Secretary.

''(d) REGULATIONS.—The Secretary may promulgate such regulations as are necessary to carry out this section.

''§ 5575. Funding

''(a) HIGHWAY ACCOUNT.—

''(1) There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subchapter $10,000,000 for each of fiscal years 2005 through 2009.

''(2) The funding made available under paragraph (1) 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 obligation limitation imposed on funds for Federal-aid highways and highway safety construction programs.

''(b) PERIOD OF AVAILABILITY.—Amounts made available under subsection (a) shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 55 of title 49, United States Code, is amended by adding at the end the following:

''SUBCHAPTER III—INTERMODAL PASSENGER FACILITIES

Sec.
''5571. Policy and Purposes.
''5572. Definitions.
''5573. Assurance of access to intermodal facilities.
''5574. Intercity bus intermodal facility grants.
''5575. Funding.''.

TITLE IV—SURFACE TRANSPORTATION SAFETY

SEC. 4001. SHORT TITLE.

This title may be cited as the ''Surface Transportation Safety Reauthorization Act of 2004''.

Subtitle A—Highway Safety

PART 1—HIGHWAY SAFETY GRANT PROGRAM

SEC. 4101. SHORT TITLE; AMENDMENT OF TITLE 23, UNITED STATES CODE.

(a) SHORT TITLE.—This subtitle may be cited as the ''Highway Safety Grant Program Reauthorization Act of 2004''.

(b) AMENDMENT OF TITLE 23, UNITED STATES CODE.—Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 23, United States Code.

SEC. 4102. AUTHORIZATION OF APPROPRIATIONS.

(a) AMOUNTS FOR FISCAL YEARS 2004 THROUGH 2009.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to the Secretary of Transportation for the National Highway Traffic Safety Administration the following:

(1) To carry out the Highway Safety Programs under section 402 of title 23, United States Code, $170,000,000 in fiscal year 2004, $174,000,000 in fiscal year 2005, $179,000,000 in fiscal year 2006, $185,000,000 in fiscal year 2007, $204,000,000 in fiscal year 2008, and $207,000,000 in fiscal year 2009.

(2) To carry out the Highway Safety Research and Outreach Programs under section 403 of title 23, United States Code, $110,000,000 in fiscal year 2004, $112,000,000 in fiscal year 2005, $114,000,000 in fiscal year 2006, $116,000,000 in fiscal year 2007, $118,000,000 in fiscal year 2008, and $120,000,000 in fiscal year 2009.

(3) To carry out the Occupant Protection Programs under section 405 of title 23, United States Code, $120,000,000 in fiscal year 2004, $122,000,000 in fiscal year 2005, $124,000,000 in fiscal year 2006, $126,000,000 in fiscal year 2007, $128,000,000 in fiscal year 2008, and $130,000,000 in fiscal year 2009.

(4) To carry out the Emergency Medical Services Program under section 407A of title 23, United States Code, $5,000,000 in each of fiscal years 2004 through 2009.

(5) To carry out the Impaired Driving Program under section 410 of title 23, United States Code, $85,000,000 in fiscal year 2004, $89,000,000 in fiscal year 2005, $93,000,000 in fiscal year 2006, $110,000,000 in fiscal year 2007, $126,000,000 in fiscal year 2008, and $130,000,000 in fiscal year 2009.

(6) To carry out the State Traffic Safety Information System Improvements under section 412 of title 23, United States Code, $45,000,000 in each of fiscal years 2004 through 2009.

(7) To carry out chapter 303 of title 49, United States Code, $4,000,000 for each of fiscal years 2004 through 2009.

(b) PROHIBITION ON OTHER USES.—Except as otherwise provided in this title, the amounts allocated from the Highway Trust Fund for programs provided for in chapter 4 of title 23, United States Code, shall only be used for such programs and may not be used by States or local governments for construction purposes.

(c) EFFECT OF REVENUE DEFICIENCY.—If revenue to the Highway Trust Fund for a given fiscal year is lower than the amounts authorized by this subtitle, any subsequent reductions in the overall funding for highway and transit programs shall not affect the highway safety programs provided for in chapter 4 of title 23, United States Code.

(d) PROPORTIONAL INCREASES.—For each fiscal year from 2004 through 2009, if revenue to the Highway Trust Fund increases above the amounts for each such fiscal year set forth in the fiscal year 2004 joint budget resolution, then the amounts made available in such year for the programs in sections 402, 405, and 410 shall increase by the same percentage.

SEC. 4103. HIGHWAY SAFETY PROGRAMS.

(a) PROGRAMS TO BE INCLUDED.—

(1) MOTOR VEHICLE AIRBAGS PUBLIC AWARENESS.—Section 402(a)(2) is amended by striking ''vehicles and to increase public awareness of the benefit of motor vehicles equipped with airbags'' and inserting ''vehicles,''.

(2) AGGRESSIVE DRIVING.—Section 402(a) is further amended—

(A) by redesignating clause (6) as clause (7);

(B) by inserting after ''involving school buses,'' at the end of clause (5) ''(6) to reduce aggressive driving and to educate drivers about defensive driving,''; and

(C) by inserting ''aggressive driving,'' after ''school bus accidents,''.

(b) APPORTIONMENT.—

(1) TRIBAL GOVERNMENT PROGRAMS.—Section 402(c) is amended by striking ''three-fourths of 1 percent'' and inserting ''2 percent''.

(c) EXTRA FUNDING FOR OCCUPANT PROTECTION AND IMPAIRED DRIVING PROGRAMS.—Section 402 is amended by inserting after subsection (g) the following:

''(h) GRANTS.—Funds available to States under this section may be used for making grants of financial assistance for programs and initiatives authorized by sections 405 and 410 of this title.''.

(d) LAW ENFORCEMENT CHASE TRAINING.—Section 402 is amended by adding at the end the following:

''(l) LIMITATION RELATING TO LAW ENFORCEMENT VEHICULAR PURSUIT TRAINING.—No State may receive any funds available for fiscal years after fiscal year 2004 for programs under this chapter until the State submits to the Secretary a written statement that the State actively encourages all relevant law enforcement agencies in that State to follow the guidelines established for police chases issued by the International Association of Chiefs of Police that are in effect on the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2004, or as revised and in effect after that date as determined by the Secretary.

''(m) CONSOLIDATION OF GRANT APPLICATIONS.—The Secretary shall establish an approval process by which a State may apply for all grants included under this chapter through a single application with a single annual deadline. The Bureau of Indian Affairs shall establish a similarly simplified process for applications from Indian tribes.

''(n) ADMINISTRATIVE EXPENSES.—Funds authorized to be appropriated to carry out this section shall be subject to a deduction of not to exceed 5 percent for the necessary costs of administering the provisions of this section, section 405, section 407A, section 410, and 413 of this chapter.''.

SEC. 4104. HIGHWAY SAFETY RESEARCH AND OUTREACH PROGRAMS.

(a) REVISED AUTHORITY AND REQUIREMENTS.—Section 403 is amended to read as follows:

"§ 403. Highway safety research and development

''(a) AUTHORITY OF THE SECRETARY.—The Secretary is authorized to use funds appropriated to carry out this section to—

''(1) conduct research on all phases of highway safety and traffic conditions, including accident causation, highway or driver characteristics, communications, and emergency care;

''(2) conduct ongoing research into driver behavior and its effect on traffic safety;

''(3) conduct research on, and launch initiatives to counter, fatigued driving by drivers of motor vehicles and distracted driving in such vehicles, including the effect that the use of electronic devices and other factors deemed relevant by the Secretary have on driving;

''(4) conduct training or education programs in cooperation with other Federal departments and agencies, States, private sector persons, highway safety personnel, and law enforcement personnel;

''(5) conduct research on, and evaluate the effectiveness of, traffic safety countermeasures, including seat belts and impaired driving initiatives; and

''(6) conduct demonstration projects.

''(b) SPECIFIC RESEARCH PROGRAMS.—

''(1) REQUIRED PROGRAMS.—The Secretary shall conduct research on the following:

''(A) EFFECTS OF USE OF CONTROLLED SUBSTANCES.—A study on the effects of the use of controlled substances on driver behavior to determine—

''(i) methodologies for measuring driver impairment resulting from use of the most common controlled substances (including the use of such substances in combination with alcohol); and

''(ii) effective and efficient methods for training law enforcement personnel to detect or measure the level of impairment of a driver who is under the influence of a controlled substance by the use of technology or otherwise.

''(B) ON-SCENE MOTOR VEHICLE COLLISION CAUSATION.—A nationally representative study to collect on-scene motor vehicle collision data, and to determine crash causation, for which the Secretary shall enter into a contract with the National Academy of Sciences to conduct a review of the research, design, methodology, and implementation of the study.

''(C) TOLL FACILITIES WORKPLACE SAFETY.—A study on the safety of highway toll collection facilities, including toll booths, conducted in cooperation with State and local highway safety organizations to determine the safety of highway toll collection facilities for the toll collectors who work in and around such facilities and to develop best practices that would be of benefit to State and local highway safety organizations. The study shall consider—

''(i) any problems resulting from design or construction of facilities that contribute to the occurrence of vehicle collisions with the facilities;

''(ii) the safety of crosswalks used by toll collectors in transit to and from toll booths;

''(iii) the extent of the enforcement of speed limits at and in the vicinity of toll facilities;

''(iv) the use of warning devices, such as vibration and rumble strips, to alert drivers approaching toll facilities;

''(v) the use of cameras to record traffic violations in the vicinity of toll facilities;

''(vi) the use of traffic control arms in the vicinity of toll facilities;

''(vii) law enforcement practices and jurisdictional issues that affect safety at and in the vicinity of toll facilities; and

''(viii) data (which shall be collected in conducting the research) regarding the incidence of accidents and injuries at and around toll booth facilities.

''(2) TIME FOR COMPLETION OF STUDIES.—The studies conducted in subparagraphs (A), (B), and (C) of paragraph (1) may be conducted in concert with other Federal departments and agencies with relevant expertise. The Secretary shall submit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the progress of each study conducted under this subsection.

''(3) ONGOING STUDIES.—The studies under subparagraphs (A) and (B) of paragraph (1) shall be conducted on an ongoing basis.

''(4) REPORTS.—

''(A) ONE-TIME STUDY.—Not later than 2 years after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2004, the Secretary shall submit a final report on the study referred to in paragraph (1)(C) to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

''(B) ONGOING STUDIES.—The Secretary shall submit a report on the studies referred to in paragraph (3) to the Committees of Congress referred to in subparagraph (A) not later than December 31, 2005, and shall submit additional reports on such studies to such committees every 2 years. Such additional reports shall contain the findings, progress, remaining challenges, research objectives, and other relevant data relating to the ongoing studies.

''(c) NATIONWIDE TRAFFIC SAFETY CAMPAIGNS.—

''(1) REQUIREMENT FOR CAMPAIGNS.—The Administrator of the National Highway Traffic Safety Administration shall establish and administer a program under which 3 high-visibility traffic safety law enforcement campaigns will be carried out for the purposes specified in paragraph (2) in each of years 2004 through 2009.

''(2) PURPOSE.—The purpose of each law enforcement campaign is to achieve either or both of the following objectives:

''(A) Reduce alcohol-impaired or drug-impaired operation of motor vehicles.

''(B) Increase use of seat belts by occupants of motor vehicles.

''(3) ADVERTISING.—The Administrator may use, or authorize the use of, funds available under this section to pay for the development, production, and use of broadcast and print media advertising in carrying out traffic safety law enforcement campaigns under this subsection. Consideration shall be given to advertising directed at non-English speaking populations, including those who listen, read, or watch nontraditional media.

''(4) COORDINATION WITH STATES.—The Administrator shall coordinate with the States in carrying out the traffic safety law enforcement campaigns under this subsection, including advertising funded under paragraph (3), with a view to—

''(A) relying on States to provide the law enforcement resources for the campaigns out of funding available under this section and sections 402, 405, and 410 of this title; and

''(B) providing out of National Highway Traffic Safety Administration resources most of the means necessary for national advertising and education efforts associated with the law enforcement campaigns.

''(5) ANNUAL EVALUATION.—The Secretary shall conduct an annual evaluation of the effectiveness of such initiatives.

''(6) FUNDING.—The Secretary shall use $24,000,000 in each of fiscal years 2004 through 2009 for advertising and educational initiatives to be carried out nationwide in support of the campaigns under this section.

''(d) IMPROVING OLDER DRIVER SAFETY.—

''(1) IN GENERAL.—Of the funds made available under this section, the Secretary shall allocate $2,000,000 in each of fiscal years 2004 through 2009 to conduct a comprehensive research and demonstration program to improve traffic safety pertaining to older drivers. The program shall—

''(A) provide information and guidelines to assist physicians and other related medical personnel, families, licensing agencies, enforcement officers, and various public and transit agencies in enhancing the safety and mobility of older drivers;

''(B) improve the scientific basis of medical standards and screenings strategies used in the licensing of all drivers in a non-discriminatory manner;

''(C) conduct field tests to assess the safety benefits and mobility impacts of different driver licensing strategies and driver assessment and rehabilitation methods;

''(D) assess the value and improve the safety potential of driver retraining courses of particular benefit to older drivers; and

''(E) conduct other activities to accomplish the objectives of this action.

''(2) FORMULATION OF PLAN.—After consultation with affected parties, the Secretary shall formulate an older driver traffic safety plan to guide the design and implementation of this program. The plan shall be submitted to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation within 180 days after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2004.

''(e) LAW ENFORCEMENT TRAINING.—

''(1) REQUIREMENT FOR PROGRAM.—The Administrator of the National Highway Traffic Safety Administration shall carry out a program to train law enforcement personnel of each State and political subdivision thereof in police chase techniques that are consistent with the police chase guidelines issued by the International Association of Chiefs of Police.

''(2) AMOUNT FOR PROGRAM.—Of the amount available for a fiscal year to carry out this section, $200,000 shall be available for carrying out this subsection.

''(f) INTERNATIONAL COOPERATION.—

''(1) AUTHORITY.—The Administrator of the National Highway Traffic Safety Administration may participate and cooperate in international activities to enhance highway safety.

''(2) AMOUNT FOR PROGRAM.—Of the amount available for a fiscal year to carry out this section, $200,000 may be used for activities authorized under paragraph (1).''.

(b) STUDY ON REFUSAL OF INTOXICATION TESTING.—

(1) REQUIREMENT FOR STUDY.—In addition to studies under section 403 of title 23, United States Code, the Secretary of Transportation shall carry out a study of the frequency with which persons arrested for the offense of operating a motor vehicle under the influence of alcohol and persons arrested for the offense of operating a motor vehicle while intoxicated refuse to take a test to determine blood alcohol concentration levels and the effect such refusals have on the ability of States to prosecute such persons for those offenses.

(2) CONSULTATION.—In carrying out the study under this section, the Secretary shall consult with the Governors of the States, the States' Attorneys General, and the United States Sentencing Commission.

(3) REPORT.—

(A) REQUIREMENT FOR REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report on the results of the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(B) CONTENT.—The report shall include any recommendation for legislation, including any recommended model State legislation, and any other recommendations that the Secretary considers appropriate for implementing a program designed to decrease the occurrence refusals by arrested persons to submit to a test to determine blood alcohol concentration levels.

SEC. 4105. NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE TECHNICAL CORRECTION.

Section 404(d) is amended by striking ''Commerce'' and inserting ''Transportation''.

SEC. 4106. OCCUPANT PROTECTION GRANTS.

Section 405 is amended—

(1) by striking the second sentence of subsection (a)(1);

(2) by striking ''Transportation Equity Act for the 21st Century.'' in subsection (a)(2) and inserting ''Highway Safety Grant Program Reauthorization Act of 2004.'';

(3) by striking subsections (a)(3) and (4), (b), (c), and (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively; and

(4) by inserting after subsection (a) the following:

''(b) OCCUPANT PROTECTION GRANTS.—

''(1) IN GENERAL.—In addition to the grants authorized by subsection (a), the Secretary shall make grants in accordance with this subsection.

''(2) SAFETY BELT PERFORMANCE GRANTS.—

''(A) PRIMARY SAFETY BELT USE LAW.—

''(i) For fiscal years 2004 and 2005, the Secretary shall make a grant to each State that enacted, and is enforcing, a primary safety belt use law for all passenger motor vehicles that became effective by December 31, 2003.

''(ii) For each of fiscal years 2004 through 2009, the Secretary shall, after making grants under clause (i) of this subparagraph, make a one-time grant to each State that either enacts for the first time after December 31, 2003, and has in effect a primary safety belt use law for all passenger motor vehicles, or, in the case of a State that does not have such a primary safety belt use law, has a State safety belt use rate in the preceding fiscal year of at least 90 percent, as measured under criteria determined by the Secretary.

''(iii) Of the funds authorized for grants under this subsection, $100,000,000 in each of fiscal years 2004 through 2009 shall be available for grants under this paragraph. The amount of a grant available to a State in each of fiscal years 2004 and 2005 under clause (i) of this subparagraph shall be equal to ½ of the amount of funds apportioned to the State under section 402(c) for fiscal year 2003. The amount of a grant available to a State in fiscal year 2004 or in a subsequent fiscal year under clause (ii) of this subparagraph shall be equal to 5 times the amount apportioned to the State for fiscal year 2003 under section 402(c). A State that receives a grant under clause (ii) of this subparagraph is ineligible to receive funding under subparagraph (B) for that fiscal year and the following fiscal year. The Federal share payable for grants under this subparagraph shall be 100 percent. If the total amount of grants under clause (ii) of this subparagraph for a fiscal year exceeds the amount of funds available in the fiscal year, grants shall be made to each eligible State, in the order in which its primary safety belt use law became effective or its safety belt use rate reached 90 percent, until the funds for the fiscal year are exhausted. A State that does not receive a grant for which it is eligible in a fiscal year shall receive the grant in the succeeding fiscal year so long as its law remains in effect or its safety belt use rate remains at or above 90 percent. If the total amount of grants under this subparagraph for a fiscal year is less than the amount available in the fiscal year, the Secretary shall use any funds that exceed the total amount for grants under subparagraph (B) of this paragraph.

''(B) SAFETY BELT USE RATE.—

''(i) For each fiscal year, from 2004 through 2009, the funds authorized for a grant under this subparagraph shall be awarded to States that increase their measured safety belt use rate, as determined by the Secretary, by decreasing the proportion of non-users of safety belts by 10 percent, as compared to the proportion of non-users, in the preceding fiscal year.

''(ii) Each State that meets the requirement of clause (i) of this subparagraph shall be apportioned an amount of funds that is equal to the amount available under this subparagraph for the relevant fiscal year multiplied by the ratio that the funds apportioned to the State under section 402 for such fiscal year bear to the funds apportioned under section 402 for such fiscal year to all states that qualify for a grant for such fiscal year.

''(iii) Of the funds authorized for grants under this subsection, $20,000,000 for fiscal year 2004, $22,000,000 for fiscal year 2005, $24,000,000 for fiscal year 2006, $26,000,000 for fiscal year 2007, $28,000,000 for fiscal year 2008, and $30,000,000 for fiscal year 2009 shall be available for safety belt use rate grants under this subparagraph.

''(iv) The Federal share payable for grants under this subparagraph shall be 100 percent.

''(c) USE OF GRANTS.—A State allocated an amount for a grant under subparagraph (A) or (B) of subsection (b)(2) may use the amount for activities eligible for assistance under sections 402, 405, and 410 of title 23, United States Code.''.

SEC. 4107. SCHOOL BUS DRIVER TRAINING.

Section 406(c) is amended by striking the first, second, and third sentences.

SEC. 4108. EMERGENCY MEDICAL SERVICES.

(a) FEDERAL COORDINATION AND ENHANCED SUPPORT OF EMERGENCY MEDICAL SERVICES.—Chapter 4 is amended by inserting after section 407 the following:

''§ 407A. Federal coordination and enhanced support of emergency medical services

''(a) FEDERAL INTERAGENCY COMMITTEE ON EMERGENCY MEDICAL SERVICES.—

''(1) ESTABLISHMENT.—The Secretary of Transportation and the Secretary of Homeland Security, through the Under Secretary for Emergency Preparedness and Response, shall establish a Federal Interagency Committee on Emergency Medical Services. In establishing the Interagency Committee, the Secretary of Transportation and the Secretary of Homeland Security through the Under Secretary for Emergency Preparedness and Response shall consult with the Secretary of Health and Human Services.

''(2) MEMBERSHIP.—The Interagency Committee shall consist of the following officials, or their designees:

''(A) The Administrator, National Highway Traffic Safety Administration.

''(B) The Director, Preparedness Division, Emergency Preparedness and Response Directorate, Department of Homeland Security.

''(C) The Administrator, Health Resources and Services Administration, Department of Health and Human Services.

''(D) The Director, Centers for Disease Control and Prevention, Department of Health and Human Services.

''(E) The Administrator, United States Fire Administration, Emergency Preparedness and Response Directorate, Department of Homeland Security.

''(F) The Director, Center for Medicare and Medicaid Services, Department of Health and Human Services.

''(G) The Undersecretary of Defense for Personnel and Readiness.

''(H) The Director, Indian Health Service, Department of Health and Human Services.

''(I) The Chief, Wireless Telecom Bureau, Federal Communications Commission.

''(J) A representative of any other Federal agency identified by the Secretary of Transportation or the Secretary of Homeland Security through the Under Secretary for Emergency Preparedness and Response, in consultation with the Secretary of Health and Human Services, as having a significant role in relation to the purposes of the Interagency Committee.

''(3) PURPOSES.—The purposes of the Interagency Committee are as follows:

''(A) To ensure coordination among the Federal agencies involved with State, local, tribal, or regional emergency medical services and 9–1–1 systems.

''(B) To identify State, local, tribal, or regional emergency medical services and 9–1–1 needs.

''(C) To recommend new or expanded programs, including grant programs, for improving State, local, tribal, or regional emergency medical services and implementing improved emergency medical services communications technologies, including wireless 9–1–1.

''(D) To identify ways to streamline the process through which Federal agencies support State, local, tribal or regional emergency medical services.

''(E) To assist State, local, tribal or regional emergency medical services in setting priorities based on identified needs.

''(F) To advise, consult, and make recommendations on matters relating to the implementation of the coordinated State emergency medical services programs.

''(4) ADMINISTRATION.—The Administrator of the National Highway Traffic Safety Administration, in cooperation with the Director, Preparedness Division, Emergency Preparedness and Response Directorate, Department of Homeland Security, shall provide administrative support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

''(5) LEADERSHIP.—The members of the Interagency Committee shall select a chairperson of the Committee annually.

''(6) MEETINGS.—The Interagency Committee shall meet as frequently as is determined necessary by the chairperson of the Committee.

''(7) ANNUAL REPORTS.—The Interagency Committee shall prepare an annual report to Congress on the Committee's activities, actions, and recommendations.

''(b) COORDINATED NATIONWIDE EMERGENCY MEDICAL SERVICES PROGRAM.—

''(1) PROGRAM REQUIREMENT.—The Secretary of Transportation, acting through the Administrator of the National Highway Traffic Safety Administration, shall coordinate with officials of other Federal departments and agencies, and may assist State and local governments and emergency medical services organizations (whether or not a firefighter organization), private industry, and other interested parties, to ensure the development and implementation of a coordinated

nationwide emergency medical services program that is designed to strengthen transportation safety and public health and to implement improved emergency medical services communication systems, including 9–1–1.

''(2) COORDINATED STATE EMERGENCY MEDICAL SERVICES PROGRAM.—Each State shall establish a program, to be approved by the Secretary, to coordinate the emergency medical services and resources deployed throughout the State, so as to ensure—

''(A) improved emergency medical services communication systems, including 9–1–1;

''(B) utilization of established best practices in system design and operations;

''(C) implementation of quality assurance programs; and

''(D) incorporation of data collection and analysis programs that facilitate system development and data linkages with other systems and programs useful to emergency medical services.

''(3) ADMINISTRATION OF STATE PROGRAMS.—The Secretary may not approve a coordinated State emergency medical services program under this subsection unless the program—

''(A) provides that the Governor of the State is responsible for its administration through a State office of emergency medical services that has adequate powers and is suitably equipped and organized to carry out such program and coordinates such program with the highway safety office of the State; and

''(B) authorizes political subdivisions of the State to participate in and receive funds under such program, consistent with a goal of achieving statewide coordination of emergency medical services and 9–1–1 activities.

''(4) FUNDING.—

''(A) USE OF FUNDS.—Funds authorized to be appropriated to carry out this subsection shall be used to aid the States in conducting coordinated emergency medical services and 9–1–1 programs as described in paragraph (2).

''(B) APPORTIONMENT.—

''(i) APPORTIONMENT FORMULA.—The funds shall be apportioned as follows: 75 percent in the ratio that the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and 25 percent in the ratio that the public road mileage in each State bears to the total public road mileage in all States. For the purpose of this subparagraph, a 'public road' means any road under the jurisdiction of and maintained by a public authority and open to public travel. Public road mileage as used in this subsection shall be determined as of the end of the calendar year prior to the year in which the funds are apportioned and shall be certified by the Governor of the State and subject to approval by the Secretary.

''(ii) MINIMUM APPORTIONMENT.—The annual apportionment to each State shall not be less than ½ of 1 percent of the total apportionment, except that the apportionment to the Secretary of the Interior on behalf of Indian tribes shall not be less than ¾ of 1 percent of the total apportionment, and the apportionments to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not be less than ¼ of 1 percent of the total apportionment.

''(5) APPLICABILITY OF CHAPTER 1.—Section 402(d) of this title shall apply in the administration of this subsection.

''(6) FEDERAL SHARE.—The Federal share of the cost of a project or program funded under this subsection shall be 80 percent.

''(7) APPLICATION IN INDIAN COUNTRY.—

''(A) USE OF TERMS.—For the purpose of application of this subsection in Indian country, the terms 'State' and 'Governor of the State' include the Secretary of the Interior and the term 'political subdivisions of the State' includes an Indian tribe.

''(B) INDIAN COUNTRY DEFINED.—In this subsection, the term 'Indian country' means—

''(i) all land within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent and including rights-of-way running through the reservation;

''(ii) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof and whether within or without the limits of a State; and

''(iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

''(c) STATE DEFINED.—In this section, the term 'State' means each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Secretary of the Interior on behalf of Indian tribes.

''(d) CONSTRUCTION WITH RESPECT TO DISTRICT OF COLUMBIA.—In the administration of this section with respect to the District of Columbia, a reference in this section to the Governor of a State shall refer to the Mayor of the District of Columbia.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 4 is amended by inserting after the item relating to section 407 the following:

''407A. Federal coordination and enhanced support of emergency medical services.''.

SEC. 4109. REPEAL OF AUTHORITY FOR ALCOHOL TRAFFIC SAFETY PROGRAMS.

(a) REPEAL.—Section 408 is repealed.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 4 is amended by striking the item relating to section 408.

SEC. 4110. IMPAIRED DRIVING PROGRAM.

(a) MAINTENANCE OF EFFORT.—Section 410(a)(2) is amended by striking ''the Transportation Equity Act for the 21st Century'' and inserting ''the Highway Safety Grant Program Reauthorization Act of 2004''.

(b) REVISED GRANT AUTHORITY.—Section 410 is amended—

(1) by striking paragraph (3) of subsection (a) and redesignating paragraph (4) as paragraph (3); and

(2) by striking subsections (b) through (f) and inserting the following:

''(b) PROGRAM-RELATED ELIGIBILITY REQUIREMENTS.—To be eligible for a grant under this section, a State shall—

''(1) carry out each of the programs and activities required under subsection (c);

''(2) comply with the additional requirements set forth in subsection (d) with respect to such programs and activities; and

''(3) comply with any additional requirements of the Secretary.

''(c) REQUIRED STATE PROGRAMS AND ACTIVITIES.—For the purpose of subsection (b)(1), a State must meet the requirements of 4 of the following 6 criteria in order to receive a grant under this section:

''(1) CHECK-POINT, SATURATION PATROL PROGRAM.—

''(A) A State program to conduct of a series of high-visibility, Statewide law enforcement campaigns in which law enforcement personnel monitor for impaired driving, either through use of check-points or saturation patrols, on a nondiscriminatory, lawful basis for the purpose of determining whether the operators of the motor vehicles are driving while under the influence of alcohol or controlled substances that meets the requirements of subparagraphs (B) and (C).

''(B) A program meets the requirements of this subparagraph only if a State organizes the campaigns in cooperation with related national campaigns organized by the National Highway Traffic Safety Administration, but this subparagraph does not preclude a State from initiating high-visibility, Statewide law enforcement campaigns independently of the cooperative efforts.

''(C) A program meets the requirements of this subparagraph only if, for each fiscal year, a State demonstrates to the Secretary that the State and the political subdivisions of the State that receive funds under this section have increased, in the aggregate, the total number of impaired driving law enforcement activities, as described in subparagraph (A) (or any other similar activity approved by the Secretary), initiated in such State during the preceding fiscal year by a factor that the Secretary determines meaningful for the State over the number of such activities initiated in such State during the preceding fiscal year, which shall not be less than 5 percent.

''(2) PROSECUTION AND ADJUDICATION PROGRAM.—For grants made during fiscal years after fiscal year 2004, a State prosecution and adjudication program under which—

''(A) judges and prosecutors are actively encouraged to prosecute and adjudicate cases of defendants who repeatedly commit impaired driving offenses by reducing the use of State diversion programs, or other means that have the effect of avoiding or expunging a permanent record of impaired driving in such cases;

''(B) the courts in a majority of the judicial jurisdictions of the State are monitored on the courts' adjudication of cases of impaired driving offenses; or

''(C) annual Statewide outreach is provided for judges and prosecutors on innovative approaches to the prosecution and adjudication of cases of impaired driving offenses that have the potential for significantly improving the prosecution and adjudication of such cases.

''(3) IMPAIRED OPERATOR INFORMATION SYSTEM.—

''(A) A State impaired operator information system that—

''(i) tracks drivers who are arrested or convicted for violation of laws prohibiting impaired operation of motor vehicles;

''(ii) includes information about each case of an impaired driver beginning at the time of arrest through case disposition, including information about any trial, plea, plea agreement, conviction or other disposition, sentencing or other imposition of sanctions, and substance abuse treatment;

''(iii) provides—

''(I) accessibility to the information for law enforcement personnel Statewide and for United States law enforcement personnel; and

''(II) linkage for the sharing of the information and of the information in State traffic record systems among jurisdictions and appropriate agencies, court systems and offices of the States;

''(iv) shares information with the National Highway Traffic Safety Administration for compilation and use for the tracking of impaired operators of motor vehicles who move from State to State; and

''(v) meets the requirements of subparagraphs (B), (C), and (D) of this paragraph, as applicable.

''(B) A program meets the requirements of this subparagraph only if, during fiscal years 2004 and 2005, a State—

''(i) assess the system used by the State for tracking drivers who are arrested or convicted for violation of laws prohibiting impaired operation of motor vehicles;

''(ii) identifies ways to improve the system, as well as to enhance the capability of

the system to provide information in coordination with impaired operator information systems of other States; and

''(iii) develops a strategic plan that sets forth the actions to be taken and the resources necessary to achieve the identified improvements and to enhance the capability for coordination with the systems of other States.

''(C) A program meets the requirements of this subparagraph only if, in each of fiscal years 2006, 2007, and 2008, a State demonstrates to the Secretary that the State has made substantial and meaningful progress in improving the State's impaired operator information system, and makes public a report on the progress of the information system.

''(D) A program meets the requirements of this subparagraph only if, in fiscal year 2009, a State demonstrates to the Secretary that the State's impaired operator information system meets the basic standards for such systems as determined by the Secretary.

''(4) IMPAIRED DRIVING PERFORMANCE.—The percentage of fatally-injured drivers with 0.08 percent or greater blood alcohol concentration in the State has decreased in each of the 2 most recent calendar years.

''(5) IMPAIRED DRIVING TASK FORCE.—

Establishment of an impaired driving task force that involves all relevant State, tribal, and local agencies responsible for reducing alcohol impairment and impaired driving and meets the requirements of subparagraphs (B), (C), and (D). The purpose of the task force is to oversee efforts to reduce impaired driving by strengthening applicable laws, regulations, programs, and policies, and to coordinate impaired driving resources and programs among different jurisdictions. The impaired driving task force shall include State, Tribal, and local law enforcement, motor carrier safety agencies, and State alcohol and drug abuse prevention agencies, State and local court systems, State drivers licensing agencies, the State highway safety office, and State parole and probation agencies.

''(B) In fiscal year 2004 and fiscal year 2005, the State shall establish a statewide impaired driving task force to assess the State's impaired driving system, identify the opportunities for improvements in the system, and develop a strategic plan that outlines the steps and resources necessary to improve the system and enhance coordination among State and local agencies responsible for reducing impaired driving.

''(C) In each subsequent fiscal year, the State demonstrates progress in the implementation of top priorities of the strategic plan.

''(D) The State provides the Secretary a copy of the strategic plan developed under subparagraph and in subsequent years, a report detailing the progress of the strategic plan. The Secretary shall make available for public viewing each strategic plan and progress report.

''(6) IMPAIRED DRIVING COURTS.—

''(A) IN GENERAL.—A program to consolidate and coordinate impaired driving cases into courts that specialize in impaired driving cases, with the emphasis on tracking and processing offenders of impaired driving laws, (hereinafter referred to as DWI courts) that meets the requirements of this paragraph.

''(B) CHARACTERISTICS.—A DWI Court is a distinct function performed by a court system for the purpose of changing the behavior of alcohol or drug dependent offenders arrested for driving while impaired. A DWI Court can be a dedicated court with dedicated personnel, including judges, prosecutors and probation officers. A DWI court may be an existing court system that serves the following essential DWI Court functions:

''(i) A DWI Court performs an assessment of high-risk offenders utilizing a team headed by the judge and including all criminal justice stakeholders (prosecutors, defense attorneys, probations officers, law enforcement personnel and others) along with alcohol/drug treatment professionals.

''(ii) The DWI Court team recommends a specific plea agreement or contract for each offender that can include incarceration, treatment, and close community supervision. The agreement maximizes the probability of rehabilitation and minimizes the likelihood of recidivism.

''(iii) Compliance with the agreement is verified with thorough monitoring and frequent alcohol testing. Periodic status hearings assess offender progress and allow an opportunity for modifying the sentence if necessary.

''(C) In the first year of operation, the States shall assess the number of court systems in its jurisdiction that are consistently performing the DWI Court functions.

''(D) In the second year of operation, the State shall develop a strategic plan for increasing the number of courts performing the DWI function.

''(E) In subsequent years of operation, the State shall demonstrate progress in increasing the number of DWI Courts and in increasing the number of high-risk offenders participating in and successfully completing DWI Court agreements.

''(d) USES OF GRANTS.—Grants made under this section may be used for programs and activities described in subsection (c) and to defray the following costs:

''(1) Labor costs, management costs, and equipment procurement costs for the high-visibility, Statewide law enforcement campaigns under subsection (c)(1).

''(2) The costs of the training of law enforcement personnel and the procurement of technology and equipment, such as and including video equipment and passive alcohol sensors, to counter directly impaired operation of motor vehicles.

''(3) The costs of public awareness, advertising, and educational campaigns that publicize use of sobriety check points or increased law enforcement efforts to counter impaired operation of motor vehicles.

''(4) The costs of public awareness, advertising, and educational campaigns that target impaired operation of motor vehicles by persons under 34 years of age.

''(5) The costs of the development and implementation of a State impaired operator information system described in subsection (c)(3).

''(e) ADDITIONAL AUTHORITIES FOR CERTAIN AUTHORIZED USES.—

''(1) COMBINATION OF GRANT PROCEEDS.—Grant funds used for a campaign under subsection (d)(3) may be combined, or expended in coordination, with proceeds of grants under section 402 of this title.

''(2) COORDINATION OF USES.—Grant funds used for a campaign under paragraph (3) or (4) of subsection (d) may be expended—

''(A) in coordination with employers, schools, entities in the hospitality industry, and nonprofit traffic safety groups; and

''(B) in coordination with sporting events and concerts and other entertainment events.

''(g) FUNDING.—

''(1) IN GENERAL.—Except as provided in paragraph (2), grant funding under this section shall be allocated among eligible States on the basis of the apportionment formula that applies for apportionments under section 402(c) of this title.

''(2) HIGH FATALITY-RATE STATES.—The amount of the grant funds allocated under this subsection to each of the 10 States with the highest impaired driving-related fatality rate for the most recent fiscal year for which the data is available preceding the fiscal year of the allocation shall be twice the amount that, except for this subparagraph, would otherwise be allocated to the State under paragraph (1).

''(h) USE OF FUNDS BY HIGH FATALITY-RATE STATES.—

''(1) REQUIRED USES.—At least ½ of the amounts allocated to States under subsection (g)(2) shall be used for the program described in subsection (c)(1).

''(2) REQUIREMENT FOR PLAN.—A State receiving an allocation of grant funds under subsection (g)(2) shall expend those funds only after consulting with the Administrator of the National Highway Traffic Safety Administration regarding such expenditures.

''(i) DEFINITIONS.—In this section:

''(1) IMPAIRED OPERATOR.—The term 'impaired operator' means a person who, while operating a motor vehicle—

''(A) has a blood alcohol content of 0.08 percent or higher; or

''(B) is under the influence of a controlled substance.

''(2) IMPAIRED DRIVING-RELATED FATALITY RATE.—The term 'impaired driving-related fatality rate' means the rate of the fatal accidents that involve impaired drivers while operating motor vehicles, as calculated in accordance with regulations which the Administrator of the National Highway Traffic Safety Administration shall prescribe.''.

(c) NHTSA TO ISSUE REGULATIONS.—Not later than 12 months after the enactment of the Highway Safety Grant Program Reauthorization Act of 2004, the National Highway Traffic Safety Administration shall issue guidelines to the States specifying the types and formats of data that States should collect relating to drivers who are arrested or convicted for violation of laws prohibiting the impaired operation of motor vehicles.

SEC. 4111. STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.

(a) GRANT PROGRAM AUTHORITY.—Chapter 4 is amended by adding at the end the following:

''§ 412. State traffic safety information system improvements

''(a) GRANT AUTHORITY.—Subject to the requirements of this section, the Secretary shall make grants of financial assistance to eligible States to support the development and implementation of effective programs by such States to—

''(1) improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the safety data of the State that is needed to identify priorities for national, State, and local highway and traffic safety programs;

''(2) evaluate the effectiveness of efforts to make such improvements;

''(3) link the State data systems, including traffic records, with other data systems within the State, such as systems that contain medical, roadway, and economic data; and

''(4) improve the compatibility and interoperability of the data systems of the State with national data systems and data systems of other States and enhance the ability of the Secretary to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances.

''(b) FIRST-YEAR GRANTS.—

''(1) ELIGIBILITY.—To be eligible for a first-year grant under this section in a fiscal year, a State shall demonstrate to the satisfaction of the Secretary that the State has—

''(A) established a highway safety data and traffic records coordinating committee with a multidisciplinary membership that includes, among others, managers, collectors, and users of traffic records and public health and injury control data systems; and

''(B) developed a multiyear highway safety data and traffic records system strategic plan that addresses existing deficiencies in the State's highway safety data and traffic records system, is approved by the highway safety data and traffic records coordinating committee, and—

''(i) specifies how existing deficiencies in the State's highway safety data and traffic records system were identified;

''(ii) prioritizes, on the basis of the identified highway safety data and traffic records system deficiencies, the highway safety data and traffic records system needs and goals of the State, including the activities under subsection (a);

''(iii) identifies performance-based measures by which progress toward those goals will be determined; and

''(iv) specifies how the grant funds and any other funds of the State are to be used to address needs and goals identified in the multiyear plan.

''(2) GRANT AMOUNT.—Subject to subsection (d)(3), the amount of a first-year grant to a State for a fiscal year shall the higher of—

''(A) the amount determined by multiplying—

''(i) the amount appropriated to carry out this section for such fiscal year, by

''(ii) the ratio that the funds apportioned to the State under section 402 of this title for fiscal year 2003 bears to the funds apportioned to all States under such section for fiscal year 2003; or

''(B) $300,000.

''(c) SUCCESSIVE YEAR GRANTS.—

''(1) ELIGIBILITY.—A State shall be eligible for a grant under this subsection in a fiscal year succeeding the first fiscal year in which the State receives a grant under subsection (b) if the State, to the satisfaction of the Secretary—

''(A) submits an updated multiyear plan that meets the requirements of subsection (b)(1)(B);

''(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 are to 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.

''(2) GRANT AMOUNT.—Subject to subsection (d)(3), the amount of a year grant made to a State for a fiscal year under this subsection shall equal the higher of—

''(A) the amount determined by multiplying—

''(i) the amount appropriated to carry out this section for such fiscal year, by

''(ii) the ratio that the funds apportioned to the State under section 402 of this title for fiscal year 2003 bears to the funds apportioned to all States under such section for fiscal year 2003; or

''(B) $500,000.

''(d) ADDITIONAL REQUIREMENTS AND LIMITATIONS.—

''(1) MODEL DATA ELEMENTS.—The Secretary, in consultation with States and other appropriate parties, shall determine the model data elements that are useful for the observation and analysis of State and national trends in occurrences, rates, outcomes, and circumstances of motor vehicle traffic accidents. In order to be eligible for a grant under this section, a State shall submit to the Secretary a certification that the State has adopted and uses such model data elements, or a certification that the State will use grant funds provided under this section toward adopting and using the maximum number of such model data elements as soon as practicable.

''(2) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all other sources for highway safety data programs at or above the average level of such expenditures maintained by such State in the 2 fiscal years preceding the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2003.

''(3) FEDERAL SHARE.—The Federal share of the cost of adopting and implementing in a fiscal year a State program described in subsection (a) may not exceed 80 percent.

''(4) LIMITATION ON USE OF GRANT PROCEEDS.—A State may use the proceeds of a grant received under this section only to implement the program described in subsection (a) for which the grant is made.

''(e) APPLICABILITY OF CHAPTER 1.—Section 402(d) of this title shall apply in the administration of this section.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 4 is amended by adding at the end the following:

''412. State traffic safety information system improvements.''.

SEC. 4112. NHTSA ACCOUNTABILITY.

(a) IN GENERAL.—Chapter 4, as amended by section 4111, is amended by adding at the end the following:

''§ 413. Agency accountability

''(a) TRIENNIAL STATE MANAGEMENT REVIEWS.—At least once every 3 years the National Highway Traffic Safety Administration shall conduct a review of each State highway safety program. The review shall include a management evaluation of all grant programs partially or fully funded under this title. The Administrator shall provide review-based recommendations on how each State may improve the management and oversight of its grant activities and may provide a management and oversight plan.

''(b) RECOMMENDATIONS BEFORE SUBMISSION.—In order to provide guidance to State highway safety agencies on matters that should be addressed in the State highway safety program goals and initiatives as part of its highway safety plan before the plan is submitted for review, the Administrator shall provide non-binding data-based recommendations to each State at least 90 days before the date on which the plan is to be submitted for approval.

''(c) STATE PROGRAM REVIEW.—The Administrator shall—

''(1) conduct a program improvement review of any State that does not make substantial progress over a 3-year period in meeting its priority program goals; and

''(2) provide technical assistance and safety program recommendations to the State for any goal not achieved.

''(d) REGIONAL HARMONIZATION.—The Administration and the Inspector General of the Department of Transportation shall undertake a State grant administrative review of the practices and procedures of the management reviews and program reviews conducted by Administration regional offices and formulate a report of best practices to be completed within 180 days after the date of enactment of the Surface Transportation Safety Reauthorization Act of 2004.

''(e) BEST PRACTICES GUIDELINES.—

''(1) UNIFORM GUIDELINES.—The Administration shall issue uniform management review and program review guidelines based on the report under subsection (d). Each regional office shall use the guidelines in executing its State administrative review duties.

''(2) PUBLICATION.—The Administration shall make the following documents available via the Internet upon their completion:

''(A) The Administration's management review and program review guidelines.

''(B) State highway safety plans.

''(C) State annual accomplishment reports.

''(D) The Administration's State management reviews.

''(E) The Administration's State program improvement plans.

''(3) REPORTS TO STATE HIGHWAY SAFETY AGENCIES.—The Administrator may not make a plan, report, or review available under paragraph (2) that is directed to a State highway safety agency until after it has been submitted to that agency.

''(f) GENERAL ACCOUNTING OFFICE REVIEW.—The General Accounting Office shall analyze the effectiveness of the National Highway Traffic Safety Administration's oversight of traffic safety grants by seeking to determine the usefulness of the Administration's advice to the States regarding grants administration and State activities, the extent to which the States incorporate the Administration's recommendation into their highway safety plans and programs, and improvements that result in a State's highway safety program that may be attributable to the Administration's recommendations. Based on this analysis, the General Accounting Office shall submit a report by not later than the end of fiscal year 2008 to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 4, as amended by section 4111, is amended by inserting after the item relating to section 412 the following:

''413. Agency accountability''.

PART 2—SPECIFIC VEHICLE SAFETY-RELATED RULINGS

SEC. 4151. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise specifically provided, whenever in this subtitle an amendment is expressed in terms of an amendment to a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 4152. VEHICLE CRASH EJECTION PREVENTION.

(a) IN GENERAL.—Subchapter II of chapter 301 is amended by adding at the end the following:

''§ 30128. Vehicle accident ejection protection

''(a) IN GENERAL.—The Secretary of Transportation shall prescribe a safety standard under this chapter or upgrade existing Federal motor vehicle safety standards to reduce complete and partial occupant ejection from motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds that are involved in accidents that present a risk of occupant ejection. In formulating the safety standard, the Secretary shall consider the ejection-mitigation capabilities of safety technologies, such as advanced side glazing, side curtains, and side impact air bags.

''(b) DOOR LOCK AND RETENTION STANDARD.—The Secretary shall upgrade Federal Motor Vehicle Safety Standard No. 206 to require manufacturers of new motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds that are distributed in commerce for sale in the United States to make such modifications to door locks, door latches, and retention components of doors in such vehicles as the Secretary determines to be necessary to reduce occupant ejection

from such vehicles in motor vehicle accidents.''.

(b) RULEMAKING DEADLINES.—

(1) RULEMAKING.—The Secretary of Transportation shall issue—

(A) a notice of a proposed rulemaking under section 30128 of title 49, United States Code, not later than June 30, 2006; and

(B) a final rule under that section not later than 18 months after the publication of the notice of proposed rulemaking.

(2) EFFECTIVE DATE OF REQUIREMENTS.—In the final rule, the Secretary shall set forth effective dates for the requirements contained in the rule.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation $500,000 for each of fiscal years 2004 and 2005 to promulgate rules under section 30128 of title 49, United States Code.

(d) CONFORMING AMENDMENT.—The chapter analysis for chapter 301 is amended by inserting after the item relating to section 30127 the following:

''30128. Vehicle accident ejection protection''.

SEC. 4153. VEHICLE BACKOVER AVOIDANCE TECHNOLOGY STUDY.

(a) IN GENERAL.—The Administrator of the National Highway Traffic Safety Administration shall conduct a study of effective methods for reducing the incidence of injury and death outside of parked passenger motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds attributable to movement of such vehicles. The Administrator shall complete the study within 1 year after the date of enactment of this Act and report its findings to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce not later than 5 months after the date of enactment of this Act.

(b) SPECIFIC ISSUES TO BE COVERED.—The study required by subsection (a) shall—

(1) include an analysis of backover prevention technology;

(2) identify, evaluate, and compare the available technologies for detecting people or objects behind a motor vehicle with a gross vehicle weight rating of not more than 10,000 pounds for their accuracy, effectiveness, cost, and feasibility for installation; and

(3) provide an estimate of cost savings that would result from widespread use of backover prevention devices and technologies in motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds, including savings attributable to the prevention of—

(A) injuries and fatalities; and

(B) damage to bumpers and other motor vehicle parts and damage to other objects.

SEC. 4154. VEHICLE BACKOVER DATA COLLECTION.

In conjunction with the study required in section 4154, the National Highway Traffic Safety Administration may establish a method to collect and maintain data on the number and types of injuries and deaths involving motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds in non-traffic, non-accident incidents to assist in the analysis required in section 4153 of this Act regarding the inclusion of backover prevention technologies in motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds.

SEC. 4155. AGGRESSIVITY AND INCOMPATIBILITY REDUCTION STANDARD.

(a) IN GENERAL.—Subchapter II of chapter 301, as amended by section 4152, is amended by adding at the end the following:

''§ 30129. Vehicle incompatibility and aggressivity reduction standard

''(a) IN GENERAL.—The Secretary of Transportation shall issue motor vehicle safety standards to reduce vehicle incompatibility and aggressivity for motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds. In formulating the standards, the Secretary shall consider factors such as bumper height, weight, and any other design characteristics necessary to ensure better management of crash forces in frontal and side impact crashes among different types, sizes, and weights of motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds in order to reduce occupant deaths and injuries.

''(b) STANDARDS.—The Secretary shall develop a standard rating metric to evaluate compatibility and aggressivity among motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds.

''(c) PUBLIC INFORMATION.—The Secretary shall create a public information program that includes vehicle ratings based on risks posed by vehicle incompatibility and aggressivity to occupants, risks posed by vehicle incompatibility and agressivity to other motorists, and combined risks posed by vehicle incompatibility and agressivity by vehicle make and model.''.

(b) RULEMAKING DEADLINES.—

(1) RULEMAKING.—The Secretary of Transportation shall issue—

(A) a notice of a proposed rulemaking under section 30129 of title 49, United States Code, not later than January 31, 2007; and

(B) a final rule under that section not later than 18 months after the publication of the notice of proposed rulemaking.

(2) EFFECTIVE DATE OF REQUIREMENTS.—In the final rule, the Secretary shall set forth effective dates for the requirements contained in the rule.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 301 is amended by inserting after the item relating to section 30128 the following:

''30129. Vehicle incompatibility and aggressivity reduction standard''.

SEC. 4156. IMPROVED CRASHWORTHINESS.

(a) IMPROVED CRASHWORTHINESS.—Subchapter II of chapter 301, as amended by section 4155, is amended by adding at the end the following:

''§ 30130. Improved crashworthiness of motor vehicles

''(a) ROLLOVERS.—

''(1) IN GENERAL.—The Secretary of Transportation shall prescribe a motor vehicle safety standard under this chapter for rollover crashworthiness standards for motor vehicles with a gross weight rating of not more than 10,000 pounds. In formulating the safety standard, the Secretary shall consider the prescription of a roof strength standard based on dynamic tests that realistically duplicate the actual forces transmitted to a passenger motor vehicle during an on-roof rollover crash, and shall consider safety technologies and design improvements such as—

''(A) improved seat structure and safety belt design, including seat belt pretensioners;

''(B) side impact head protection airbags; and

''(C) roof injury protection measures.

''(2) ROLLOVER RESISTANCE STANDARD.—The Secretary shall prescribe a motor vehicle safety standard under this chapter to improve on the basic design characteristics of motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds to increase their resistance to rollover. The Secretary shall also consider additional technologies to improve the handling of motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds and thereby reduce the likelihood of vehicle instability and rollovers.

''(3) STUDY.—The Secretary shall conduct a study on electronic stability control systems and other technologies designed to improve the handling of motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds and shall report the results of that study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure by December 31, 2005.

''(b) FRONTAL IMPACT STANDARDS AND CRASH TESTS.—

''(1)IN GENERAL.—The Secretary shall prescribe a motor vehicle safety standard under this chapter or upgrade existing Federal motor vehicle safety standards to improve the protection of occupants in frontal impact crashes involving motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds.

''(2) TEST METHODOLOGY.—In determining the standard under paragraph (1), the Secretary shall—

''(A) evaluate additional test barriers and measurements of occupant head impact and neck injuries; and

''(B) review frontal impact criteria, including consideration of criteria established by the Insurance Institute for Highway Safety.

''(c) SIDE IMPACT STANDARDS AND CRASH TESTS.—

''(1)IN GENERAL.—The Secretary shall prescribe a motor vehicle safety standard under this chapter or upgrade existing Federal motor vehicle safety standards to improve the protection afforded to occupants in side impact crashes involving motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds.

''(2) TEST METHODOLOGY.—In prescribing the standard under paragraph (1), the Secretary shall—

''(A) evaluate additional test barriers and measurements of occupant head impact and neck injuries;

''(C) consider the need for additional and new crash test dummies that represent the full range of occupant sizes and weights; and

''(D) review side impact criteria, including consideration of criteria established by the Insurance Institute for Highway Safety.''.

(b) RULEMAKING DEADLINES.—

(1) RULEMAKING.—The Secretary of Transportation shall—

(A) issue a notice of a proposed rulemaking under section 30130 of title 49, United States Code, not later than June 30, 2006; and

(B) issue a final rule not later than 18 months after publication of the notice of proposed rulemaking.

(2) EFFECTIVE DATE OF REQUIREMENTS.—In the final rule, the Secretary shall set forth effective dates for the requirements contained in this rule.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 301 is amended by inserting after the item relating to section 30129 the following:

''30130. Improved crashworthiness of passenger motor vehicles''.

SEC. 4157. 15-PASSENGER VANS.

(a) IN GENERAL.—The Secretary of Transportation shall initiate a rulemaking and issue a final regulation not later than September 31, 2005, to include all 15-passenger vans with a gross vehicle weight rating of not more than 10,000 pounds in the National Highway Traffic Safety Administration's dynamic rollover testing program and require such vans to comply with all existing and

prospective Federal Motor Vehicle Safety Standards for occupant protection and vehicle crash avoidance that are relevant to such vehicles.

(b) NEW CAR ASSESSMENT PROGRAM.—The Secretary shall initiate a rulemaking and issue a final regulation not later than September 31, 2005, to include all 15-passenger vans with a gross vehicle weight of not more than 10,000 pounds in the Administration's New Car Assessment Program rollover resistance program.

(c) VEHICLE CONTROL TECHNOLOGY FOR 15-PASSENGER VANS.—The National Highway Traffic Safety Administration shall evaluate and test the potential of technological systems, particularly electronic stability control systems and rollover warning systems, to assist drivers in maintaining control of 15-passenger vans with a gross vehicle weight rating of not more than 10,000 pounds.

(d) CERTAIN SPECIALIZED VEHICLES EXCLUDED.—In this section, the term ''15-passenger van'' does not include an ambulance, tow truck, or other vehicle designed primarily for the transportation of property or special purpose equipment.

SEC. 4158. ADDITIONAL SAFETY PERFORMANCE CRITERIA FOR TIRES.

(a) STRENGTH AND ROAD HAZARD PROTECTION.—The Secretary of Transportation shall issue a final rule to upgrade Federal Motor Vehicle Safety Standard No. 139 to include strength and road hazard protection safety performance criteria for light vehicle tires, which are criteria that were not addressed in the June 2003 final rule mandated by the Transportation Recall Enhancement, Accountability, and Documentation Act of 2000.

(b) RESISTANCE TO BEAD UNSEATING AND AGING.—The Secretary of Transportation shall issue a final rule to upgrade Federal Motor Vehicle Safety Standard No. 139 to include resistance to bead unseating and aging safety performance criteria for passenger motor vehicle tires, which are criteria that were not addressed in the June, 2003, final rule mandated by the Transportation Recall Enhancement, Accountability, and Documentation Act of 2000.

(c) RULEMAKING DEADLINES.—The Secretary of Transportation shall—

(1) issue a notice of proposed rulemaking under subsection (a) not later than June 30, 2005, and under subsection(b) not later than December 31, 2005; and

(2) issue a final rule relating to subsection (a) not later than 18 months after June 30, 2005, and a final rule under subsection (b) not later than 18 months after December 31, 2005.

(d) TECHNOLOGY USE AND REPORT.—The Secretary shall reconsider the use of shearography analysis, on a sampling basis, for regulatory compliance and the Administrator of the National Highway Traffic Safety Administration shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the most cost effective methods of using such technology within 2 years after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2004.

SEC. 4159. SAFETY BELT USE REMINDERS.

(a) NOTICE OF PROPOSED RULES TO ENCOURAGE MORE SEAT BELT USE.—Not later than 12 months after the date of enactment of this Act, the Secretary of Transportation shall issue a Notice of Proposed Rulemaking to amend the Federal Motor Vehicle Safety Standard No. 208 for motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds to encourage increased seat belt usage by drivers and passengers. The proposed rulemaking shall take into account the potential safety benefits and public acceptability of alternative means to encourage increased seat belt usage, including intermittent or continuous audible or visual reminders when a driver or passenger is not wearing a seat belt, features to prevent operation of convenience or entertainment features of the vehicle when a driver or passenger is not wearing a seat belt, and shall consider technology, including but not limited to technology identified by the National Academy of Sciences in its study of the potential benefits of seat belt usage reminder technologies.

(b) FINAL RULE.—Not later than 24 months after the date of enactment of this Act, the Secretary shall issue the final rule required by subsection (a).

(c) BUZZER LAW.—

(1) IN GENERAL.—Section 30124 is amended—

(A) by striking ''not'' the first place it appears; and

(B) by striking ''except'' and inserting ''including''.

(2) CONFORMING AMENDMENT.—Section 30122 is amended by striking subsection (d).

SEC. 4160. MISSED DEADLINES REPORTS.

(a) IN GENERAL.—If the Secretary of Transportation fails to meet any rulemaking deadline established in this subtitle, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 90 days after missing the deadline—

(1) explaining why the Secretary failed to meet the deadline; and

(2) setting forth a date by which the Secretary anticipates that the rulemaking will be made.

(b) CONSIDERATION OF EFFECTS.—The Secretary of Transportation shall consider and report the potential consequences, in terms of the number of deaths and the number and severity of injuries, that may result from not meeting any such deadline.

SEC. 4161. GRANTS FOR IMPROVING CHILD PASSENGER SAFETY PROGRAMS.

(a) IN GENERAL.—Chapter 4 of title 23, United States Code, as amended by section 4111 of this Act, is amended by adding at the end the following:

''§ 413. Booster seat incentive grants

''(a) IN GENERAL.—The Secretary of Transportation shall make a grant under this section to any eligible State.

''(b) ELIGIBILITY REQUIREMENTS.—

''(1) IN GENERAL.—The Secretary shall make a grant to each State that, as determined by the Secretary, enacts or has enacted, and is enforcing a law requiring that children riding in passenger motor vehicles (as defined in section 405(d)(4)) who are too large to be secured in a child safety seat be secured in a child restraint (as defined in section 7(1) of Anton's Law (49 U.S.C. 30127 note)) that meets requirements prescribed by the Secretary under section 3 of Anton's Law.

''(2) YEAR IN WHICH FIRST ELIGIBLE.—

''(A) EARLY QUALIFICATION.—A State that has enacted a law described in paragraph (1) that is in effect before October 1, 2005, is first eligible to receive a grant under subsection (a) in fiscal year 2006.

''(B) SUBSEQUENT QUALIFICATION.—A State that enacts a law described in paragraph (1) that takes effect after September 30, 2005, is first eligible to receive a grant under subsection (a) in the first fiscal year beginning after the date on which the law is enacted.

''(3) CONTINUING ELIGIBILITY.—A State that is eligible under paragraph (1) to receive a grant may receive a grant during each fiscal year listed in subsection (f) in which it is eligible.

''(4) MAXIMUM NUMBER OF GRANTS.—A State may not receive more than 4 grants under this section.

''(c) GRANT AMOUNT.—Amounts available for grants under this section in any fiscal year shall be apportioned among the eligible States on the basis of population.

''(d) USE OF GRANT AMOUNTS.—

''(1) IN GENERAL.—Of the amounts received by a State under this section for any fiscal year—

''(A) 50 percent shall be used for the enforcement of, and education to promote public awareness of, State child passenger protection laws; and

''(B) 50 percent shall be used to fund programs that purchase and distribute child booster seats, child safety seats, and other appropriate passenger motor vehicle child restraints to indigent families without charge.

''(2) REPORT.—Within 60 days after the State fiscal year in which a State receives a grant under this section, the State shall transmit to the Secretary a report documenting the manner in which grant amounts were obligated or expended and identifying the specific programs supports by grant funds. The report shall be in a form prescribed by the Secretary and may be combined with other State grant reporting requirements under this chapter.

''(e) DEFINITION OF CHILD SAFETY SEAT.—The term 'child safety seat' means any device (except safety belts (as such term is defined in section 405(d)(5)), designed for use in a motor vehicle (as such term is defined in section 405(d)(1)) to restrain, seat, or position a child who weighs 50 pounds or less.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation, out of the Highway Trust Fund—

''(1) $18,000,000 for fiscal year 2006;

''(2) $20,000,000 for fiscal year 2007;

''(3) $25,000,000 for fiscal year 2008; and

''(4) $30,000,000 for fiscal year 2009.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 4 of title 23, United States Code, is amended by inserting after the item relating to section 411 the following:

''413. Booster seat incentive grants.''.

SEC. 4162. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Transportation to carry out this subtitle and chapter 301 (motor vehicle safety) of title 49, United States Code—

(1) $130,500,000 for fiscal year 2004;

(1) $133,500,000 for fiscal year 2005;

(1) $133,600,000 for fiscal year 2006;

(1) $134,500,000 for fiscal year 2007;

(1) $138,000,000 for fiscal year 2008; and

(1) $141,000,000 for fiscal year 2009.

Subtitle B—Motor Carrier Safety and Unified Carrier Registration

SEC. 4201. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED STATES CODE

(a) SHORT TITLE.—This title may be cited as the ''Motor Carrier Safety Reauthorization Act of 2004''.

(b) AMENDMENT OF TITLE 49, UNITED STATES CODE.—Except as otherwise specifically provided, whenever in this title an amendment is expressed in terms of an amendment to a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 4202. REQUIRED COMPLETION OF OVERDUE REPORTS, STUDIES, AND RULEMAKINGS.

(a) REQUIREMENT FOR COMPLETION.—By no later than 36 months after the date of enactment of this Act, the Secretary of Transportation shall complete all reports, studies, and rulemaking proceedings to issue regulations which Congress directed the Secretary

to complete in previous laws and which are not yet completed, including—

(1) Commercial Vehicle Driver Biometric Identifier, section 9105, Truck and Bus Safety and Regulatory Reform Act of 1988;

(2) General Transportation of HAZMAT, section 8(b), Hazardous Materials Transportation Uniform Safety Act of 1990;

(3) Nationally Uniform System of Permits for Interstate Motor Carrier Transport of HAZMAT, section 22, Hazardous Materials Transportation Uniform Safety Act of 1990;

(4) Training for Entry-Level Drivers of Commercial Motor Vehicles, section 4007 (a), Intermodal Surface Transportation Efficiency Act of 1991;

(5) Minimum Training Requirements for Operators and for Training Instructors of Multiple Trailer Combination Vehicles, section 4007(b)(2), Intermodal Surface Transportation Efficiency Act of 1991;

(6) Railroad-Highway Grade Crossing Safety, section 112, Hazardous Materials Transportation Authorization Act of 1994;

(7) Safety Performance History of New Drivers, section 114, Hazardous Materials Transportation Authorization Act of 1994;

(8) Motor Carrier Replacement Information and Registration System, section 103, ICC Termination Act of 1995;

(9) General Jurisdiction Over Freight Forwarder Service, section 13531, ICC Termination Act of 1995;

(10) Waivers, Exemptions, and Pilot Programs, section 4007, Transportation Equity Act for the Twenty-First Century;

(11) Safety Performance History of New Drivers, section 4014, Transportation Equity Act for the Twenty-First Century;

(12) Performance-based CDL Testing, section 4019, Transportation Equity Act for the Twenty-First Century;

(13) Improved Flow of Driver History Pilot Program, section 4022, Transportation Equity Act for the Twenty-First Century;

(14) Employee Protections, section 4023, Transportation Equity Act for the Twenty-First Century;

(15) Improved Interstate School Bus Safety, section 4024, Transportation Equity Act for the Twenty-First Century;

(16) Federal Motor Carrier Safety Administration 2010 Strategy, Sec. 104, Motor Carrier Safety Improvement Act of 1999;

(17) New Motor Carrier Entrant Requirements, section 210, Motor Carrier Safety Improvement Act of 1999;

(18) Certified Motor Carrier Safety Auditors, section 211, Motor Carrier Safety Improvement Act of 1999;

(19) Medical Certificate, section 215, Motor Carrier Safety Improvement Act of 1999;

(20) Report on Any Pilots Undertaken to Develop Innovative Methods of Improving Motor Carrier Compliance with Traffic Laws, section 220, Motor Carrier Safety Improvement Act of 1999;

(21) Status Report on the Implementation of Electronic Transmission of Data State-to-State on Convictions for All Motor Vehicle Control Law Violations for CDL Holders, section 221, Motor Carrier Safety Improvement Act of 1999;

(22) Assessment of Civil Penalties, section 222, Motor Carrier Safety Improvement Act of 1999;

(23) Truck Crash Causation Study, section 224, Motor Carrier Safety Improvement Act of 1999;

(24) Drug Test Results Study, section 226, Motor Carrier Safety Improvement Act of 1999.

(b) FINAL RULE REQUIRED.—Unless specifically permitted by law, rulemaking proceedings shall be considered completed for purposes of this section only when the Secretary has issued a final rule and the docket for the rulemaking proceeding is closed.

(c) SCHEDULE FOR COMPLETION.—No fewer than one-third of the reports, studies, and rulemaking proceedings in subsection (a) shall be completed every 12 months after the date of enactment of this Act. The Inspector General of the Department of Transportation shall make an annual determination as to whether this schedule has been met.

(d) FAILURE TO COMPLY.—If the Secretary fails to complete the required number of reports, studies, and rulemaking proceedings according to the schedule set forth in subsection (c) during any fiscal year, the Secretary shall allocate to the States $3,000,000 from the amount authorized by section 31104(i)(1) of title 49, United States Code, for administrative expenses of the Federal Motor Carrier Safety Administration to conduct additional compliance reviews under section 31102 of that title instead of obligating or expending such amount for those administrative expenses.

(e) AMENDMENTS TO THE LISTED REPORTS, STUDIES, AND RULEMAKING PROCEEDINGS.—In addition to completing the reports, studies and rulemaking proceedings listed in subsection (c), the Secretary shall—

(1) amend the Interim Final Rule addressing New Motor Carrier Entrant Requirements to require that a safety audit be immediately converted to a compliance review and appropriate enforcement actions be taken if the safety audit discloses acute safety violations by the new entrant; and

(2) eliminate a proposed provision in the rulemaking proceeding addressing Commercial Van Operations Transporting Nine to Fifteen Passengers which exempts commercial van operations that operate within a 75-mile radius.

(f) COMPLETION OF NEW RULEMAKING PROCEEDINGS.—Nothing in this section delays or changes the deadlines specified for new reports, studies, or rulemaking mandates contained in this title.

(g) REPORT OF OTHER AGENCY ACTIONS.—Within 12 months after the date of enactment of this Act, the Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and to the House Committee on Transportation and Infrastructure a report on the status of the following projects:

(1) Rescinding the current regulation which prohibits truck and bus drivers from viewing television and monitor screens while operating commercial vehicles.

(2) Incorporating Out-Of-Service Criteria regulations enforced by the Federal Motor Carrier Safety Administration.

(3) Revision of the safety fitness rating system of motor carriers.

(4) Amendment of Federal Motor Carrier Safety Administration rules of practice for conducting motor carrier administrative proceedings, investigations, disqualifications, and for issuing penalties.

(5) Requiring commercial drivers to have a sufficient functional speaking and reading comprehension of the English language.

(6) Inspection, repair and maintenance of intermodal container chassis and trailers.

SEC. 4203. CONTRACT AUTHORITY.

Authorizations from the Highway Trust Fund (other than the Mass Transit Account) to carry out this title shall be available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first. Approval by the Secretary of a grant with funds made available under this title 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.

PART 1—MOTOR CARRIER SAFETY

SEC. 4221. MINIMUM GUARANTEE.

There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) not less than 1.21 percent of the total amounts made available in any fiscal year from the Highway Trust Fund for purposes of this title.

SEC. 4222. AUTHORIZATION OF APPROPRIATIONS.

(a) ADMINISTRATIVE EXPENSES.—Section 31104 is amended by adding at the end the following:

''(i) ADMINISTRATIVE EXPENSES.—

''(1) There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for the Secretary of Transportation to pay administrative expenses of the Federal Motor Carrier Safety Administration—

''(A) $202,900,000 for fiscal year 2004;

''(B) $206,200,000 for fiscal year 2005;

''(C) $211,400,000 for fiscal year 2006;

''(D) $217,500,000 for fiscal year 2007;

''(E) $222,600,000 for fiscal year 2008; and

''(F) $228,500,000 for fiscal year 2009.

''(2) The funds authorized by this subsection shall be used for personnel costs; administrative infrastructure; rent; information technology; programs for research and technology, information management, regulatory development (including a medical review board and rules for medical examiners), performance and registration information system management, and outreach and education; other operating expenses and similar matters; and such other expenses as may from time to time become necessary to implement statutory mandates not funded from other sources.

''(3) From the funds authorized by this section, the Secretary shall ensure that compliance reviews are completed on the motor carriers that have demonstrated through performance data that they pose the highest safety risk. At a minimum, compliance reviews shall be conducted within 6 months after whenever a carrier is rated as category A or B.

''(4) The amounts made available under this section shall remain available until expended.

''(5) Of the funds authorized by paragraph (1), $6,750,000 in each of fiscal years 2004 through 2009 shall be used to carry out the medical program under section 31149.''.

(b) AMENDMENT TO APPORTIONMENT PROVISION OF TITLE 23.—Section 104(a) of title 23, United States Code, is amended—

(1) by striking ''exceed—'' and so much of subparagraph (A) as precedes clause (i) and inserting ''exceed 1⅙ percent of all sums so made available, as the Secretary determines necessary—'';

(2) by redesignating clause (i) and (ii) of subparagraph (A) as subparagraphs (A) and (B), and indenting such clauses, as so redesignated, 2 em spaces; and

(3) by striking ''system; and'' in subparagraph (B) as so redesignated, and all that follows through ''research.'' and inserting ''system.''.

(c) GRANT PROGRAMS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for the following Federal Motor Carrier Safety Administration programs:

(1) Border enforcement grants under section 31107 of title 49, United States Code—

(A) $ 32,000,000 for fiscal year 2004;

(B) $ 33,000,000 for fiscal year 2005;

(C) $ 33,000,000 for fiscal year 2006;

(D) $ 34,000,000 for fiscal year 2007;

(E) $ 35,000,000 for fiscal year 2008; and

(F) $ 36,000,000 for fiscal year 2009.

(2) Performance and registration information system management grant program under 31109 of title 49, United States Code—

(A) $4,000,000 for fiscal year 2004;
(B) $4,000,000 for fiscal year 2005;
(C) $4,000,000 for fiscal year 2006;
(D) $4,000,000 for fiscal year 2007;
(E) $4,000,000 for fiscal year 2008; and
(F) $4,000,000 for fiscal year 2009.

(3) Commercial driver's license and driver improvement program grants under section 31318 of title 49, United States Code—
(A) $22,000,000 for fiscal year 2004;
(B) $22,000,000 for fiscal year 2005;
(C) $23,000,000 for fiscal year 2006;
(D) $23,000,000 for fiscal year 2007;
(E) $24,000,000 for fiscal year 2008; and
(F) $25,000,000 for fiscal year 2009.

(4) Deployment of the Commercial Vehicle Informations Systems and Networks established under section 4241 of this title, $25,000,000 for each of fiscal years 2004 through 2009.

(d) MOTOR CARRIER SAFETY ACCOUNT.—Funds made available under subsection (c) shall be administered in the account established in the Treasury entitled ''Motor Carrier Safety 69-8055-0-7-401.

(e) PERIOD OF AVAILABILITY.—The amounts made available under subsection (c) of this section shall remain available until expended.

SEC. 4223. MOTOR CARRIER SAFETY GRANTS.

(a) MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.—

(1) Section 31102 is amended—

(A) by striking ''activities by fiscal year 2000;'' in subsection (b)(1)(A) and inserting ''activities for commercial motor vehicles of passengers and freight;'';

(B) by striking ''years before December 18, 1991;'' in subsection (b)(1)(E) and inserting ''years'';

(C) by striking ''and'' after the semicolon in subsection (b)(1)(S);

(D) by striking ''personnel.'' in subsection (b)(1)(T) and inserting ''personnel;'';

(E) adding at the end of subsection (b)(1) the following:

''(U) ensures that inspections of motor carriers of passengers are conducted at stations, terminals, border crossings, or maintenance facilities, except in the case of an imminent or obvious safety hazard;

''(V) provides that the State will include in the training manual for the licensing examination to drive a non-commercial motor vehicle and a commercial motor vehicle, information on best practices for driving safely in the vicinity of commercial motor vehicles and in the vicinity of non-commercial vehicles, respectively; and

''(W) provides that the State will enforce the registration requirements of section 13902 by suspending the operation of any vehicle discovered to be operating without registration or beyond the scope of its registration.''; and

(F) by striking subsection (c) and inserting the following:

''(c) USE OF GRANTS TO ENFORCE OTHER LAWS.—A State may use amounts received under a grant under subsection (a) of this section for the following activities:

''(1) If the activities are carried out in conjunction with an appropriate inspection of the commercial motor vehicle to enforce Government or State commercial motor vehicle safety regulations—

''(A) enforcement of commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at specific locations such as steep grades or mountainous terrains where the weight of a commercial motor vehicle can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States; and

''(B) detection of the unlawful presence of a controlled substance (as defined under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)) in a commercial motor vehicle or on the person of any occupant (including the operator) of the vehicle.

''(2) Documented enforcement of State traffic laws and regulations designed to promote the safe operation of commercial motor vehicles, including documented enforcement of such laws and regulations against non-commercial motor vehicles when necessary to promote the safe operation of commercial motor vehicles.''.

(2) Section 31103(b) is amended—

(1) by inserting ''(1)'' after ''ACTIVITIES.—''; and

(2) by adding at the end the following:

''(2) NEW ENTRANT MOTOR CARRIER AUDIT FUNDS.—From the amounts designated under section 31104(f)(4), the Secretary may allocate new entrant motor carrier audit funds to States and local governments without requiring a matching contribution from such States or local governments.''.

(3) Section 31104(a) is amended to read as follows:

''(a) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out section 31102:

''(1) Not more than $186,100,000 for fiscal year 2004.

''(2) Not more than $189,800,000 for fiscal year 2005.

''(3) Not more than $193,600,000 for fiscal year 2006.

''(4) Not more than $197,500,000 for fiscal year 2007.

''(5) Not more than $201,400,000 for fiscal year 2008.

''(6) Not more than $205,500,000 for fiscal year 2009.''.

(4) Section 31104(f) is amended by striking paragraph (2) and inserting the following:

''(2) HIGH-PRIORITY ACTIVITIES.—The Secretary may designate up to 5 percent of amounts available for allocation under paragraph (1) for States, local governments, and organizations representing government agencies or officials for carrying out high priority activities and projects that improve commercial motor vehicle safety and compliance with commercial motor vehicle safety regulations, including activities and projects that are national in scope, increase public awareness and education, or demonstrate new technologies. The amounts designated under this paragraph shall be allocated by the Secretary to State agencies, local governments, and organizations representing government agencies or officials that use and train qualified officers and employees in coordination with State motor vehicle safety agencies. At least 80 percent of the amounts designated under this paragraph shall be awarded to State agencies and local government agencies.

''(3) SAFETY-PERFORMANCE INCENTIVE PROGRAMS.—The Secretary may designate up to 10 percent of the amounts available for allocation under paragraph (1) for safety performance incentive programs for States. The Secretary shall establish safety performance criteria to be used to distribute incentive program funds. Such criteria shall include, at a minimum, reduction in the number and rate of fatal accidents involving commercial motor vehicles. Allocations under this paragraph do not require a matching contribution from a State.

''(4) NEW ENTRANT AUDITS.—The Secretary shall designate up to $29,000,000 of the amounts available for allocation under paragraph (1) for audits of new entrant motor carriers conducted pursuant to 31144(f). The Secretary may withhold such funds from a State or local government that is unable to use government employees to conduct new entrant motor carrier audits, and may instead utilize the funds to conduct audits in those jurisdictions.''.

(b) GRANTS TO STATES FOR BORDER ENFORCEMENT.—Section 31107 is amended to read as follows:

''§ 31107. Border enforcement grants

''(a) GENERAL AUTHORITY.—From the funds authorized by section 4222(c)(1) of the Motor Carrier Safety Reauthorization Act of 2004, the Secretary may make a grant in a fiscal year to a State that shares a border with another country for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

''(b) MAINTENANCE OF EXPENDITURES.—The Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of United States Government amounts, for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 State or Federal fiscal years before October 1, 2003.''.

(c) GRANTS TO STATES FOR COMMERCIAL DRIVER'S LICENSE IMPROVEMENTS.—Chapter 313 is amended by adding at the end the following:

''§ 31318. Grants for commercial driver's license program improvements

''(a) GENERAL AUTHORITY.—From the funds authorized by section 4222(c)(3) of the Motor Carrier Safety Reauthorization Act of 2004, the Secretary may make a grant to a State, except as otherwise provided in subsection (e), in a fiscal year to improve its implementation of the commercial driver's license program, providing the State is in substantial compliance with the requirements of section 31311 and this section. The Secretary shall establish criteria for the distribution of grants and notify the States annually of such criteria.

''(b) CONDITIONS.—Except as otherwise provided in subsection (e), a State may use a grant under this section only for expenses directly related to its commercial driver's license program, including, but not limited to, computer hardware and software, publications, testing, personnel, training, and quality control. The grant may not be used to rent, lease, or buy land or buildings. The Secretary shall give priority to grants that will be used to achieve compliance with the requirements of the Motor Carrier Safety Improvement Act. The Secretary may allocate the funds appropriated for such grants in a fiscal year among the eligible States whose applications for grants have been approved, under criteria established by the Secretary.

''(c) MAINTENANCE OF EXPENDITURES.—Except as otherwise provided in subsection (e), the Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of United States Government amounts, for the operation of the commercial driver's license program will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years before October 1, 2003.

''(d) GOVERNMENT SHARE.—Except as otherwise provided in subsection (e), the Secretary shall reimburse a State, from a grant made under this section, an amount that is not more than 80 percent of the costs incurred by the State in a fiscal year in implementing the commercial driver's license improvements described in subsection (b). In

determining those costs, the Secretary shall include in-kind contributions by the State.

''(e) HIGH-PRIORITY ACTIVITIES.—

''(1) The Secretary may make a grant to a State agency, local government, or organization representing government agencies or officials for the full cost of research, development, demonstration projects, public education, or other special activities and projects relating to commercial driver licensing and motor vehicle safety that are of benefit to all jurisdictions or designed to address national safety concerns and circumstances.

''(2) The Secretary may designate up to 10 percent of the amounts made available under section 4222(c)(3) of the Motor Carrier Safety Reauthorization Act of 2004 in a fiscal year for high-priority activities under subsection (e)(1).

''(f) EMERGING ISSUES.—The Secretary may designate up to 10 percent of the amounts made available under section 4222(c)(3) of the Motor Carrier Safety Reauthorization Act of 2004 in a fiscal year for allocation to a State agency, local government, or other person at the discretion of the Secretary to address emerging issues relating to commercial driver's license improvements.

''(g) APPORTIONMENT.—Except as otherwise provided in subsections (e) and (f), all amounts available in a fiscal year to carry out this section shall be apportioned to States according to a formula prescribed by the Secretary.

''(h) DEDUCTION FOR ADMINISTRATIVE EXPENSES.—On October 1 of each fiscal year or as soon after that date as practicable, the Secretary may deduct, from amounts made available under section 4222(c)(3) of the Motor Carrier Safety Reauthorization Act of 2004 for that fiscal year, up to 0.75 percent of those amounts for administrative expenses incurred in carrying out this section in that fiscal year.''.

(d) NONCOMPLIANCE WITH CDL REQUIREMENTS.—Section 31314 is amended by striking subsections (a) and (b) and inserting the following:

''(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 second 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.''.

(e) CONFORMING AMENDMENTS.—

(1) The chapter analysis for chapter 311 is amended—

(A) by striking the item relating to Subchapter I, and inserting the following:

''SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS'';

and

(B) by striking the item relating to section 31107, and inserting the following:

''31107. Border enforcement grants.''.

(2) Subchapter I of chapter 311 is amended by striking the subchapter heading and inserting the following:

''SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS''

(3) The chapter analysis for chapter 313 is amended by inserting the following after the item relating to section 31317:

''31318. Grants for commercial driver's license program improvements.''.

SEC. 4224. CDL WORKING GROUP.

(a) IN GENERAL.—The Secretary of Transportation shall convene a working group to study and address current impediments and foreseeable challenges to the commercial driver's license program's effectiveness and measures needed to realize the full safety potential of the commercial driver's license program. The working group shall address such issues as State enforcement practices, operational procedures to detect and deter fraud, needed improvements for seamless information sharing between States, effective methods for accurately sharing electronic data between States, updated technology, and timely notification from judicial bodies concerning traffic and criminal convictions of commercial driver's license holders.

(b) MEMBERSHIP.—Members of the working group should include State motor vehicle administrators, organizations representing government agencies or officials, members of the Judicial Conference, representatives of the trucking industry, representatives of labor organizations, safety advocates, and other significant stakeholders.

(c) REPORT.—Within 2 years after the date of enactment of this Act, the Secretary, on behalf of the working group, shall complete a report of the working group's findings and recommendations for legislative, regulatory, and enforcement changes to improve the commercial driver's license program. The Secretary shall promptly transmit the report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(d) FUNDING.—From the funds authorized by section 4222(c)(3) of this title, $200,000 shall be made available for each of fiscal years 2004 and 2005 to carry out this section.

SEC. 4225. CDL LEARNER'S PERMIT PROGRAM.

(a) IN GENERAL.—Chapter 313 is amended—

(1) by striking ''time.'' in section 31302 and inserting ''license, and may have only 1 learner's permit at any time.'';

(2) by inserting ''and learners' permits'' after ''licenses'' the first place it appears in section 31308;

(3) by striking ''licenses.'' in section 31308 and inserting ''licenses and permits.'';

(4) by redesignating paragraphs (2) and (3) of section 31308 as paragraphs (3) and (4), respectively, and inserting after paragraph (1) the following:

''(2) before a commercial driver's license learner's permit can be issued to an individual, the individual must pass a written test on the operation of a commercial motor vehicle that complies with the minimum standards prescribed by the Secretary under section 31305(a) of this title;'';

(5) by inserting ''or learner's permit'' after ''license'' each place it appears in paragraphs (3) and (4), as redesignated, of section 31308; and

(6) by inserting ''or learner's permit'' after ''license'' each place it appears in section 31309(b).

(b) CONFORMING AMENDMENTS.—

(1) Section 31302 is amended by inserting ''**and learner's permits**'' in the section caption.

(2) Sections 31308 and 31309 are each amended by inserting ''**and learner's permit**'' after ''**license**'' in the section captions.

(3) The chapter analysis for chapter 313 is amended by striking the item relating to section 31302 and inserting the following:

''31302. Limitation on the number of driver's licenses and learner's permits''.

(4) The chapter analysis for chapter 313 is amended by striking the items relating to sections 31308 and 31309 and inserting the following:

''31308. Commercial driver's license and learner's permit

''31309. Commercial driver's license and learner's permit information system''.

SEC. 4226. HOBBS ACT.

(a) Section 2342(3)(A) of title 28, United States Code, is amended to read as follows:

''(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 of title 49 or pursuant to subchapter III of chapter 311, chapter 313, and chapter 315 of Part B of subtitle VI of title 49; and''.

(b) Section 351(a) is amended to read as follows:

''(a) JUDICIAL REVIEW.—An action of the Secretary of Transportation in carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89–670; 80 Stat. 931), or an action of the Administrator of the Federal Railroad Administration, Federal Motor Carrier Safety Administration, or the Federal Aviation Administration in carrying out a duty or power specifically assigned to the Administrator by that Act, may be reviewed judicially to the same extent and in the same way as if the action had been an action by the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer or assignment.''.

(c) Section 352 is amended to read as follows:

''§ 352. Authority to carry out certain transferred duties and powers

''In carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89–670; 80 Stat. 931), the Secretary of Transportation and the Administrators of the Federal Railroad Administration, the Federal Motor Carrier Safety Administration, and the Federal Aviation Administration have the same authority that was vested in the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer. An action of the Secretary or Administrator in carrying out the duty or power has the same effect as when carried out by the department, agency, or instrumentality.''.

SEC. 4227. PENALTY FOR DENIAL OF ACCESS TO RECORDS.

Section 521(b)(2) is amended by adding at the end the following:

''(E) COPYING OF RECORDS AND ACCESS TO EQUIPMENT, LANDS, AND BUILDINGS.—A motor carrier subject to chapter 51 of subtitle III, a motor carrier, broker, or freight forwarder subject to part B of subtitle IV, or the owner or operator of a commercial motor vehicle subject to part B of subtitle VI of this title who fails to allow the Secretary, or an employee designated by the Secretary, promptly upon demand to inspect and copy any record or inspect and examine equipment, lands, buildings and other property in accordance with sections 504(c), 5121(c), and 14122(b) of this title shall be liable to the United States for a civil penalty not to exceed $500 for each offense, and each day the Secretary is denied the right to inspect and copy any record or inspect and examine equipment, lands, buildings and other property shall constitute a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed $5,000. It shall be a defense to such penalty that the records did not exist at the time of the Secretary's request or could not be timely produced without unreasonable expense or effort. Nothing herein amends or supersedes

any remedy available to the Secretary under sections 502(d), 507(c), or other provision of this title.''.

SEC. 4228. MEDICAL PROGRAM.

(a) IN GENERAL.—Subchapter III of chapter 311 is amended by adding at the end the following:

''§ 31149. Medical program

''(a) MEDICAL REVIEW BOARD.—

''(1) ESTABLISHMENT AND FUNCTION.—The Secretary of Transportation shall establish a Medical Review Board to serve as an advisory committee to provide the Federal Motor Carrier Safety Administration with medical advice and recommendations on driver qualification medical standards and guidelines, medical examiner education, and medical research.

''(2) COMPOSITION.—The Medical Review Board shall be appointed by the Secretary and shall consist of 5 members selected from medical institutions and private practice. The membership shall reflect expertise in a variety of specialties relevant to the functions of the Federal Motor Carrier Safety Administration.

''(b) CHIEF MEDICAL EXAMINER.—The Secretary shall appoint a chief medical examiner for the Federal Motor Carrier Safety Administration.

''(c) MEDICAL STANDARDS AND REQUIREMENTS.—The Secretary, with the advice of the Medical Review Board and the chief medical examiner, shall—

''(1) establish, review, and revise—

''(A) medical standards for applicants for and holders of commercial driver's licenses that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely;

''(B) requirements for periodic physical examinations of such operators performed by medical examiners who have received training in physical and medical examination standards and are listed on a national registry maintained by the Department of Transportation; and

''(C) requirements for notification of the chief medical examiner if such an applicant or holder—

''(i) fails to meet the applicable standards; or

''(ii) is found to have a physical or mental disability or impairment that would interfere with the individual's ability to operate a commercial motor vehicle safely;

''(2) require each holder of a commercial driver's license or learner's permit to have a current valid medical certificate;

''(3) issue such certificates to such holders and applicants who are found, upon examination, to be physically qualified to operate a commercial motor vehicle and to meet applicable medical standards; and

''(4) develop, as appropriate, specific courses and materials for medical examiners listed in the national registry established under this section, and require those medical examiners to complete specific training, including refresher courses, to be listed in the registry.

''(d) NATIONAL REGISTRY OF MEDICAL EXAMINERS.—The Secretary, through the Federal Motor Carrier Safety Administration—

''(1) shall establish and maintain a current national registry of medical examiners who are qualified to perform examination, testing, inspection, and issuance of a medical certificate;

''(2) shall delegate to those examiners the authority to issue such certificates if the Medical Review Board develops a system to identify the medical examination forms uniquely and track them; and

''(3) shall remove from the registry the name of any medical examiner that fails to meet the qualifications established by the Secretary for being listed in the registry.

''(e) CONSULTATION AND COOPERATION WITH FAA.—

''(1) IN GENERAL.—The Administrator of the Federal Motor Carrier Safety Administration shall consult the Administrator of the Federal Aviation Administration with respect to examinations, the issuance of certificates, standards, and procedures under this section in order to take advantage of such aspects of the Federal Aviation Administration's airman certificate program under chapter 447 of this title as the Administrator deems appropriate for carrying out this section.

''(2) USE OF FAA-QUALIFIED EXAMINERS.—The Administrator of the Federal Motor Carrier Safety Administration and the Administrator of the Federal Aviation Administration are authorized and encouraged to execute a memorandum of understanding under which individuals holding or applying for a commercial driver's license or learner's permit may be examined, for purposes of this section, by medical examiners who are qualified to administer medical examinations for airman certificates under chapter 447 of this title and the regulations thereunder—

''(A) until the national registry required by subsection (d) is fully established; and

''(B) to the extent that the Administrators determine appropriate, after that registry is established.

''(f) REGULATIONS.—The Secretary is authorized to promulgate such regulations as may be necessary to carry out this section.''.

(b) MEDICAL EXAMINERS.—Section 31136(a)(3) is amended to read as follows:

''(3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely, and the periodic physical examinations required of such operators are performed by medical examiners who have received training in physical and medical examination standards and are listed on a national registry maintained by the Department of Transportation; and''.

(c) DEFINITION OF MEDICAL EXAMINER.—Section 31132 is amended—

(1) by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively; and

(2) by inserting after paragraph (5) the following:

''(6) 'medical examiner' means an individual licensed, certified, or registered in accordance with regulations issued by the Federal Motor Carrier Safety Administration as a medical examiner.''.

(e) CONFORMING AMENDMENT.—The chapter analysis for chapter 311 is amended by inserting after the item relating to section 31148 the following:

''31149. Medical program''.

(f) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 1 year after the date of enactment of this Act.

SEC. 4229. OPERATION OF COMMERCIAL MOTOR VEHICLES BY INDIVIDUALS WHO USE INSULIN TO TREAT DIABETES MELLITUS.

(a) REVISION OF FINAL RULE.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall revise the final rule to allow individuals who use insulin to treat their diabetes to operate commercial motor vehicles in interstate commerce. The revised final rule shall provide for the individual assessment of applicants who use insulin to treat their diabetes and who are, except for their use of insulin, otherwise qualified under the Federal Motor Carrier Safety Regulations. The revised final rule shall be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305 note) and shall conclude the rulemaking process in the Federal Motor Carrier Safety Administration docket relating to qualifications of drivers with diabetes.

(b) NO HISTORY OF DRIVING WHILE USING INSULIN REQUIRED FOR QUALIFICATION.—The Secretary may not require individuals to have experience operating commercial motor vehicles while using insulin in order to qualify to operate a commercial motor vehicle in interstate commerce.

(c) HISTORY OF DIABETES CONTROL.—The Secretary may require an individual to have used insulin for a minimum period of time and demonstrated stable control of diabetes in order to qualify to operate a commercial motor vehicle in interstate commerce. Any such requirement, including any requirement with respect to the duration of such insulin use, shall be consistent with the findings of the expert medical panel reported in July 2000 in ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate Commercial Motor Vehicles in Interstate Commerce as Directed by the Transportation Equity Act for the 21st Century''.

(d) APPLICABLE STANDARD.—The Secretary shall ensure that individuals who use insulin to treat their diabetes are not held to a higher standard than other qualified commercial drivers, except to the extent that limited operating, monitoring, or medical requirements are deemed medically necessary by experts in the field of diabetes medicine.

SEC. 4230. FINANCIAL RESPONSIBILITY FOR PRIVATE MOTOR CARRIERS.

(a) TRANSPORTATION OF PASSENGERS.—

(1) Section 31138(a) is amended to read as follows:

''(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability and property damage for the transportation of passengers by motor vehicle in the United States between a place in a State and—

''(1) a place in another State;

''(2) another place in the same State through a place outside of that State; or

''(3) a place outside the United States.''.

(2) Section 31138(c) is amended by adding at the end the following:

''(4) The Secretary may require a person, other than a motor carrier as defined in section 13102(12) of this title, transporting passengers by motor vehicle to file with the Secretary the evidence of financial responsibility specified in subsection (c)(1) of this section in an amount not less than that required by this section, and the laws of the State or States in which the person is operating, to the extent applicable. The extent of the financial responsibility must be sufficient to pay, not more than the amount of the financial responsibility, for each final judgment against the person for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles, or for loss or damage to property, or both.''.

(b) TRANSPORTATION OF PROPERTY.—Section 31139 is amended—

(1) by striking so much of subsection (b) as precedes paragraph (2) and inserting the following:

''(b) GENERAL REQUIREMENTS AND MINIMUM AMOUNT.—

''(1) The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and environmental restoration for

the transportation of property by motor vehicle in the United States between a place in a State and—

''(A) a place in another State;

''(B) another place in the same State through a place outside of that State; or

''(C) a place outside the United States.'';

(2) by aligning the left margin of paragraph (2) of subsection (b) with the left margin of paragraph (1) of that subsection (as amended by paragraph (1) of this subsection); and

(3) by redesignating subsection (c) through (g) as subsections (d) through (h), respectively, and inserting after subsection (b) the following:

''(c) FILING OF EVIDENCE OF FINANCIAL RESPONSIBILITY.—The Secretary may require a motor private carrier, as defined in section 13102 of this title, to file with the Secretary the evidence of financial responsibility specified in subsection (b) of this section in an amount not less than that required by this section, and the laws of the State or States in which the motor private carrier is operating, to the extent applicable. The amount of the financial responsibility must be sufficient to pay, not more than the amount of the financial responsibility, for each final judgment against the motor private carrier for bodily injury to, or death of, an individual resulting from negligent operation, maintenance, or use of motor vehicles, or for loss or damage to property, or both.''.

SEC. 4231. INCREASED PENALTIES FOR OUT-OF-SERVICE VIOLATIONS AND FALSE RECORDS.

(a) Section 521(b)(2)(B) is amended to read as follows:

''(B) RECORDKEEPING AND REPORTING VIOLATIONS.—A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under section 504 of this title or under any regulation issued by the Secretary pursuant to subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title about transportation by motor carrier, motor carrier of migrant workers, or motor private carrier, or an officer, agent, or employee of that person—

''(i) who does not make that report, does not specifically, completely, and truthfully answer that question in 30 days from the date the Secretary requires the question to be answered, or does not make, prepare, or preserve that record in the form and manner prescribed by the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed $1,000 for each offense, and each day of the violation shall constitute a separate offense, except that the total of all civil penalties assessed against any violator for all offenses related to any single violation shall not exceed $10,000; or

''(ii) who knowingly falsifies, destroys, mutilates, or changes a required report or record, knowingly files a false report with the Secretary, knowingly makes or causes or permits to be made a false or incomplete entry in that record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation or order of the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each violation, if any such action can be shown to have misrepresented a fact that constitutes a violation other than a reporting or recordkeeping violation.''.

(b) Section 31310(i)(2) is amended to read as follows:

''(2) The Secretary shall prescribe regulations establishing sanctions and penalties related to violations of out-of-service orders by individuals operating commercial motor vehicles. The regulations shall require at least that—

''(A) an operator of a commercial motor vehicle found to have committed a first violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 180 days and liable for a civil penalty of at least $2,500;

''(B) an operator of a commercial motor vehicle found to have committed a second violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 2 years and not more than 5 years and liable for a civil penalty of at least $5,000;

''(C) an employer that knowingly allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall be liable for a civil penalty of not more than $25,000; and

''(D) an employer that knowingly and willfully allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall, upon conviction, be subject for each offense to imprisonment for a term not to exceed 1 year or a fine under title 18, United States Code, or both.''.

SEC. 4232. ELIMINATION OF COMMODITY AND SERVICE EXEMPTIONS.

(a) Section 13506(a) is amended—

(1) by striking paragraphs (6), (11), (12), (13), and (15);

(2) by redesignating paragraphs (7), (8), (9), (10), and (14) as paragraphs (6), (7), (8), (9) and (10), respectively;

(3) by inserting ''or'' after the semicolon in paragraph (9), as redesignated; and

(4) striking ''13904(d); or'' in paragraph (1), as redesignated, and inserting ''14904(d).''.

(b) Section 13507 is amended by striking ''(6), (8), (11), (12), or (13)'' and inserting ''(6)''.

SEC. 4233. INTRASTATE OPERATIONS OF INTERSTATE MOTOR CARRIERS.

(a) Subsection (a) of section 31144 is amended to read as follows:

''(a) IN GENERAL.—The Secretary shall—

''(1) determine whether an owner or operator is fit to operate safely commercial motor vehicles, utilizing among other things the accident record of an owner or operator operating in interstate commerce and the accident record and safety inspection record of such owner or operator in operations that affect interstate commerce;

''(2) periodically update such safety fitness determinations;

''(3) make such final safety fitness determinations readily available to the public; and

''(4) prescribe by regulation penalties for violations of this section consistent with section 521.''.

(b) Subsection (c) of section 31144 is amended by adding at the end the following:

''(5) TRANSPORTATION AFFECTING INTERSTATE COMMERCE.—Owners or operators of commercial motor vehicles prohibited from operating in interstate commerce pursuant to paragraphs (1) through (3) of this section may not operate any commercial motor vehicle that affects interstate commerce until the Secretary determines that such owner or operator is fit.''.

(c) Section 31144 is amended by redesignating subsections (d), (e), and the second subsection (c) as subsections (e), (f), and (g), respectively, and inserting after subsection (c) the following:

''(d) DETERMINATION OF UNFITNESS BY A STATE.—If a State that receives Motor Carrier Safety Assistance Program funds pursuant to section 31102 of this title determines, by applying the standards prescribed by the Secretary under subsection (b) of this section, that an owner or operator of commercial motor vehicles that has its principal place of business in that State and operates in intrastate commerce is unfit under such standards and prohibits the owner or operator from operating such vehicles in the State, the Secretary shall prohibit the owner or operator from operating such vehicles in interstate commerce until the State determines that the owner or operator is fit.''.

SEC. 4234. AUTHORITY TO STOP COMMERCIAL MOTOR VEHICLES.

(a) IN GENERAL.—Chapter 2 of title 18, United States Code, is amended by adding at the end the following:

''§ 38. Commercial motor vehicles required to stop for inspections

''(a) A driver of a commercial motor vehicle, as defined in section 31132(1) of title 49, shall stop and submit to inspection of the vehicle, driver, cargo, and required records when directed to do so by an authorized employee of the Federal Motor Carrier Safety Administration, Department of Transportation, at or in the vicinity of an inspection site. The driver shall not leave the inspection site until authorized to do so by an authorized employee.

''(b) A driver of a commercial motor vehicle, as defined in subsection (a), who knowingly fails to stop for inspection when directed to do so by an authorized employee of the Federal Motor Carrier Safety Administration at or in the vicinity of an inspection site, or leaves the inspection site without authorization, shall be fined under this title or imprisoned not more than 1 year, or both.''.

(b) AUTHORITY OF FMCSA.—Chapter 203 of title 18, United States Code, is amended by adding at the end the following:

''§ 3064. Powers of Federal Motor Carrier Safety Administration

''Authorized employees of the Federal Motor Carrier Safety Administration may direct a driver of a commercial motor vehicle, as defined in 49 U.S.C. 31132(1), to stop for inspection of the vehicle, driver, cargo, and required records at or in the vicinity of an inspection site.''.

(c) CONFORMING AMENDMENTS.—

(1) The chapter analysis for chapter 2 of title 18, United States Code, is amended by inserting after the item relating to section 37 the following:

''38. Commercial motor vehicles required to stop for inspections.''.

(2) The chapter analysis for chapter 203 of title 18, United States Code, is amended by inserting after the item relating to section 3063 the following:

''3064. Powers of Federal Motor Carrier Safety Administration.''.

SEC. 4235. REVOCATION OF OPERATING AUTHORITY.

Section 13905(e) is amended—

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

''(1) PROTECTION OF SAFETY.—Notwithstanding subchapter II of chapter 5 of title 5, the Secretary—

''(A) may suspend the registration of a motor carrier, a freight forwarder, or a broker for failure to comply with requirements of the Secretary pursuant to section 13904(c) or 13906 of this title, or an order or regulation of the Secretary prescribed under those sections; and

''(B) shall revoke the registration of a motor carrier that has been prohibited from operating in interstate commerce for failure to comply with the safety fitness requirements of section 31144 of this title.'';

(2) by striking ''may suspend a registration''in paragraph (2) and inserting ''shall revoke the registration''; and

(3) by striking paragraph (3) and inserting the following:

''(3) NOTICE; PERIOD OF SUSPENSION.—The Secretary may suspend or revoke under this

subsection the registration only after giving notice of the suspension or revocation to the registrant. A suspension remains in effect until the registrant complies with the applicable sections or, in the case of a suspension under paragraph (2), until the Secretary revokes the suspension.''.

SEC. 4236. PATTERN OF SAFETY VIOLATIONS BY MOTOR CARRIER MANAGEMENT.

(a) IN GENERAL.—Section 31135 is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''Each''; and

(2) by adding at the end the following:

''(b) PATTERN OF NON-COMPLIANCE.—If an officer of a motor carrier engages in a pattern or practice of avoiding compliance, or masking or otherwise concealing non-compliance, with regulations on commercial motor vehicle safety prescribed under this subchapter, the Secretary may suspend, amend, or revoke any part of the motor carrier's registration under section 13905 of this title.

''(c) LIST OF PROPOSED OFFICERS.—Each person seeking registration as a motor carrier under section 13902 of this title shall submit a list of the proposed officers of the motor carrier. 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 non-compliance, with regulations on commercial motor vehicle safety prescribed under this chapter, the Secretary may deny the person's application for registration as a motor carrier under section 13902(a)(3).

''(d) REGULATIONS.—The Secretary shall by regulation establish standards to implement subsections (b) and (c).

''(e) DEFINITIONS.—In this section:

''(1) MOTOR CARRIER.—The term motor carrier has the meaning given the term in section 13102(12) of this title; and

''(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.''.

(b) REGISTRATION OF CARRIERS.—Section 13902(a)(1)(B) is amended to read as follows:

''(B) any safety regulations imposed by the Secretary, the duties of employers and employees established by the Secretary under section 31135, and the safety fitness requirements established by the Secretary under section 31144; and''.

SEC. 4237. MOTOR CARRIER RESEARCH AND TECHNOLOGY PROGRAM.

(a) IN GENERAL—Section 31108 is amended to read as follows:

''§ 31108. Motor carrier research and technology program

''(a) RESEARCH, TECHNOLOGY, AND TECHNOLOGY TRANSFER ACTIVITIES.—

''(1) The Secretary of Transportation shall establish and carry out a motor carrier and motor coach research and technology program. The Secretary may carry out research, development, technology, and technology transfer activities with respect to—

''(A) the causes of accidents, injuries and fatalities involving commercial motor vehicles; and

''(B) means of reducing the number and severity of accidents, injuries and fatalities involving commercial motor vehicles.

''(2) The Secretary may test, develop, or assist in testing and developing any material, invention, patented article, or process related to the research and technology program.

''(3) The Secretary may use the funds appropriated to carry out this section for training or education of commercial motor vehicle safety personnel, including, but not limited to, training in accident reconstruction and detection of controlled substances or other contraband, and stolen cargo or vehicles.

''(4) The Secretary may carry out this section—

''(A) independently;

''(B) in cooperation with other Federal departments, agencies, and instrumentalities and Federal laboratories; or

''(C) by making grants to, or entering into contracts, cooperative agreements, and other transactions with, any Federal laboratory, State agency, authority, association, institution, for-profit or non-profit corporation, organization, foreign country, or person.

''(5) The Secretary shall use funds made available to carry out this section to develop, administer, communicate, and promote the use of products of research, technology, and technology transfer programs under this section.

''(b) COLLABORATIVE RESEARCH AND DEVELOPMENT.—

''(1) To advance innovative solutions to problems involving commercial motor vehicle and motor carrier safety, security, and efficiency, and to stimulate the deployment of emerging technology, the Secretary may carry out, on a cost-shared basis, collaborative research and development with—

''(A) non-Federal entities, including State and local governments, foreign governments, colleges and universities, corporations, institutions, partnerships, and sole proprietorships that are incorporated or established under the laws of any State; and

''(B) Federal laboratories.

''(2) In carrying out this subsection, the Secretary may enter into cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)).

''(3)(A) The Federal share of the cost of activities carried out under a cooperative research and development agreement entered into under this subsection shall not exceed 50 percent, except that if there is substantial public interest or benefit, the Secretary may approve a greater Federal share.

''(B) All costs directly incurred by the non-Federal partners, including personnel, travel, and hardware or software development costs, shall be credited toward the non-Federal share of the cost of the activities described in subparagraph (A).

''(4) The research, development, or use of a technology under a cooperative research and development agreement entered into under this subsection, including the terms under which the technology may be licensed and the resulting royalties may be distributed, shall be subject to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

''(5) Section 5 of title 41, United States Code, shall not apply to a contract or agreement entered into under this section.

''(c) AVAILABILITY OF AMOUNTS.—The amounts made available under section 4222(a) of the Motor Carrier Safety Reauthorization Act of 2004 to carry out this section shall remain available until expended.

''(d) CONTRACT AUTHORITY.—Approval by the Secretary of a grant with funds made available under section 4222(a) of the Motor Carrier Safety Reauthorization Act of 2004 to carry out this section imposes upon the United States Government a contractual obligation for payment of the Government's share of costs incurred in carrying out the objectives of the grant.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 311 is amended by striking the item relating to section 31108, and inserting the following:

''31108. Motor carrier research and technology program.''.

SEC. 4238. REVIEW OF COMMERCIAL ZONE EXEMPTION PROVISION.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall complete a review of part 372 of title 49, Code of Federal Regulations, as it pertains to commercial zone exemptions (excluding border commercial zones) from Department of Transportation and Surface Transportation Board regulations governing interstate commerce. The Secretary shall determine whether such exemptions should continue to apply as written, should undergo revision, or should be revoked. The Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report of the review not later than 14 months after such date of enactment.

(b) NOTICE.—The Secretary shall publish notice of the review required by subsection (a) and provide and opportunity for the public to submit comments on the effect of continuing, revising, or revoking the commercial zone exemptions in part 372 of title 49, Code of Federal Regulations.

SEC. 4239. INTERNATIONAL COOPERATION.

(a) IN GENERAL.—Chapter 311 is amended by inserting at the end the following:

''SUBCHAPTER IV—MISCELLANEOUS

''§ 31161. International cooperation

''The Secretary is authorized to use funds appropriated under section 31104(i) of this title to participate and cooperate in international activities to enhance motor carrier, commercial motor vehicle, driver, and highway safety by such means as exchanging information, conducting research, and examining needs, best practices, and new technology.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 311 is amended by adding at the end the following:

''SUBCHAPTER IV—MISCELLANEOUS

''31161. International cooperation.''.

SEC. 4240. PERFORMANCE AND REGISTRATION INFORMATION SYSTEM MANAGEMENT.

(a) IN GENERAL.—Section 31106(b) is amended—

(1) by striking paragraphs (2) and (3) and inserting the following:

''(2) DESIGN.—The program shall link Federal motor carrier safety information systems with State commercial vehicle registration and licensing systems and shall be designed to enable a State to—

''(A) determine the safety fitness of a motor carrier or registrant when licensing or registering the registrant or motor carrier or while the license or registration is in effect; and

''(B) deny, suspend, or revoke the commercial motor vehicle registrations of a motor carrier or registrant that has been issued an operations out-of-service order by the Secretary.

''(3) CONDITIONS FOR PARTICIPATION.—The Secretary shall require States, as a condition of participation in the program, to—

''(A) comply with the uniform policies, procedures, and technical and operational standards prescribed by the Secretary under subsection (a)(4);

''(B) possess the authority to impose sanctions relating to commercial motor vehicle registration on the basis of a Federal safety fitness determination; and

''(C) cancel the motor vehicle registration and seize the registration plates of an employer found liable under section

31310(i)(2)(C) of this title for knowingly allowing or requiring an employee to operate a commercial motor vehicle in violation of an out-of-service order.''; and

(2) by striking paragraph (4).

(b) PERFORMANCE AND REGISTRATION INFORMATION SYSTEM MANAGEMENT GRANTS.—

(1) Subchapter I of chapter 311, as amended by this title, is further amended by adding at the end the following:

''§ 31109. Performance and Registration Information System Management

''(a) IN GENERAL.—From the funds authorized by section 4222(c)(2) of the Motor Carrier Safety Reauthorization Act of 2004, the Secretary may make a grant in a fiscal year to a State to implement the performance and registration information system management requirements of section 31106(b).

''(b) AVAILABILITY OF AMOUNTS.—Amounts made available to a State under section 4222(c)(2) of the Motor Carrier Safety Reauthorization Act of 2004 to carry out this section shall remain available until expended.

''(c) SECRETARY'S APPROVAL.—Approval by the Secretary of a grant to a State under section 4222(c)(2) of the Motor Carrier Safety Reauthorization Act of 2004 to carry out this section is a contractual obligation of the Government for payment of the amount of the grant.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 311 is amended by inserting after the item relating to section 31108 the following:

''31109. Performance and Registration Information System Management.''.

SEC. 4241. COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS DEPLOYMENT.

(a) IN GENERAL.—The Secretary shall carry out a commercial vehicle information systems and networks program to—

(1) improve the safety and productivity of commercial vehicles; and

(2) reduce costs associated with commercial vehicle operations and Federal and State commercial vehicle regulatory requirements.

(b) PURPOSE.—The program shall advance the technological capability and promote the deployment of intelligent transportation system applications for commercial vehicle operations, including commercial vehicle, commercial driver, and carrier-specific information systems and networks.

(c) CORE DEPLOYMENT GRANTS.—

(1) IN GENERAL.—The Secretary shall make grants to eligible States for the core deployment of commercial vehicle information systems and networks.

(2) ELIGIBILITY.—To be eligible for a core deployment grant under this section, a State—

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

(B) shall certify to the Secretary that its commercial vehicle information systems and networks deployment activities, including hardware procurement, software and system development, and infrastructure modifications, are consistent with the national intelligent transportation systems and commercial vehicle information systems and networks architectures and available standards, and promote interoperability and efficiency to the extent practicable; and

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

(3) AMOUNT OF GRANTS.—The maximum aggregate amount a State may receive under this section for the core deployment of commercial vehicle information systems and networks may not exceed $2,500,000.

(4) USE OF FUNDS.—Funds from a grant under this subsection may only be used for the core deployment of commercial vehicle information systems and networks. Eligible States that have either completed the core deployment of commercial vehicle information systems and networks or completed such deployment before core deployment grant funds are expended may use the remaining core deployment grant funds for the expanded deployment of commercial vehicle information systems and networks in their State.

(d) EXPANDED DEPLOYMENT GRANTS.—

(1) IN GENERAL.—For each fiscal year, from the funds remaining after the Secretary has made core deployment grants under subsection (c) of this section, the Secretary may make grants to each eligible State, upon request, for the expanded deployment of commercial vehicle information systems and networks.

(2) ELIGIBILITY.—Each State that has completed the core deployment of commercial vehicle information systems and networks is eligible for an expanded deployment grant.

(3) AMOUNT OF GRANTS.—Each fiscal year, the Secretary may distribute funds available for expanded deployment grants equally among the eligible States, but not to exceed $1,000,000 per State.

(4) USE OF FUNDS.—A State may use funds from a grant under this subsection only for the expanded deployment of commercial vehicle information systems and networks.

(e) FEDERAL SHARE.—The Federal share of the cost of a project payable from funds made available to carry out this section shall not exceed 50 percent. The total Federal share of the cost of a project payable from all eligible sources shall not exceed 80 percent.

(f) APPLICABILITY OF TITLE 23, UNITED STATES CODE.—Funds authorized to be appropriated under section 4222(c)(4) shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under chapter 1 of title 23, United States Code, except that such funds shall remain available until expended.

(g) DEFINITIONS.—In this section:

(1) COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS.—The term ''commercial vehicle information systems and networks'' means the information systems and communications networks that provide the capability to—

(A) improve the safety of commercial vehicle operations;

(B) increase the efficiency of regulatory inspection processes to reduce administrative burdens by advancing technology to facilitate inspections and increase the effectiveness of enforcement efforts;

(C) advance electronic processing of registration information, driver licensing information, fuel tax information, inspection and crash data, and other safety information;

(D) enhance the safe passage of commercial vehicles across the United States and across international borders; and

(E) promote the communication of information among the States and encourage multistate cooperation and corridor development.

(2) COMMERCIAL VEHICLE OPERATIONS.—The term ''commercial vehicle operations''—

(A) means motor carrier operations and motor vehicle regulatory activities associated with the commercial movement of goods, including hazardous materials, and passengers; and

(B) with respect to the public sector, includes the issuance of operating credentials, the administration of motor vehicle and fuel taxes, and roadside safety and border crossing inspection and regulatory compliance operations.

(3) CORE DEPLOYMENT.—The term ''core deployment'' means the deployment of systems in a State necessary to provide the State with the following capabilities:

(A) SAFETY INFORMATION EXCHANGE.—Safety information exchange to—

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

(ii) connect to the Safety and Fitness Electronic Records system for access to interstate carrier and commercial vehicle data, summaries of past safety performance, and commercial vehicle credentials information; and

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

(B) INTERSTATE CREDENTIALS ADMINISTRATION.—Interstate credentials administration to—

(i) perform end-to-end processing, including carrier application, jurisdiction application processing, and credential issuance, of at least the International Registration Plan and International Fuel Tax Agreement credentials and extend this processing to other credentials, including intrastate, titling, oversize/overweight, carrier registration, and hazardous materials;

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

(iii) have at least 10 percent of the transaction volume handled electronically, and have the capability to add more carriers and to extend to branch offices where applicable.

(C) ROADSIDE SCREENING.—Roadside electronic screening to electronically screen transponder-equipped commercial vehicles at a minimum of 1 fixed or mobile inspection sites and to replicate this screening at other sites.

(4) EXPANDED DEPLOYMENT.—The term ''expanded deployment'' means the deployment of systems in a State that exceed the requirements of an core deployment of commercial vehicle information systems and networks, improve safety and the productivity of commercial vehicle operations, and enhance transportation security.

SEC. 4242. OUTREACH AND EDUCATION.

(a) IN GENERAL.—The Secretary of Transportation, through the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration, may undertake outreach and education initiatives, including the ''Share the Road Safely'' program, that may reduce the number of highway accidents, injuries, and fatalities involving commercial motor vehicles. The Secretary may not use funds authorized by this part for the ''Safety Is Good Business'' program.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for fiscal year 2004 to carry out this section—

(1) $250,000 for the Federal Motor Carrier Safety Administration; and

(2) $750,000 for the National Highway Traffic Safety Administration.

SEC. 4243. OPERATION OF RESTRICTED PROPERTY-CARRYING UNITS ON NATIONAL HIGHWAY SYSTEM.

(a) RESTRICTED PROPERTY-CARRYING UNIT DEFINED.—Section 31111(a) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

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

''(3) RESTRICTED PROPERTY-CARRYING UNIT.—The term 'restricted property-carrying unit' means any trailer, semi-trailer, container, or other property-carrying unit that is longer than 53 feet.''.

(b) PROHIBITION ON OPERATION OF RESTRICTED PROPERTY-CARRYING UNITS.—

(1) IN GENERAL.—Section 31111(b)(1)(C) is amended to read as follows:

''(C) allows operation on any segment of the National Highway System, including the Interstate System, of a restricted property-carrying unit unless the operation is specified on the list published under subsection (h);''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect 270 days after the date of enactment of this subsection.

(c) LIMITATIONS.—Section 31111 is amended by adding at the end the following:

''(h) RESTRICTED PROPERTY-CARRYING UNITS.—

''(1) APPLICABILITY OF PROHIBITION.—

''(A) IN GENERAL.—Notwithstanding subsection (b)(1)(C), a restricted property-carrying unit may continue to operate on a segment of the National Highway System if the operation of such unit is specified on the list published under paragraph (2).

''(B) APPLICABILITY OF STATE LAWS AND REGULATIONS.—All operations specified on the list published under paragraph (2) shall continue to be subject to all State statutes, regulations, limitations and conditions, including routing-specific, commodity-specific, and configuration-specific designations and all other restrictions, in force on June 1, 2003.

''(C) FIRE-FIGHTING UNITS.—Subsection (b)(1)(C) shall not apply to the operation of a restricted property-carrying unit that is used exclusively for fire-fighting.

''(2) LISTING OF RESTRICTED PROPERTY-CARRYING UNITS.—

''(A) IN GENERAL.—Not later than 60 days after the date of enactment of this subsection, the Secretary shall initiate a proceeding to determine and publish a list of restricted property-carrying units that were authorized by State officials pursuant to State statute or regulation on June 1, 2003, and in actual and lawful operation on a regular or periodic basis (including seasonal operations) on or before June 1, 2003.

''(B) LIMITATION.—A restricted property-carrying unit may not be included on the list published under subparagraph (A) on the basis that a State law or regulation could have authorized the operation of the unit at some prior date by permit or otherwise.

''(C) PUBLICATION OF FINAL LIST.—Not later than 270 days after the date of enactment of this subsection, the Secretary shall publish a final list of restricted property-carrying units described in subparagraph (A).

''(D) UPDATES.—The Secretary shall update the list published under subparagraph (C) as necessary to reflect new designations made to the National Highway System.

''(3) APPLICABILITY OF PROHIBITION.—The prohibition established by subsection (b)(1)(C) shall apply to any new designation made to the National Highway System and remain in effect on those portions of the National Highway System that cease to be designated as part of the National Highway System.

''(4) LIMITATION ON STATUTORY CONSTRUCTION.—This subsection does not prevent a State from further restricting in any manner or prohibiting the operation of a restricted property-carrying unit; except that such restrictions or prohibitions shall be consistent with the requirements of this section and sections 31112 through 31114.''.

(d) ENFORCEMENT.—The second sentence of section 141(a) of title 23, United States Code, is amended by striking ''section 31112'' and inserting ''sections 31111 and 31112''.

SEC. 4244. OPERATION OF LONGER COMBINATION VEHICLES ON NATIONAL HIGHWAY SYSTEM.

(a) IN GENERAL.—Section 31112 is amended—

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

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

''(f) NATIONAL HIGHWAY SYSTEM.—

''(1) GENERAL RULE.—A State may not allow, on a segment of the National Highway System that is not covered under subsection (b) or (c), the operation of a commercial motor vehicle combination (except a vehicle or load that cannot be dismantled easily or divided easily and that has been issued a special permit under applicable State law) with more than 1 property-carrying unit (not including the truck tractor) whose property-carrying units are more than—

''(A) the maximum combination trailer, semitrailer, or other type of length limitation allowed by law or regulation of that State on June 1, 2003; or

''(B) the length of the property-carrying units of those commercial motor vehicle combinations, by specific configuration, in actual and lawful operation on a regular or periodic basis (including continuing seasonal operation) in that State on or before June 1, 2003.

''(2) ADDITIONAL LIMITATIONS.—

''(A) APPLICABILITY OF STATE RESTRICTIONS.—A commercial motor vehicle combination whose operation in a State is not prohibited under paragraph (1) may continue to operate in the State on highways described in paragraph (1) only in compliance with all State laws, regulations, limitations, and conditions, including routing-specific and configuration-specific designations and all other restrictions in force in the State on June 1, 2003. Subject to regulations prescribed by the Secretary under subsection (h), the State may make minor adjustments of a temporary and emergency nature to route designations and vehicle operating restrictions in effect on June 1, 2003, for specific safety purposes and road construction.

''(B) ADDITIONAL STATE RESTRICTIONS.—This subsection does not prevent a State from further restricting in any manner or prohibiting the operation of a commercial motor vehicle combination subject to this section, except that such restrictions or prohibitions shall be consistent with this section and sections 31113(a), 31113(b), and 31114.

''(C) MINOR ADJUSTMENTS.—A State making a minor adjustment of a temporary and emergency nature as authorized by subparagraph (A) or further restricting or prohibiting the operation of a commercial motor vehicle combination as authorized by subparagraph (B) shall advise the Secretary not later than 30 days after the action. The Secretary shall publish a notice of the action in the Federal Register.

''(3) LIST OF STATE LENGTH LIMITATIONS.—

''(A) STATE SUBMISSIONS.—Not later than 60 days after the date of enactment of the Motor Carrier Safety Reauthorization Act of 2004, each State shall submit to the Secretary for publication a complete list of State length limitations applicable to commercial motor vehicle combinations operating in the State on the highways described in paragraph (1). The list shall indicate the applicable State laws and regulations associated with the length limitations. If a State does not submit the information as required, the Secretary shall complete and file the information for the State.

''(B) PUBLICATION OF INTERIM LIST.—Not later than 90 days after the date of enactment of the Motor Carrier Safety Reauthorization Act of 2004, the Secretary shall publish an interim list in the Federal Register consisting of all information submitted under subparagraph (A). The Secretary shall review for accuracy all information submitted by a State under subparagraph (A) and shall solicit and consider public comment on the accuracy of the information.

''(C) LIMITATION.—A law or regulation may not be included on the list submitted by a State or published by the Secretary merely because it authorized, or could have authorized, by permit or otherwise, the operation of commercial motor vehicle combinations not in actual operation on a regular or periodic basis on or before June 1, 2003.

''(D) PUBLICATION OF FINAL LIST.—Except as revised under this subparagraph or subparagraph (E), the list shall be published as final in the Federal Register not later than 270 days after the date of enactment of the Motor Carrier Safety Reauthorization Act of 2004. In publishing the final list, the Secretary shall make any revisions necessary to correct inaccuracies identified under subparagraph (B). After publication of the final list, commercial motor vehicle combinations prohibited under paragraph (1) may not operate on a highway described in paragraph (1) except as published on the list.

''(E) INACCURACIES.—On the Secretary's own motion or on request by any person (including a State), the Secretary shall review the list published under subparagraph (D). If the Secretary decides there is reason to believe a mistake was made in the accuracy of the list, the Secretary shall begin a proceeding to decide whether a mistake was made. If the Secretary decides there was a mistake, the Secretary shall publish the correction.''.

(b) CONFORMING AMENDMENTS.—Section 31112 is amended—

(1) by inserting ''126(e) or'' before ''127(d)'' in subsection (g)(1) (as redesignated by subsection (a) of this section);

(2) by inserting ''(or June 1, 2003, with respect to highways described in subsection (f)(1))'' after ''June 2, 1991'' in subsection (g)(3) (as redesignated by subsection (a) of this section); and

(3) by striking ''Not later than June 15, 1992, the Secretary'' in subsection (h)(2) (as redesignated by subsection (a) of this section) and inserting ''The Secretary''; and

(4) by inserting ''or (f)'' in subsection (h)(2) (as redesignated by subsection (a) of this section) after ''subsection (d)''.

SEC. 4245. APPLICATION OF SAFETY STANDARDS TO CERTAIN FOREIGN MOTOR CARRIERS.

(a) APPLICATION OF SAFETY STANDARDS.—Section 30112 is amended—

(1) by striking ''person'' in subsection (a) and inserting ''person, including a foreign motor carrier,''; and

(2) by adding at the end the following:

''(c) DEFINITIONS.—In this section:

''(1) FOREIGN MOTOR CARRIER.—The term 'foreign motor carrier' has the meaning given that term in section 13102 of this title.

''(2) IMPORT.—The term 'import' means transport by any means into the United States, on a permanent or temporary basis, including the transportation of a motor vehicle into the United States for the purpose of providing the transportation of cargo or passengers.''.

(b) REQUIREMENT FOR CERTIFICATE OF COMPLIANCE.—Section 30115 is amended by adding at the end the following:

''(c) APPLICATION TO FOREIGN MOTOR CARRIERS.—

''(1) IN GENERAL.—The requirement for certification described in subsection (a) shall

apply to a foreign motor carrier that imports a motor vehicle or motor vehicle equipment into the United States. Such certification shall be made to the Secretary of Transportation prior to the import of the vehicle or equipment.

''(2) DEFINITIONS.—In this subsection:

''(A) FOREIGN MOTOR CARRIER.—The term 'foreign motor carrier' has the meaning given that term in section 13102 of this title.

''(B) IMPORT.—The term 'import' has the meaning given that term in section 30112 of this title.''.

(c) TIME FOR COMPLIANCE.—The amendments made by sections (a) and (b) shall take effect on September 1, 2004.

SEC. 4246. BACKGROUND CHECKS FOR MEXICAN AND CANADIAN DRIVERS HAULING HAZARDOUS MATERIALS.

(a) IN GENERAL.—No commercial motor vehicle operator registered to operate in Mexico or Canada may operate a commercial motor vehicle transporting a hazardous material in commerce in the United States until the operator has undergone a background records check similar to the background records check required for commercial motor vehicle operators licensed in the United States to transport hazardous materials in commerce.

(b) DEFINITIONS.—In this section:

(1) HAZARDOUS MATERIALS.—The term ''hazardous material'' means any material determined by the Secretary of Transportation to be a hazardous material for purposes of this section.

(2) COMMERCIAL MOTOR VEHICLE.—The term ''commercial motor vehicle'' has the meaning given that term by section 31101 of title 49, United States Code.

(c) EFFECTIVE DATE.—This section takes effect on April 1, 2004.

SEC. 4247. EXEMPTION OF DRIVERS OF UTILITY SERVICE VEHICLES.

Section 345 of the National Highway System Designation Act of 1995 (49 U.S.C. 31136 note) is amended—

(1) by striking paragraph (4) of subsection (a) and inserting the following:

''(4) DRIVERS OF UTILITY SERVICE VEHICLES.—

''(A) INAPPLICABILITY OF FEDERAL REGULATIONS.—Such regulations may not apply to a driver of a utility service vehicle.

''(B) PROHIBITION ON STATE REGULATIONS.—A State, a political subdivision of a State, an interstate agency, or other entity consisting of 2 or more States, may not enact or enforce any law, rule, regulation, or standard that imposes requirements on a driver of a utility service vehicle that are similar to the requirements contained in such regulations.'';

(2) by striking ''Nothing'' in subsection (b) and inserting ''Except as provided in subsection (a)(4), nothing''; and

(3) by striking ''paragraph (2)'' in the first sentence of subsection (c) and inserting ''an exemption under paragraph (2) or (4)''.

SEC. 4248. OPERATION OF COMMERCIAL MOTOR VEHICLES TRANSPORTING AGRICULTURAL COMMODITIES AND FARM SUPPLIES.

(a) EXEMPTION FROM HOURS-OF-SERVICE REQUIREMENTS.—

(1) IN GENERAL.—Section 345(c) of the National Highway System Designation Act of 1995 (49 U.S.C. 31136 note), as amended by section 4247(3) of this title, is amended by striking ''paragraph (2) or (4)'' and inserting ''paragraph (1), (2), or (4) of that subsection)''.

(2) APPLICABILITY.—The exemption provided by section 345(a)(1) of the National Highway System Designation Act of 1995 (49 U.S.C. 31136 note) shall apply to a person transporting agricultural commodities or farm supplies for agricultural purposes under that section on and after the date of enactment of this Act regardless of any action taken by the Secretary of Transportation under section 345(c) of that Act before the date of enactment of this Act.

(b) DEFINITION OF AGRICULTURAL COMMODITY.—Section 345(e) of the National Highway System Designation Act of 1995 (49 U.S.C. 31136 note) is amended—

(1) by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (5), (6), (4), and (7), respectively, and moving the paragraphs so as to appear in numerical order; and

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

''(3) AGRICULTURAL COMMODITY.—The term 'agricultural commodity' has the meaning given the term in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).''.

SEC. 4249. SAFETY PERFORMANCE HISTORY SCREENING.

(a) IN GENERAL.—Subchapter III of chapter 311, as amended by section 4228, is amended by adding at the end the following:

''§ 31150. Safety performance history screening

''(a) IN GENERAL.—The Secretary of Transportation shall provide companies conducting pre-employment screening services for the motor carrier industry electronic access to—

''(1) commercial motor vehicle accident reports,

''(2) inspection reports that contain no driver-related safety violations, and

''(3) serious driver-related safety violation inspection reports that are contained in the Motor Carrier Management Information System.

''(b) ESTABLISHMENT.—Prior to making information available to such companies under subsection (a), the Secretary shall—

''(1) ensure that any information released is done in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and all applicable Federal laws;

''(2) require the driver applicant's written consent as a condition of releasing the information;

''(3) ensure that the information made available to companies providing pre-employment screening services is not released to any other unauthorized company or individual, unless expressly authorized or required by law; and

''(4) provide a procedure for drivers to remedy incorrect information in a timely manner.

''(c) DESIGN.—To be eligible to have access to information under subsection (a), a company conducting pre-employment screening services for the motor carrier industry shall utilize a screening process—

''(1) that is designed to assist the motor carrier industry in assessing an individual driver's crash and serious safety violation inspection history as a pre-employment condition;

''(2) the use of which is not mandatory; and

''(3) which is used only during the pre-employment assessment of a driver-applicant.

''(d) SERIOUS DRIVER-RELATED SAFETY VIOLATIONS.—In this section, the term 'serious driver-related safety violation' means a violation listed in the North American Standard Driver Out-of-service Criteria that prohibits the continued operation of a commercial motor vehicle.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 311, as amended by section 4228, is amended by inserting after the item relating to section 31149 the following:

''31150. Safety performance history screening''.

SEC. 4250. COMPLIANCE REVIEW AUDIT.

Within 1 year after the date of enactment of this Act, the Inspector General for the Department of Transportation shall audit the compliance reviews performed by the Federal Motor Carrier Safety Administration in fiscal year 2003 and submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on—

(1) the enforcement actions taken as a result of the compliance reviews, including fines, suspension or revocation of operating authority, unsatisfactory ratings, and follow-up actions to ensure compliance with Federal motor carrier safety regulations;

(2) whether compliance reviews are or should be performed on a corporate-wide basis for all affiliates of the motor carrier selected for a compliance review as a result of its Safety Status Measurement System ranking or the submission of a complaint;

(3) whether the enforcement actions taken by the Federal Motor Carrier Safety Administration are adequate to assure future compliance of the motor carrier with Federal safety regulations and what deterrent effect those enforcement actions may have industry-wide;

(4) whether the methodology for calculating the crash rate of commercial motor vehicles in the Safety Status Measurement System would be more appropriately based on the number of vehicle miles driven by a motor carrier rather than the number of trucks operated by the carrier;

(5) whether the public access information in the Safety Status Measurement System meets the agency's requirements under the Data Quality Act; and

(6) the existing information Selection System Indicators criteria and weighting and whether the safety evaluation area containing data on accidents should receive higher priority for complaince reviews and inspection selection.

(5) whether the public access information in the Safety Status Measurement System meets the agency's requirements under the Data Quality Act.

PART 2—UNIFIED CARRIER REGISTRATION

SEC. 4261. SHORT TITLE.

This part may be cited as the ''Unified Carrier Registration Act of 2004''.

SEC. 4262. RELATIONSHIP TO OTHER LAWS.

Except as provided in section 14504 of title 49, United States Code, and sections 14504a and 14506 of title 49, United States Code, as added by this part, this part is not intended to prohibit any State or any political subdivision of any State from enacting, imposing, or enforcing any law or regulation with respect to a motor carrier, motor private carrier, broker, freight forwarder, or leasing company that is not otherwise prohibited by law.

SEC. 4263. INCLUSION OF MOTOR PRIVATE AND EXEMPT CARRIERS.

(a) PERSONS REGISTERED TO PROVIDE TRANSPORTATION OR SERVICE AS A MOTOR CARRIER OR MOTOR PRIVATE CARRIER.—Section 13905 is amended by—

(1) redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e), and (f), respectively; and

(2) inserting after subsection (a) the following:

''(b) PERSON REGISTERED WITH SECRETARY.—Any person having registered with the Secretary to provide transportation or service as a motor carrier or motor private carrier under this title, as in effect on January 1, 2002, but not having registered pursuant to section 13902(a) of this title, shall be deemed, for purposes of this part, to be registered to provide such transportation or service for purposes of sections 13908 and 14504a of this title.''.

(b) SECURITY REQUIREMENT.—Section 13906(a) is amended by—

(1) redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) inserting the following:

''(2) SECURITY REQUIREMENT.—Not later than 120 days after the date of enactment of the Unified Carrier Registration Act of 2004, any person, other than a motor private carrier, registered with the Secretary to provide transportation or service as a motor carrier under section 13905(b) of this title shall file with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than required by sections 31138 and 31139 of this title.''.

SEC. 4264. UNIFIED CARRIER REGISTRATION SYSTEM.

(a) Section 13908 is amended to read as follows:

''§ 13908. Registration and other reforms

''(a) ESTABLISHMENT OF UNIFIED CARRIER REGISTRATION SYSTEM.—The Secretary, in cooperation with the States, representatives of the motor carrier, motor private carrier, freight forwarder and broker industries, and after notice and opportunity for public comment, shall issue within 1 year after the date of enactment of the Unified Carrier Registration Act of 2004 regulations to establish, an online, Federal registration system to be named the Unified Carrier Registration System to replace—

''(1) the current Department of Transportation identification number system, the Single State Registration System under section 14504 of this title;

''(2) the registration system contained in this chapter and the financial responsibility information system under section 13906; and

''(3) the service of process agent systems under sections 503 and 13304 of this title.

''(b) ROLE AS CLEARINGHOUSE AND DEPOSITORY OF INFORMATION.—The Unified Carrier Registration System shall serve as a clearinghouse and depository of information on, and identification of, all foreign and domestic motor carriers, motor private carriers, brokers, and freight forwarders, and others required to register with the Department, including information with respect to a carrier's safety rating, compliance with required levels of financial responsibility, and compliance with the provisions of section 14504a of this title. The Secretary shall ensure that Federal agencies, States, representatives of the motor carrier industry, and the public have access to the Unified Carrier Registration System, including the records and information contained in the System.

''(c) PROCEDURES FOR CORRECTING INFORMATION.—Not later than 60 days after the effective date of this section, the Secretary shall prescribe regulations establishing procedures that enable a motor carrier to correct erroneous information contained in any part of the Unified Carrier Registration System.

''(d) FEE SYSTEM.—The Secretary shall establish, under section 9701 of title 31, a fee system for the Unified Carrier Registration System according to the following guidelines:

''(1) REGISTRATION AND FILING EVIDENCE OF FINANCIAL RESPONSIBILITY.—The fee for new registrants shall as nearly as possible cover the costs of processing the registration and conducting the safety audit or examination, if required, but shall not exceed $300.

''(2) EVIDENCE OF FINANCIAL RESPONSIBILITY.—The fee for filing evidence of financial responsibility pursuant to this section shall not exceed $10 per filing. No fee shall be charged for a filing for purposes of designating an agent for service of process or the filing of other information relating to financial responsibility.

''(3) ACCESS AND RETRIEVAL FEES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the fee system shall include a nominal fee for the access to or retrieval of information from the Unified Carrier Registration System to cover the costs of operating and upgrading the System, including the personnel costs incurred by the Department and the costs of administration of the Unified Carrier Registration Agreement.

''(B) EXCEPTIONS.—There shall be no fee charged—

''(i) to any agency of the Federal Government or a State government or any political subdivision of any such government for the access to or retrieval of information and data from the Unified Carrier Registration System for its own use; or

''(ii) to any representative of a motor carrier, motor private carrier, leasing company, broker, or freight forwarder (as each is defined in section 14504a of this title) for the access to or retrieval of the individual information related to such entity from the Unified Carrier Registration System for the individual use of such entity.''.

SEC. 4265. REGISTRATION OF MOTOR CARRIERS BY STATES.

(a) TERMINATION OF REGISTRATION PROVISIONS.—Section 14504 is amended by adding at the end the following:

''(d) TERMINATION OF PROVISIONS.—Subsections (b) and (c) shall cease to be effective on the first January 1st occurring more than 12 months after the date of enactment of the Unified Carrier Registration Act of 2004.''.

(b) UNIFIED CARRIER REGISTRATION SYSTEM PLAN AND AGREEMENT.—Chapter 145 is amended by inserting after section 14504 the following:

''§ 14504a. Unified carrier registration system plan and agreement

''(a) DEFINITIONS.—In this section and section 14506 of this title:

''(1) COMMERCIAL MOTOR VEHICLE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'commercial motor vehicle' has the meaning given the term in section 31101 of this title.

''(B) EXCEPTION.—With respect to motor carriers required to make any filing or pay any fee to a State with respect to the motor carrier's authority or insurance related to operation within such State, the term 'commercial motor vehicle' means any self-propelled vehicle used on the highway in commerce to transport passengers or property for compensation regardless of the gross vehicle weight rating of the vehicle or the number of passengers transported by such vehicle.

''(2) BASE-STATE.—

''(A) IN GENERAL.—The term 'Base-State' means, with respect to the Unified Carrier Registration Agreement, a State—

''(i) that is in compliance with the requirements of subsection (e); and

''(ii) in which the motor carrier, motor private carrier, broker, freight forwarder or leasing company maintains its principal place of business.

''(B) DESIGNATION OF BASE-STATE.—A motor carrier, motor private carrier, broker, freight forwarder or leasing company may designate another State in which it maintains an office or operating facility as its Base-State in the event that—

''(i) the State in which the motor carrier, motor private carrier, broker, freight forwarder or leasing company maintains its principal place of business is not in compliance with the requirements of subsection (e); or

''(ii) the motor carrier, motor private carrier, broker, freight forwarder or leasing company does not have a principal place of business in the United States.

''(3) INTRASTATE FEE.—The term 'intrastate fee' means any fee, tax, or other type of assessment, including per vehicle fees and gross receipts taxes, imposed on a motor carrier or motor private carrier for the renewal of the intrastate authority or insurance filings of such carrier with a State.

''(4) LEASING COMPANY.—The term 'leasing company' means a lessor that is engaged in the business of leasing or renting for compensation motor vehicles without drivers to a motor carrier, motor private carrier, or freight forwarder.

''(5) MOTOR CARRIER.—The term 'motor carrier' has the meaning given the term in section 13102(12) of this title, but shall include all carriers that are otherwise exempt from the provisions of part B of this title pursuant to the provisions of chapter 135 of this title or exemption actions by the former Interstate Commerce Commission under this title.

''(6) PARTICIPATING STATE.—The term 'participating state' means a State that has complied with the requirements of subsection (e) of this section.

''(7) SSRS.—The term 'SSRS' means the Single State Registration System in effect on the date of enactment of the Unified Carrier Registration Act of 2004.

''(8) UNIFIED CARRIER REGISTRATION AGREEMENT.—The terms 'Unified Carrier Registration Agreement' and 'UCR Agreement' mean the interstate agreement developed under the Unified Carrier Registration Plan governing the collection and distribution of registration and financial responsibility information provided and fees paid by motor carriers, motor private carriers, brokers, freight forwarders and leasing companies pursuant to this section.

''(9) UNIFIED CARRIER REGISTRATION PLAN.—The terms 'Unified Carrier Registration Plan' and 'UCR Plan' mean the organization of State, Federal and industry representatives responsible for developing, implementing and administering the Unified Carrier Registration Agreement.

''(10) VEHICLE REGISTRATION.—The term 'vehicle registration' means the registration of any commercial motor vehicle under the International Registration Plan or any other registration law or regulation of a jurisdiction.

''(b) APPLICABILITY OF PROVISIONS TO FREIGHT FORWARDERS.—A Freight forwarder that operates commercial motor vehicles and is not required to register as a carrier pursuant to section 13903(b) of this title shall be subject to the provisions of this section as if a motor carrier.

''(c) UNREASONABLE BURDEN.—For purposes of this section, it shall be considered an unreasonable burden upon interstate commerce for any State or any political subdivision of a State, or any political authority of 2 or more States—

''(1) to enact, impose, or enforce any requirement or standards, or levy any fee or charge on any interstate motor carrier or interstate motor private carrier in connection with—

''(A) the registration with the State of the interstate operations of a motor carrier or motor private carrier;

''(B) the filing with the State of information relating to the financial responsibility of a motor carrier or motor private carrier pursuant to sections 31138 or 31139 of this title;

''(C) the filing with the State of the name of the local agent for service of process of a motor carrier or motor private carrier pursuant to sections 503 or 13304 of this title; or

''(D) the annual renewal of the intrastate authority, or the insurance filings, of a motor carrier or motor private carrier, or

other intrastate filing requirement necessary to operate within the State, if the motor carrier or motor private carrier is—

''(i) registered in compliance with section 13902 or section 13905(b) of this title; and

''(ii) in compliance with the laws and regulations of the State authorizing the carrier to operate in the State pursuant to section 14501(c)(2)(A) of this title

except with respect to—

''(I) intrastate service provided by motor carriers of passengers that is not subject to the preemptive provisions of section 14501(a) of this title,

''(II) motor carriers of property, motor private carriers, brokers, or freight forwarders, or their services or operations, that are described in subparagraphs (B) and (C) of section 14501(c)(2) and section 14506(c)(3) or permitted pursuant to section 14506(b) of this title, and

''(III) the intrastate transportation of waste or recycables by any carrier); or

''(2) to require any interstate motor carrier or motor private carrier to pay any fee or tax, not proscribed by paragraph (1)(D) of this subsection, that a motor carrier or motor private carrier that pays a fee which is proscribed by that paragraph is not required to pay.

''(d) UNIFIED CARRIER REGISTRATION PLAN.—

''(1) BOARD OF DIRECTORS.—

''(A) GOVERNANCE OF PLAN.—The Unified Carrier Registration Plan shall be governed by a Board of Directors consisting of representatives of the Department of Transportation, Participating States, and the motor carrier industry.

''(B) NUMBER.—The Board shall consist of 15 directors.

''(C) COMPOSITION.—The Board shall be composed of directors appointed as follows:

''(i) FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION.—The Secretary shall appoint 1 director from each of the Federal Motor Carrier Safety Administration's 4 Service Areas (as those areas were defined by the Federal Motor Carrier Safety Administration on January 1, 2003), from among the chief administrative officers of the State agencies responsible for overseeing the administration of the UCR Agreement.

''(ii) STATE AGENCIES.—The Secretary shall appoint 5 directors from the professional staffs of State agencies responsible for overseeing the administration of the UCR Agreement in their respective States. Nominees for these 5 directorships shall be submitted to the Secretary by the national association of professional employees of the State agencies responsible for overseeing the administration of the UCR Agreement in their respective States.

''(iii) MOTOR CARRIER INDUSTRY.—The Secretary shall appoint 5 directors from the motor carrier industry. At least 1 of the appointees shall be an employee of the national trade association representing the general motor carrier of property industry.

''(iv) DEPARTMENT OF TRANSPORTATION.—The Secretary shall appoint the Deputy Administrator of the Federal Motor Carrier Safety Administration, or such other presidential appointee from the United States Department of Transportation, as the Secretary may designate, to serve as a director.

''(D) CHAIRPERSON AND VICE-CHAIRPERSON.—The Secretary shall designate 1 director as Chairperson and 1 director as Vice-Chairperson of the Board. The Chairperson and Vice-Chairperson shall serve in such capacity for the term of their appointment as directors.

''(E) TERM.—In appointing the initial Board, the Secretary shall designate 5 of the appointed directors for initial terms of 3 years, 5 of the appointed directors for initial terms of 2 years, and 5 of the appointed directors for initial terms of 1 year. Thereafter, all directors shall be appointed for terms of 3 years, except that the term of the Deputy Administrator or other individual designated by the Secretary under subparagraph (C)(iv) shall be at the discretion of the Secretary. A director may be appointed to succeed himself or herself. A director may continue to serve on the Board until his or her successor is appointed.

''(2) RULES AND REGULATIONS GOVERNING THE UCR AGREEMENT.—The Board of Directors shall develop the rules and regulations to govern the UCR Agreement and submit such rules and regulations to the Secretary for approval and adoption. The rules and regulations shall—

''(A) prescribe uniform forms and formats, for—

''(i) the annual submission of the information required by a Base-State of a motor carrier, motor private carrier, leasing company, broker, or freight forwarder;

''(ii) the transmission of information by a Participating State to the Unified Carrier Registration System;

''(iii) the payment of excess fees by a State to the designated depository and the distribution of fees by the depository to those States so entitled; and

''(iv) the providing of notice by a motor carrier, motor private carrier, broker, freight forwarder, or leasing company to the Board of the intent of such entity to change its Base-State, and the procedures for a State to object to such a change under subparagraph (C) of this paragraph;

''(B) provide for the administration of the Unified Carrier Registration Agreement, including procedures for amending the Agreement and obtaining clarification of any provision of the Agreement;

''(C) provide procedures for dispute resolution that provide due process for all involved parties; and

''(D) designate a depository.

''(3) COMPENSATION AND EXPENSES.—Except for the representative of the Department of Transportation appointed pursuant to paragraph 1(D), no director shall receive any compensation or other benefits from the Federal Government for serving on the Board or be considered a Federal employee as a result of such service. All Directors shall be reimbursed for expenses they incur attending duly called meetings of the Board. In addition, the Board may approve the reimbursement of expenses incurred by members of any subcommittee or task force appointed pursuant to paragraph (5). The reimbursement of expenses to directors and subcommittee and task force members shall be based on the then applicable rules of the General Service Administration governing reimbursement of expenses for travel by Federal employees.

''(4) MEETINGS.—

''(A) IN GENERAL.—The Board shall meet at least once per year. Additional meetings may be called, as needed, by the Chairperson of the Board, a majority of the directors, or the Secretary.

''(B) QUORUM.—A majority of directors shall constitute a quorum.

''(C) VOTING.—Approval of any matter before the Board shall require the approval of a majority of all directors present at the meeting.

''(D) OPEN MEETINGS.—Meetings of the Board and any subcommittees or task forces appointed pursuant to paragraph (5) of this section shall be subject to the provisions of section 552b of title 5.

''(5) SUBCOMMITTEES.—

''(A) INDUSTRY ADVISORY SUBCOMMITTEE.—The Chairperson shall appoint an Industry Advisory Subcommittee. The Industry Advisory Subcommittee shall consider any matter before the Board and make recommendations to the Board.

''(B) OTHER SUBCOMMITTEES.—The Chairperson shall appoint an Audit Subcommittee, a Dispute Resolution Subcommittee, and any additional subcommittees and task forces that the Board determines to be necessary.

''(C) MEMBERSHIP.—The chairperson of each subcommittee shall be a director. The other members of subcommittees and task forces may be directors or non-directors.

''(D) REPRESENTATION ON SUBCOMMITTEES.—Except for the Industry Advisory Subcommittee (the membership of which shall consist solely of representatives of entities subject to the fee requirements of subsection (f) of this section), each subcommittee and task force shall include representatives of the Federal Motor Carrier Safety Administration, the Participating States, and the motor carrier industry.

''(6) DELEGATION OF AUTHORITY.—The Board may contract with any private commercial or non-profit entity or any agency of a State to perform administrative functions required under the Unified Carrier Registration Agreement, but may not delegate its decision or policy-making responsibilities.

''(7) DETERMINATION OF FEES.—The Board shall determine the annual fees to be assessed carriers, leasing companies, brokers, and freight forwarders pursuant to the Unified Carrier Registration Agreement. In determining the level of fees to be assessed in the next Agreement year, the Board shall consider—

''(A) the administrative costs associated with the Unified Carrier Registration Plan and the Agreement;

''(B) whether the revenues generated in the previous year and any surplus or shortage from that or prior years enable the Participating States to achieve the revenue levels set by the Board; and

''(C) the parameters for fees set forth in subsection (f)(1).

''(8) LIABILITY PROTECTIONS FOR DIRECTORS.—No individual appointed to serve on the Board shall be liable to any other director or to any other party for harm, either economic or non-economic, caused by an act or omission of the individual arising from the individual's service on the Board if—

''(A) the individual was acting within the scope of his or her responsibilities as a director; and

''(B) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the right or safety of the party harmed by the individual.

''(9) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Unified Carrier Registration Plan or its committees.

''(10) CERTAIN FEES NOT AFFECTED.—This section does not limit the amount of money a State may charge for vehicle registration or the amount of any fuel use tax a State may impose pursuant to the International Fuel Tax Agreement.

''(e) STATE PARTICIPATION.—

''(1) STATE PLAN.—No State shall be eligible to participate in the Unified Carrier Registration Plan or to receive any revenues derived under the Agreement, unless the State submits to the Secretary, not later than 3 years after the date of enactment of the Unified Carrier Registration Act of 2004, a plan—

''(A) identifying the State agency that has or will have the legal authority, resources,

and qualified personnel necessary to administer the Unified Carrier Registration Agreement in accordance with the rules and regulations promulgated by the Board of Directors of the Unified Carrier Registration Plan; and

''(B) containing assurances that an amount at least equal to the revenue derived by the State from the Unified Carrier Registration Agreement shall be used for motor carrier safety programs, enforcement, and financial responsibility, or the administration of the UCR Plan and UCR Agreement.

''(2) AMENDED PLANS.—A State may change the agency designated in the plan submitted under this subsection by filing an amended plan with the Secretary and the Chairperson of the Unified Carrier Registration Plan.

''(3) WITHDRAWAL OF PLAN.—In the event a State withdraws, or notifies the Secretary that it is withdrawing, the plan submitted under this subsection, the State may no longer participate in the Unified Carrier Registration Agreement or receive any portion of the revenues derived under the Agreement.

''(4) TERMINATION OF ELIGIBILITY.—If a State fails to submit a plan to the Secretary as required by paragraph (1) or withdraws its plan under paragraph (3), the State shall be prohibited from subsequently submitting or resubmitting a plan or participating in the Agreement.

''(5) PROVISION OF PLAN TO CHAIRPERSON.—The Secretary shall provide a copy of each plan submitted under this subsection to the initial Chairperson of the Board of Directors of the Unified Carrier Registration Plan not later than 90 days of appointing the Chairperson.

''(f) CONTENTS OF UNIFIED CARRIER REGISTRATION AGREEMENT.—The Unified Carrier Registration Agreement shall provide the following:

''(1) DETERMINATION OF FEES.—

''(A) Fees charged motor carriers, motor private carriers, or freight forwarders in connection with the filing of proof of financial responsibility under the UCR Agreement shall be based on the number of commercial motor vehicles owned or operated by the motor carrier, motor private carrier, or freight forwarder. Brokers and leasing companies shall pay the same fees as the smallest bracket of motor carriers, motor private carriers, and freight forwarders.

''(B) The fees shall be determined by the Board with the approval of the Secretary.

''(C) The Board shall develop no more than 6 and no less than 4 ranges of carriers by size of fleet.

''(D) The fee scale shall be progressive and use different vehicle ratios for different ranges of carrier fleet size.

''(E) The Board may adjust the fees within a reasonable range on an annual basis if the revenues derived from the fees—

''(i) are insufficient to provide the revenues to which the States are entitled under this section; or

''(ii) exceed those revenues.

''(2) DETERMINATION OF OWNERSHIP OR OPERATION.—Commercial motor vehicles owned or operated by a motor carrier, motor private carrier, or freight forwarder shall mean those commercial motor vehicles registered in the name of the motor carrier, motor private carrier, or freight forwarder or controlled by the motor carrier, motor private carrier, or freight forwarder under a long term lease during a vehicle registration year.

''(3) CALCULATION OF NUMBER OF COMMERCIAL MOTOR VEHICLES OWNED OR OPERATED.—The number of commercial motor vehicles owned or operated by a motor carrier, motor private carrier, or freight forwarder for purposes of subsection (e)(1) shall be based either on the number of commercial motor vehicles the motor carrier, motor private carrier, or freight forwarder has indicated it operates on its most recently filed MCS–150 or the total number of such vehicles it owned or operated for the 12-month period ending on June 30 of the year immediately prior to the each registration year of the Unified Carrier Registration System.

''(4) PAYMENT OF FEES.—Motor carriers, motor private carriers, leasing companies, brokers, and freight forwarders shall pay all fees required under this section to their Base-State pursuant to the UCR Agreement.

''(g) PAYMENT OF FEES.—Revenues derived under the UCR Agreement shall be allocated to Participating States as follows:

''(1) A State that participated in the Single State Registration System in the last calendar year ending before the date of enactment of the Unified Carrier Registration Act of 2004 and complies with the requirements of subsection (e) of this section is entitled to receive a portion of the UCR Agreement revenues generated under the Agreement equivalent to the revenues it received under the SSRS in the last calendar year ending before the date of enactment of the Unified Carrier Registration Act of 2004, as long as the State continues to comply with the provisions of subsection (e).

''(2) A State that collected intrastate registration fees from interstate motor carriers, interstate motor private carriers, or interstate exempt carriers and complies with the requirements of subsection (e) of this section is entitled to receive an additional portion of the UCR Agreement revenues generated under the Agreement equivalent to the revenues it received from such interstate carriers in the last calendar year ending before the date of enactment of the Unified Carrier Registration Act of 2004, as long as the State continues to comply with the provisions of subsection (e).

''(3) States that comply with the requirements of subsection (e) of this section but did not participate in SSRS during the last calendar year ending before the date of enactment of the Unified Carrier Registration Act of 2004 shall be entitled to an annual allotment not to exceed $500,000 from the UCR Agreement revenues generated under the Agreement as long as the State continues to comply with the provisions of subsection (e).

''(4) The amount of UCR Agreement revenues to which a State is entitled under this section shall be calculated by the Board and approved by the Secretary.

''(h) DISTRIBUTION OF UCR AGREEMENT REVENUES.—

''(1) ELIGIBILITY.—Each State that is in compliance with the provisions of subsection (e) shall be entitled to a portion of the revenues derived from the UCR Agreement in accordance with subsection (g).

''(2) ENTITLEMENT TO REVENUES.—A State that is in compliance with the provisions of subsection (e) may retain an amount of the gross revenues it collects from motor carriers, motor private carriers, brokers, freight forwarders and leasing companies under the UCR Agreement equivalent to the portion of revenues to which the State is entitled under subsection (g). All revenues a Participating State collects in excess of the amount to which the State is so entitled shall be forwarded to the depository designated by the Board under subsection (d)(2)(D).

''(3) DISTRIBUTION OF FUNDS FROM DEPOSITORY.—The excess funds collected in the depository shall be distributed as follows:

''(A) Excess funds shall be distributed on a pro rata basis to each Participating State that did not collect revenues under the UCR Agreement equivalent to the amount such State is entitled under subsection (g), except that the sum of the gross UCR Agreement revenues collected by a Participating State and the amount distributed to it from the depository shall not exceed the amount to which the State is entitled under subsection (g).

''(B) Any excess funds held by the depository after all distributions under subparagraph (A) have been made shall be used to pay the administrative costs of the UCR Plan and the UCR Agreement.

''(C) Any excess funds held by the depository after distributions and payments under subparagraphs (A) and (B) shall be retained in the depository, and the UCR Agreement fees for motor carriers, motor private carriers, leasing companies, freight forwarders, and brokers for the next fee year shall be reduced by the Board accordingly.

''(i) ENFORCEMENT.—

''(1) CIVIL ACTIONS.—Upon request by the Secretary of Transportation, the Attorney General may bring a civil action in a court of competent jurisdiction to enforce compliance with this section and with the terms of the Unified Carrier Registration Agreement.

''(2) VENUE.—An action under this section may be brought only in the Federal court sitting in the State in which an order is required to enforce such compliance.

''(3) RELIEF.—Subject to section 1341 of title 28, the court, on a proper showing—

''(A) shall issue a temporary restraining order or a preliminary or permanent injunction; and

''(B) may issue an injunction requiring that the State or any person comply with this section.

''(4) ENFORCEMENT BY STATES.—Nothing in this section—

''(A) prohibits a Participating State from issuing citations and imposing reasonable fines and penalties pursuant to applicable State laws and regulations on any motor carrier, motor private carrier, freight forwarder, broker, or leasing company for failure to—

''(i) submit documents as required under subsection (d)(2); or

''(ii) pay the fees required under subsection (f); or

''(B) authorizes a State to require a motor carrier, motor private carrier, or freight forwarder to display as evidence of compliance any form of identification in excess of those permitted under section 14506 of this title on or in a commercial motor vehicle.

''(j) APPLICATION TO INTRASTATE CARRIERS.—Notwithstanding any other provision of this section, a State may elect to apply the provisions of the UCR Agreement to motor carriers and motor private carriers subject to its jurisdiction that operate solely in intrastate commerce within the borders of the State.''.

SEC. 4266. IDENTIFICATION OF VEHICLES.

Chapter 145 is amended by adding at the end the following:

''§ 14506. Identification of vehicles

''(a) RESTRICTION ON REQUIREMENTS.—No State, political subdivision of a State, interstate agency, or other political agency of 2 or more States may enact or enforce any law, rule, regulation standard, or other provision having the force and effect of law that requires a motor carrier, motor private carrier, freight forwarder, or leasing company to display any form of identification on or in a commercial motor vehicle, other than forms of identification required by the Secretary of Transportation under section 390.21 of title 49, Code of Federal Regulations.

''(b) EXCEPTION.—Notwithstanding paragraph (a), a State may continue to require display of credentials that are required—

''(1) under the International Registration Plan under section 31704 of this title;

''(2) under the International Fuel Tax Agreement under section 31705 of this title;

''(3) in connection with Federal requirements for hazardous materials transportation under section 5103 of this title; or

''(4) in connection with the Federal vehicle inspection standards under section 31136 of this title.''.

SEC. 4267. USE OF UCR AGREEMENT REVENUES AS MATCHING FUNDS.

Section 31103(a) is amended by inserting ''Amounts generated by the Unified Carrier Registration Agreement, under section 14504a of this title and received by a State and used for motor carrier safety purposes may be included as part of the State's share not provided by the United States.'' after ''United States Government.''.

SEC. 4268. CLERICAL AMENDMENTS.

(a) SECTION 13906 CAPTION.—The section caption for section 13906 is amended by inserting ''**motor private carriers,**'' after ''**motor carriers,**''.

(b) TABLE OF CONTENTS.—The chapter analysis for chapter 139 is amended by striking the item relating to section 13906 and inserting the following:

''13906. Security of motor carriers, motor private carriers, brokers, and freight forwarders''.

Subtitle C—Household Goods Movers

SEC. 4301. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED STATES CODE.

(a) SHORT TITLE.—This subtitle may be cited as the ''Household Goods Mover Oversight Enforcement and Reform Act of 2004''.

(b) AMENDMENT OF TITLE 49, UNITED STATES CODE.—Except as otherwise specifically provided, whenever in this subtitle an amendment is expressed in terms of an amendment to a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 4302. FINDINGS; SENSE OF CONGRESS.

The Congress finds the following:

(1) There are approximately 1,500,000 interstate household moves every year. While the vast majority of these interstate moves are completed successfully, consumer complaints have been increasing since the Interstate Commerce Commission was abolished in 1996 and oversight of the household goods industry was transferred to the Department of Transportation.

(2) While the overwhelming majority of household goods carriers are honest and operate within the law, there appears to be a growing criminal element that is exploiting a perceived void in Federal and State enforcement efforts. The growing criminal element tends to prey upon consumers.

(3) The movement of an individual's household goods is unique and differs from the movement of a commercial shipment. A consumer may utilize a moving company once or twice in the consumer's lifetime and entrust virtually all of the consumer's worldly goods to a mover.

(4) Federal resources are inadequate to properly police or deter, on a nationwide basis, those movers who willfully violate Federal regulations governing the household goods industry and knowingly prey on consumers who are in a vulnerable position. It is appropriate that a Federal-State partnership be created to enhance enforcement against fraudulent moving companies.

SEC. 4303. DEFINITIONS.

In this title, the terms ''carrier'', ''household goods'', ''motor carrier'', ''Secretary'', and ''transportation'' have the meaning given such terms in section 13102 of title 49, United States Code.

SEC. 4304. PAYMENT OF RATES.

Section 13707(b) is amended by adding at the end the following:

''(3) SHIPMENTS OF HOUSEHOLD GOODS.—

''(A) IN GENERAL.—A carrier providing transportation for a shipment of household goods shall give up possession of the household goods transported at the destination upon payment of—

''(i) 100 percent of the charges contained in a binding estimate provided by the carrier;

''(ii) not more than 110 percent of the charges contained in a nonbinding estimate provided by the carrier; or

''(iii) in the case of a partial delivery of the shipment, the prorated percentage of the charges calculated in accordance with subparagraph (B).

''(B) CALCULATION OF PRORATED CHARGES.—For purposes of subparagraph (A)(iii), the prorated percentage of the charges shall be the percentage of the total charges due to the carrier as described in clause (i) or (ii) of subparagraph (A) that is equal to the percentage of the weight of that portion of the shipment delivered to the total weight of the shipment.

''(C) POST-CONTRACT SERVICES.—Subparagraph (A) does not apply to additional services requested by a shipper after the contract of service is executed that were not included in the estimate.

''(D) IMPRACTICABLE OPERATIONS.—Subparagraph (A) does apply to impracticable operations, as defined by the applicable carrier tariff, if the shipper agrees to pay the charges for such operations within 30 days after the goods are delivered.''.

SEC. 4305. HOUSEHOLD GOODS CARRIER OPERATIONS.

Section 14104 is amended—

(1) by striking paragraph (1) of subsection (b) and inserting the following:

''(1) REQUIREMENT FOR WRITTEN ESTIMATE.—A motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 shall provide to a prospective shipper a written estimate of all charges related to the transportation of the household goods, including charges for—

''(A) packing;

''(B) unpacking;

''(C) loading;

''(D) unloading; and

''(E) handling of the shipment from the point of origin to the final destination (whether that destination is storage or transit).'';

(2) by redesignating paragraph (2) of such subsection as paragraph (4); and

(3) by inserting after paragraph (1), as amended by paragraph (1), the following:

''(2) OTHER INFORMATION.—At the time that a motor carrier provides the written estimate required by paragraph (1), the motor carrier shall provide the shipper a copy of the Department of Transportation publication FMCSA-ESA-03-005 (or its successor edition or publication) entitled 'Ready to Move?'. Before the execution of a contract for service, a motor carrier shall provide the shipper a copy of the Department of Transportation publication OCE 100, entitled 'Your Rights and Responsibilities When You Move' required by section 375.2 of title 49, Code of Federal Regulations (or any corresponding similar regulation).

''(3) BINDING AND NONBINDING ESTIMATES.—The written estimate required by paragraph (1) may be either binding or nonbinding. The written estimate shall be based on a visual inspection of the household goods if the household goods are located within a 50-mile radius of the location of the carrier's household goods agent preparing the estimate. The Secretary may not prohibit any such carrier from charging a prospective shipper for providing a written, binding estimate for the transportation and related services.'';

(4) by redesignating subsection (c) as subsection (e); and

(5) by inserting after subsection (b), as amended by paragraphs (1) and (2), the following:

''(c) NOTIFICATION OF FINAL CHARGES.—If the final charges for a shipment of household goods exceed 100 percent of a binding estimate or 110 percent of a nonbinding estimate, the motor carrier shall provide the shipper an itemized statement of the charges. The statement shall be provided to the shipper within 24 hours prior to the delivery of the shipment unless the shipper waives this requirement or the shipper cannot be reached by fax, regular mail, or electronic mail. Such notification shall—

''(1) be delivered in writing at the motor carrier's expense; and

''(2) disclose the requirements of section 13707(b)(3) of this title regarding payment for delivery of a shipment of household goods.

''(d) REQUIREMENT FOR INVENTORY.—A motor carrier providing transportation of a shipment of household goods, as defined in section 13102(10), that is subject to jurisdiction under subchapter I of chapter 135 of this title shall, before or at the time of loading the shipment, prepare a written inventory of all articles tendered and accepted by the motor carrier for transportation. Such inventory shall—

''(1) list or otherwise reasonably identify each item tendered for transportation;

''(2) be signed by the shipper and the motor carrier, or the agent of the shipper or carrier, at the time the shipment is loaded and at the time the shipment is unloaded at the final destination;

''(3) be attached to, and considered part of, the bill of lading; and

''(4) be subject to the same requirements of the Secretary for record inspection and preservation that apply to bills of lading.''.

SEC. 4306. LIABILITY OF CARRIERS UNDER RECEIPTS AND BILLS OF LADING.

Section 14706(f) is amended—

(1) by resetting the text as a paragraph indented 2 ems from the left margin and inserting ''(1) IN GENERAL.—'' before ''A carrier''; and

(2) by adding at the end, the following:

''(2) FULL VALUE PROTECTION OBLIGATION.—Unless the carrier receives a waiver in writing under paragraph (3), a carrier's maximum liability for household goods that are lost, damaged, destroyed, or otherwise not delivered to the final destination is an amount equal to the replacement value of such goods, subject to a maximum amount equal to the declared value of the shipment, subject to rules issued by the Surface Transportation Board and applicable tariffs.

''(3) APPLICATION OF RATES.—The released rates established by the Board under paragraph (1) (commonly known as 'released rates') shall not apply to the transportation of household goods by a carrier unless the liability of the carrier for the full value of such household goods under paragraph (2) is waived in writing by the shipper.''.

SEC. 4307. DISPUTE SETTLEMENT FOR SHIPMENTS OF HOUSEHOLD GOODS.

(a) IN GENERAL.—Section 14708(a) is amended—

(1) by resetting the text as a paragraph indented 2 ems from the left margin and inserting ''(1) REQUIREMENT TO OFFER.—'' before ''As a condition''; and

(2) by striking ''shippers of household goods concerning damage or loss to the household goods transported.'' and inserting ''shippers. The carrier may not require the shipper to agree to use arbitration as a means to settle such a dispute.''; and

(3) by inserting at the end, the following:

''(2) REQUIREMENTS FOR CARRIERS.—If a dispute with a carrier providing transportation of household goods involves a claim that is—

''(A) not more than $10,000 and the shipper requests arbitration, such arbitration shall be binding on the parties; or

''(B) for more than $10,000 and the shipper requests arbitration, such arbitration shall be binding on the parties only if the carrier agrees to arbitration.''.

(b) ARBITRATION REQUIREMENTS.—

(1) IN GENERAL.—Section 14708(b) is amended—

(A) by striking paragraph (4) and inserting the following:

''(4) INDEPENDENCE OF ARBITRATOR.—The Secretary shall establish a system for the certification of persons authorized to arbitrate or otherwise settle a dispute between a shipper of household goods and a carrier. The Secretary shall ensure that each person so certified is—

''(A) independent of the parties to the dispute;

''(B) capable, as determined under such regulations as the Secretary may issue, to resolve such disputes fairly and expeditiously; and

''(C) authorized and able to obtain from the shipper or carrier any material and relevant information to the extent necessary to carry out a fair and expeditious decisionmaking process.'';

(B) by striking paragraph (6); and

(C) by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(2) CONFORMING AMENDMENT.—Section 14708(d)(3)(A) is amended by striking ''(b)(8)'' and inserting ''(b)(7)''.

(c) ATTORNEY'S FEES TO CARRIERS.—Section 14708(e) is further amended by striking ''only if'' and all that follows through the period at the end and inserting ''if—

''(1) the court proceeding is to enforce a decision rendered in favor of the carrier through arbitration under this section and is instituted after the shipper has a reasonable opportunity to pay any charges required by such decision; or

''(2) the shipper brought such action in bad faith—

''(A) after resolution of such dispute through arbitration under this section; or

''(B) after institution of an arbitration proceeding by the shipper to resolve such dispute under this section but before—

''(i) the period provided under subsection (b)(7) for resolution of such dispute (including, if applicable, an extension of such period under such subsection) ends; and

''(ii) a decision resolving such dispute is rendered.''.

(d) REVIEW AND REPORT ON DISPUTE SETTLEMENT PROGRAMS.—

(1) REVIEW AND REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall complete a review of the outcomes and the effectiveness of the programs carried out under title 49, United States Code, to settle disputes between motor carriers and shippers and submit a report on the review to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The report shall describe—

(A) the subject of, and amounts at issue is, the disputes;

(B) patterns in disputes or settlements;

(C) the prevailing party in disputes, if identifiable; and

(D) any other matters the Secretary considers appropriate.

(2) REQUIREMENT FOR PUBLIC COMMENT.—The Secretary shall publish notice of the review required by paragraph (1) and provide an opportunity for the public to submit comments on the effectiveness of such programs. Notwithstanding any confidentiality or nondisclosure provision in a settlement agreement between a motor carrier and a shipper, it shall not be a violation of that provision for a motor carrier or shipper to submit a copy of the settlement agreement, or to provide information included in the agreement, to the Secretary for use in evaluating dispute settlement programs under this subsection. Notwithstanding anything to the contrary in section 552 of title 5, United States Code, the Secretary may not post on the Department of Transportation's electronic docket system, or make available to any requester in paper or electronic format, any information submitted to the Secretary by a motor carrier or shipper under the preceding sentence. The Secretary shall use the settlement agreements or other information submitted by a motor carrier or shipper solely to evaluate the effectiveness of dispute settlement programs and shall not include in the report required by this subsection the names or, or other identifying information concerning, motor carriers or shippers that submitted comments or information under this subsection.

SEC. 4308. ENFORCEMENT OF REGULATIONS RELATED TO TRANSPORTATION OF HOUSEHOLD GOODS.

(a) NONPREEMPTION OF INTRASTATE TRANSPORTATION OF HOUSEHOLD GOODS.—Section 14501(c)(2)(B) is amended by inserting ''intrastate'' before ''transportation''.

(b) ENFORCEMENT OF FEDERAL LAW WITH RESPECT TO INTERSTATE HOUSEHOLD GOODS CARRIERS.—

(1) IN GENERAL.—Chapter 147 is amended by adding at the end the following:

''§ 14710. Enforcement of Federal laws and regulations with respect to transportation of household goods

''(a) ENFORCEMENT BY STATES.—Notwithstanding any other provision of this title, a State authority may enforce the consumer protection provisions, as determined by the Secretary of Transportation, of this title that are related to the transportation of household goods in interstate commerce. Any fine or penalty imposed on a carrier in a proceeding under this subsection shall, notwithstanding any provision of law to the contrary, be paid to and retained by the State.

''(b) STATE AUTHORITY DEFINED.—The term 'State authority' means an agency of a State that has authority under the laws of the State to regulate the intrastate movement of household goods.

''§ 14711. Enforcement by State attorneys general

''(a) IN GENERAL.—A State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enforce the consumer protection provisions, as determined by the Secretary of Transportation, of this title that are related to the transportation of household goods in interstate commerce, or regulations or orders of the Secretary or the Board thereunder, or to impose the civil penalties authorized by this part or such regulation or order, whenever the attorney general of the State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a carrier or broker providing transportation subject to jurisdiction under subchapter I or III of chapter 135 of this title, or a foreign motor carrier providing transportation registered under section 13902 of this title, that is engaged in household goods transportation that violates this part or a regulation or order of the Secretary or Board, as applicable, promulgated under this part.

''(b) NOTICE.—The State shall serve written notice to the Secretary or the Board, as the case may be, of any civil action under subsection (a) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such civil action.

''(c) AUTHORITY TO INTERVENE.—Upon receiving the notice required by subsection (b), the Secretary or Board may intervene in such civil action and upon intervening—

''(1) be heard on all matters arising in such civil action; and

''(2) file petitions for appeal of a decision in such civil action.

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

''(e) VENUE; SERVICE OF PROCESS.—In a civil action brought under subsection (a)—

''(1) the venue shall be a judicial district in which—

''(A) the carrier, foreign motor carrier, or broker operates;

''(B) the carrier, foreign motor carrier, or broker was authorized to provide transportation at the time the complaint arose; or

''(C) where the defendant in the civil action is found;

''(2) process may be served without regard to the territorial limits of the district or of the State in which the civil action is instituted; and

''(3) a person who participated with a carrier or broker in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

''(f) ENFORCEMENT OF STATE LAW.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court to enforce a criminal statute of such State.''.

(2) CONFORMING AMENDMENT.—The analysis for chapter 147 is amended by inserting after the item relating to section 14709 the following:

''14710. Enforcement of Federal laws and regulations with respect to transportation of household goods.

''14711. Enforcement by State attorneys general.''.

SEC. 4309. WORKING GROUP FOR DEVELOPMENT OF PRACTICES AND PROCEDURES TO ENHANCE FEDERAL-STATE RELATIONS.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall establish a working group of State attorneys general, State authorities that regulate the movement of household goods, and Federal and local law enforcement officials for the purpose of developing practices and procedures to enhance the Federal-State partnership in enforcement efforts, exchange of information, and coordination of enforcement efforts with respect to interstate transportation of household goods and making legislative and regulatory recommendations to the Secretary concerning such enforcement efforts.

(b) CONSULTATION.—In carrying out subsection (a), the working group shall consult with industries involved in the transportation of household goods, the public, and other interested parties.

SEC. 4310. CONSUMER HANDBOOK ON DOT WEBSITE.

Within 6 months after the date of enactment of this Act, the Secretary shall take

such action as may be necessary to ensure that the Department of Transportation publication OCE 100, entitled ''Your Rights and Responsibilities When You Move'' required by section 375.2 of title 49, Code of Federal Regulations (or any corresponding similar regulation), is prominently displayed, and available in language that is readily understandable by the general public, on the website of the Department of Transportation.

SEC. 4311. INFORMATION ABOUT HOUSEHOLD GOODS TRANSPORTATION ON CARRIERS' WEBSITES.

Not later than 1 year after the date of enactment of this Act, the Secretary shall modify the regulations contained in part 375 of title 49, Code of Federal Regulations, to require a motor carrier or broker that is subject to such regulations and that establishes and maintains a website to prominently display on the website—

(1) the number assigned to the motor carrier or broker by the Department of Transportation;

(2) the OCE 100 publication referred to in section 4310; and

(3) in the case of a broker, a list of all motor carriers providing transportation of household goods used by the broker and a statement that the broker is not a motor carrier providing transportation of household goods.

SEC. 4312. CONSUMER COMPLAINTS.

(a) REQUIREMENT FOR DATABASE.—Subchapter II of chapter 141 is amended by adding at the end the following:

''§ 14124. Consumer complaints

''(a) ESTABLISHMENT OF SYSTEM AND DATABASE.—The Secretary of Transportation shall—

''(1) establish a system to—

''(A) file and log a complaint made by a shipper that relates to motor carrier transportation of household goods; and

''(B) to solicit information gathered by a State regarding the number and type of complaints involving the interstate transportation of household goods;

''(2) establish a database of such complaints; and

''(3) develop a procedure—

''(A) to provide the public access to the database;

''(B) to forward a complaint, including the motor carrier bill of lading number related to the complaint to a motor carrier named in such complaint and to an appropriate State authority (as defined in section 14710(c) in the State in which the complainant resides; and

''(C) to permit a motor carrier to challenge information in the database.

''(b) REQUIREMENT FOR ANNUAL REPORTS.—The Secretary shall issue regulations requiring a motor carrier that provides transportation of household goods to submit to the Secretary, not later than March 31st of each year, an annual report covering the 12-month period ending on the preceding March 31st that includes—

''(1) the number of interstate shipments of household goods that the motor carrier received from shippers and that were delivered to a final destination during the preceding calendar year;

''(2) the number and general category of complaints lodged against the motor carrier during the preceding calendar year;

''(3) the number of shipments described in paragraph (1) that resulted in the filing of a claim against the motor carrier for loss or damage to the shipment for an amount in excess of $500 during the preceding calendar year; and

''(4) the number of shipments described in paragraph (3) that were—

''(A) resolved during the preceding calendar year; or

''(B) pending on the last day of the preceding calendar year.

''(c) SUMMARY TO CONGRESS.—The Secretary shall transmit a summary each year of the complaints filed and logged under subsection (a) for the preceding calendar year to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 141 is amended by inserting after the item relating to section 14123 the following:

''14124. Consumer complaints.''.

SEC. 4313. REVIEW OF LIABILITY OF CARRIERS.

(a) REVIEW.—Not later than 1 year after the date of enactment of this Act, the Surface Transportation Board shall complete a review of the current Federal regulations regarding the level of liability protection provided by motor carriers that provide transportation of household goods and revise such regulations, if necessary, to provide enhanced protection in the case of loss or damage.

(b) DETERMINATIONS.—The review required by subsection (a) shall include a determination of—

(1) whether the current regulations provide adequate protection;

(2) the benefits of purchase by a shipper of insurance to supplement the carrier's limitations on liability;

(3) whether there are abuses of the current regulations that leave the shipper unprotected in the event of loss and damage to a shipment of household goods; and

(4) whether the section 14706 of title 49, United States Code, should be modified or repealed.

SEC. 4314. CIVIL PENALTIES RELATING TO HOUSEHOLD GOODS BROKERS.

Section 14901(d) is amended—

(1) by resetting the text as a paragraph indented 2 ems from the left margin and inserting ''(1) IN GENERAL.—'' before ''If a carrier''; and

(2) by adding at the end the following:

''(2) ESTIMATE OF BROKER WITHOUT CARRIER AGREEMENT.—If a broker for transportation of household goods subject to jurisdiction under subchapter I of chapter 135 of this title makes an estimate of the cost of transporting any such goods before entering into an agreement with a carrier to provide transportation of household goods subject to such jurisdiction, the broker is liable to the United States for a civil penalty of not less than $10,000 for each violation.

''(3) UNAUTHORIZED TRANSPORTATION.—If a person provides transportation of household goods subject to jurisdiction under subchapter I of chapter 135 this title or provides broker services for such transportation without being registered under chapter 139 of this title to provide such transportation or services as a motor carrier or broker, as the case may be, such person is liable to the United States for a civil penalty of not less than $25,000 for each violation.''.

SEC. 4315. CIVIL AND CRIMINAL PENALTY FOR FAILING TO GIVE UP POSSESSION OF HOUSEHOLD GOODS.

(a) IN GENERAL.—Chapter 149 is amended by adding at the end the following:

''§ 14915. Penalties for failure to give up possession of household goods

''(a) CIVIL PENALTY.—Whoever is found to have failed to give up possession of household goods is liable to the United States for a civil penalty of not less than $10,000. Each day a carrier is found to have failed to give up possession of household goods may constitute a separate violation. If such person is a carrier or broker, the Secretary may suspend for a period of not less than 6 months the registration of such carrier or broker under chapter 139 of this title.

''(b) CRIMINAL PENALTY.—Whoever has been convicted of having failed to give up possession of household goods shall be fined under title 18 or imprisoned for not more than 2 years, or both.

''(c) FAILURE TO GIVE UP POSSESSION OF HOUSEHOLD GOODS DEFINED.—For purposes of this section, the term 'failed to give up possession of household goods' means the knowing and willful failure of a motor carrier to deliver to, or unload at, the destination of a shipment of household goods that is subject to jurisdiction under subchapter I or III of chapter 135 of this title, for which charges have been estimated by the motor carrier providing transportation of such goods, and for which the shipper has tendered a payment described in clause (i), (ii), or (iii) of section 13707(b)(3)(A) of this title.''.

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

''14915. Penalties for failure to give up possession of household goods.''.

SEC. 4316. PROGRESS REPORT.

Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the progress being made in implementing the provisions of this title.

SEC. 4317. ADDITIONAL REGISTRATION REQUIREMENTS FOR MOTOR CARRIERS OF HOUSEHOLD GOODS.

Section 13902(a) is amended—

(1) by striking paragraphs (2) and (3);

(2) by redesignating paragraph (4) as paragraph (5) and inserting after paragraph (1) the following:

''(2) ADDITIONAL REGISTRATION REQUIREMENTS FOR HOUSEHOLD GOODS TRANSPORTATION.—Notwithstanding paragraph (1), the Secretary may register a person to provide transportation of household goods (as defined in section 13102(10) of this title) only after that person—

''(A) provides evidence of participation in an arbitration program and provides a copy of the notice of that program as required by section 14708(b)(2) of this title;

''(B) identifies its tariff and provides a copy of the notice of the availability of that tariff for inspection as required by section 13702(c) of this title;

''(C) provides evidence that it has access to, has read, is familiar with, and will observe all laws relating to consumer protection, estimating, consumers' rights and responsibilities, and options for limitations of liability for loss and damage; and

''(D) discloses any relationship involving common stock, common ownership, common management, or common familial relationships between that person and any other motor carrier, freight forwarder, or broker of household goods within the past 3 years.

''(3) CONSIDERATION OF EVIDENCE; FINDINGS.—The Secretary shall consider, and, to the extent applicable, make findings on any evidence demonstrating that the registrant is unable to comply with any applicable requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2).

''(4) WITHHOLDING.—If the Secretary determines that a registrant under this section does not meet, or is not able to meet, any requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2), the Secretary shall withhold registration.''; and

(3) by adding at the end of paragraph (5), as redesignated, ''In the case of a registration for the transportation of household goods (as

defined in section 13102(10 of this title), the Secretary may also hear a complaint on the ground that the registrant fails or will fail to comply with the requirements of paragraph (2) of this subsection.''.

Subtitle D—Hazardous Materials Transportation Safety and Security

SEC. 4401. SHORT TITLE.

This subtitle may be cited as the ''Hazardous Material Transportation Safety and Security Reauthorization Act of 2004''.

SEC. 4402. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

PART 1—GENERAL AUTHORITIES ON TRANSPORTATION OF HAZARDOUS MATERIALS

SEC. 4421. PURPOSE.

The text of section 5101 is amended to read as follows:

''The purpose of this chapter is to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in intrastate, interstate, and foreign commerce.''.

SEC. 4422. DEFINITIONS.

Section 5102 is amended as follows:

(1) COMMERCE.—Paragraph (1) is amended—

(A) by striking ''or'' after the semicolon in subparagraph (A);

(B) by striking the ''State.'' in subparagraph (B) and inserting ''State; or''; and

(C) by adding at the end the following:

''(C) on a United States-registered aircraft.''.

(2) HAZMAT EMPLOYEE.—Paragraph (3) is amended to read as follows:

''(3) 'hazmat employee' means an individual—

''(A) who—

''(i) is employed or used by a hazmat employer; or

''(ii) is self-employed, including an owner-operator of a motor vehicle, vessel, or aircraft, transporting hazardous material in commerce; and

''(B) who performs a function regulated by the Secretary under section 5103(b)(1) of this title.''.

(3) HAZMAT EMPLOYER.—Paragraph (4) is amended to read as follows:

''(4) 'hazmat employer' means a person—

''(A) who—

''(i) employs or uses at least 1 hazmat employee; or

''(ii) is self-employed, including an owner-operator of a motor vehicle, vessel, or aircraft, transporting hazardous material in commerce; and

''(B) who performs, or employs or uses at least 1 hazmat employee to perform, a function regulated by the Secretary under section 5103(b)(1) of this title.''.

(4) IMMINENT HAZARD.—Paragraph (5) is amended by inserting ''relating to hazardous material'' after ''of a condition''.

(5) MOTOR CARRIER.—Paragraph (7) is amended to read as follows:

''(7) 'motor carrier'—

''(A) means a motor carrier, motor private carrier, and freight forwarder as those terms are defined in section 13102 of this title; but

''(B) does not include a freight forwarder, as so defined, if the freight forwarder is not performing a function relating to highway transportation.''.

(6) NATIONAL RESPONSE TEAM.—Paragraph (8) is amended—

(A) by striking ''national response team'' both places it appears and inserting ''National Response Team''; and

(B) by striking ''national contingency plan'' and inserting ''National Contingency Plan''.

(7) PERSON.—Paragraph (9)(A) is amended by striking ''offering'' and all that follows and inserting ''that—

''(i) offers hazardous material for transportation in commerce;

''(ii) transports hazardous material to further a commercial enterprise; or

''(iii) manufactures, designs, inspects, tests, reconditions, marks, or repairs a packaging or packaging component that is represented as qualified for use in transporting hazardous material in commerce; but''.

(8) SECRETARY OF TRANSPORTATION.—Section 5101 is further amended—

(A) by redesignating paragraphs (11), (12), and (13), as paragraphs (12), (13), and (14), respectively; and

(B) by inserting after paragraph (10) the following:

''(11) 'Secretary' means the Secretary of Transportation except as otherwise provided.''.

SEC. 4423. GENERAL REGULATORY AUTHORITY.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5103(a) is amended by striking ''of Transportation''.

(b) DESIGNATING MATERIAL AS HAZARDOUS.—Section 5103(a) is further amended—

(1) by striking ''etiologic agent'' and all that follows through ''corrosive material,'' and inserting ''infectious substance, flammable or combustible liquid, solid, or gas, toxic, oxidizing, or corrosive material,''; and

(2) by striking ''decides'' and inserting ''determines''.

(c) REGULATIONS FOR SAFE TRANSPORTATION.—Section 5103(b)(1)(A) is amended to read as follows:

''(A) apply to a person who—

''(i) transports hazardous material in commerce;

''(ii) causes hazardous material to be transported in commerce;

''(iii) manufactures, designs, inspects, tests, reconditions, marks, or repairs a packaging or packaging component that is represented as qualified for use in transporting hazardous material in commerce;

''(iv) prepares or accepts hazardous material for transportation in commerce;

''(v) is responsible for the safety of transporting hazardous material in commerce;

''(vi) certifies compliance with any requirement under this chapter;

''(vii) misrepresents whether such person is engaged in any activity under clause (i) through (vi) of this subparagraph; or

''(viii) performs any other act or function relating to the transportation of hazardous material in commerce; and''.

(d) TECHNICAL AMENDMENT REGARDING CONSULTATION.—Section 5103 is amended—

(1) by striking subsection (b)(1)(C); and

(2) by adding at the end the following:

''(c) CONSULTATION.—When prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material, the Secretary of Homeland Security shall consult with the Secretary of Transportation.''.

SEC. 4424. LIMITATION ON ISSUANCE OF HAZMAT LICENSES.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5103a is amended by striking ''of Transportation'' each place it appears in subsections (a)(1), (c)(1)(B), and (d) and inserting ''of Homeland Security''.

(b) COVERED HAZARDOUS MATERIALS.—Section 5103a(b) is amended by striking ''with respect to—'' and all that follows and inserting ''with respect to any material defined as hazardous material by the Secretary for which the Secretary requires placarding of a commercial motor vehicle transporting that material in commerce.''.

(c) RECOMMENDATIONS ON CHEMICAL OR BIOLOGICAL MATERIALS.—Section 5103a is further amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

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

''(c) RECOMMENDATIONS ON CHEMICAL AND BIOLOGICAL MATERIALS.—The Secretary of Health and Human Services shall recommend to the Secretary any chemical or biological material or agent for regulation as a hazardous material under section 5103(a) of this title if the Secretary of Health and Human Services determines that such material or agent is a threat to the national security of the United States.''.

(d) CONFORMING AMENDMENT.—Section 5103a(a)(1) is amended by striking ''subsection (c)(1)(B),'' and inserting ''subsection (d)(1)(B),''.

SEC. 4425. REPRESENTATION AND TAMPERING.

(a) REPRESENTATION.—Section 5104(a) is amended—

(1) by striking ''a container,'' and all that follows through ''packaging) for'' and inserting ''a package, component of a package, or packaging for''; and

(2) by striking ''the container'' and all that follows through ''packaging) meets'' and inserting ''the package, component of a package, or packaging meets''.

(b) TAMPERING.—Section 5104(b) is amended—

(1) by inserting '', without authorization from the owner or custodian,'' after ''may not'';

(2) by striking ''unlawfully''; and

(3) by inserting ''component of a package, or packaging,'' after ''package,'' in paragraph (2).

SEC. 4426. TRANSPORTING CERTAIN HIGHLY RADIOACTIVE MATERIAL.

(a) REPEAL OF ROUTES AND MODES STUDY.—Section 5105 is amended by striking subsection (d).

(b) REPEAL OF REQUIREMENT FOR INSPECTIONS OF CERTAIN MOTOR VEHICLES.—Section 5105 is amended by striking subsection (e).

SEC. 4427. HAZMAT EMPLOYEE TRAINING REQUIREMENTS AND GRANTS.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5107 is amended by striking ''of Transportation'' each place it appears in subsections (a), (b), (c) (other than in paragraph (1)), (d), and (f).

(b) TRAINING GRANTS.—Section 5107(e) is amended—

(1) by striking ''section 5127(c)(3)'' and inserting ''section 5128(b)(1) of this title'';

(2) by inserting ''and, to the extent determined appropriate by the Secretary, grants for such instructors to train hazmat employees'' after ''employees'' in the first sentence thereof.

SEC. 4428. REGISTRATION.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5108 is amended by striking ''of Transportation'' each place it appears in subsections (a), (b) (other than following ''Department''), (d), (e), (f), (g), (h), and (i).

(b) PERSONS REQUIRED TO FILE.—

(1) REQUIREMENT TO FILE.—Section 5108(a)(1)(B) is amended by striking ''class A or B explosive'' and inserting ''Division 1.1, 1.2, or 1.3 explosive material''.

(2) AUTHORITY TO REQUIRE TO FILE.—Section 5108(a)(2)(B) is amended to read as follows:

''(B) a person manufacturing, designing, inspecting, testing, reconditioning, marking, or repairing a package or packaging component that is represented as qualified for use in transporting hazardous material in commerce.''.

(3) NO TRANSPORTATION WITHOUT FILING.—Section 5108(a)(3) is amended by striking ''fabricate,'' and all that follows through ''package or'' and inserting ''design, inspect, test, recondition, mark, or repair a package, packaging component, or''.

(c) FORM AND CONTENT OF FILINGS.—Section 5108(b)(1)(C) by striking ''the activity.'' and inserting ''any of the activities.''.

(d) FILING.—Section 5108(c) is amended to read as follows:

''(c) FILING.—Each person required to file a registration statement under subsection (a) of this section shall file the statement in accordance with regulations prescribed by the Secretary.''.

(e) FEES.—Section 5108(g)(1) is amended by striking ''may establish,'' and inserting ''shall establish,''.

(f) RELATIONSHIP TO OTHER LAWS.—Section 5108(i)(2)(B) is amended by inserting ''an Indian tribe,'' after ''subdivision of a State,''.

(g) REGISTRATION AND ANNUAL FEES.—

(1) REDUCTION IN CAP.—Section 5108(g)(2)(A) is amended by striking ''$5,000'' and inserting ''$2,000''.

(2) RULEMAKING.—Any rule, regulation, or order issued by the Secretary of Transportation under which the assessment, payment, or collection of fees under section 5108(g) of title 49, United States Code, was suspended or terminated before the date of enactment of this Act is declared null and void effective 30 days after such date of enactment. Beginning on the 31st day after such date of enactment, the fee schedule established by the Secretary and set forth at 65 Federal Register 7297 (as modified by the rule set forth at 67 Federal Register 58343) shall take effect and apply until such time as it may be modified by a rulemaking proceeding.

(3) PLANNING AND TRAINING GRANTS.—Notwithstanding any other provision of law to the contrary, including any limitation on the amount of grants authorized by section 5116 of title 49, United States Code, not contained in that section, the Secretary shall make grants under that section from the account established under section 5116(i) to reduce the balance in that account over the 6 fiscal year period beginning with fiscal year 2004, but in no fiscal year shall the grants distributed exceed the level authorized by section 5116 of title 49, United States Code.

SEC. 4429. SHIPPING PAPERS AND DISCLOSURE.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5110(a) is amended by striking ''of Transportation''.

(b) DISCLOSURE CONSIDERATIONS AND REQUIREMENTS.—Section 5110 is amended—

(1) by striking ''under subsection (b) of this section.'' in subsection (a) and inserting ''in regulations.'';

(2) by striking subsection (b); and

(3) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively.

(c) RETENTION OF PAPERS.—The first sentence of section 5110(d), as redesignated by subsection (b)(3) of this section, is amended to read as follows: ''The person who provides the shipping paper, and the carrier required to keep it, under this section shall retain the paper, or an electronic format of it, for a period of 3 years after the date the shipping paper is provided to the carrier, with the paper and format to be accessible through their respective principal places of business.''.

SEC. 4430. RAIL TANK CARS.

(a) REPEAL OF REQUIREMENTS.—Section 5111 is repealed.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 51 is amended by striking the item relating to section 5111.

SEC. 4431. HIGHWAY ROUTING OF HAZARDOUS MATERIAL.

The second sentence of section 5112(a)(1) is amended by striking ''However, the Secretary of Transportation'' and inserting ''The Secretary''.

SEC. 4432. UNSATISFACTORY SAFETY RATINGS.

(a) IN GENERAL.—The text of section 5113 is amended to read as follows:

''A violation of section 31144(c)(3) of this title shall be considered a violation of this chapter, and shall be subject to the penalties in sections 5123 and 5124 of this title.''.

(b) CONFORMING AMENDMENTS.—The first subsection (c) of section 31144 is amended—

(1) by striking ''sections 521(b)(5)(A) and 5113'' in paragraph (1) and inserting ''section 521(b)(5)(A) of this title''; and

(2) by adding at the end of paragraph (3) ''A violation of this paragraph by an owner or operator transporting hazardous material shall be considered a violation of chapter 51 of this title, and shall be subject to the penalties in sections 5123 and 5124 of this title.''.

SEC. 4433. AIR TRANSPORTATION OF IONIZING RADIATION MATERIAL.

Section 5114(b) is amended by striking ''of Transportation''.

SEC. 4434. TRAINING CURRICULUM FOR THE PUBLIC SECTOR.

(a) IN GENERAL.—Section 5115(a) is amended to read as follows:

''(a) IN GENERAL.—In coordination with the Director of the Federal Emergency Management Agency, the Chairman of the Nuclear Regulatory Commission, the Administrator of the Environmental Protection Agency, the Secretaries of Labor, Energy, and Health and Human Services, and the Director of the National Institute of Environmental Health Sciences, and using existing coordinating mechanisms of the National Response Team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee, the Secretary shall maintain a current curriculum of lists of courses necessary to train public sector emergency response and preparedness teams in matters relating to the transportation of hazardous material.''.

(b) REQUIREMENTS.—Section 5115(b) is amended—

(1) by striking ''developed'' in the matter preceding paragraph (1) and inserting ''maintained''; and

(2) by striking ''under other United States Government grant programs'' in paragraph (1)(C) and all that follows and inserting ''with Federal assistance; and''.

(c) TRAINING ON COMPLIANCE WITH LEGAL REQUIREMENTS.—Section 5115(c)(3) is amended by striking ''Association.'' and inserting ''Association or by any other voluntary organization establishing consensus-based standards that the Secretary considers appropriate.''.

(d) DISTRIBUTION AND PUBLICATION.—Section 5115(d) is amended—

(1) by striking ''national response team—'' and inserting ''National Response Team—''; and

(2) by striking ''publish a list'' in paragraph (2) and all that follows and inserting ''publish and distribute the list of courses maintained under this section, and of any programs utilizing such courses.''.

SEC. 4435. PLANNING AND TRAINING GRANTS; EMERGENCY PREPAREDNESS FUND.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5116 is amended by striking ''of Transportation'' each place it appears in subsections (a), (b), (c), (d), (g), and (i).

(b) GOVERNMENT SHARE OF COSTS.—Section 5116(e) is amended by striking the second sentence.

(c) MONITORING AND TECHNICAL ASSISTANCE.—Section 5116(f) is amended by striking ''national response team'' and inserting ''National Response Team''.

(d) DELEGATION OF AUTHORITY.—Section 5116(g) is amended by striking ''Government grant programs'' and inserting ''Federal financial assistance programs''.

(e) EMERGENCY PREPAREDNESS FUND.—

(1) NAME OF FUND.—Section 5116(i) is amended by inserting after ''an account'' the following: ''(to be known as the 'Emergency Preparedness Fund')''.

(2) PUBLICATION OF EMERGENCY RESPONSE GUIDE.—Section 5116(i) is further amended—

(A) by striking ''collects under section 5108(g)(2)(A) of this title and'';

(B) by striking ''and'' after the semicolon in paragraph (2);

(C) by redesignating paragraph (3) as paragraph (4); and

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

''(3) to publish and distribute an emergency response guide; and''.

(3) CONFORMING AMENDMENT.—Section 5108(g)(2)(C) is amended by striking ''the account the Secretary of the Treasury establishes'' and inserting ''the Emergency Response Fund established''.

(f) REPORTS.—Section 5116(k) is amended—

(1) by striking the first sentence and inserting ''The Secretary shall make available to the public annually information on the allocation and uses of planning grants under subsection (a), training grants under subsection (b), and grants under subsection (j) of this section and under section 5107 of this title.''; and

(2) by striking ''Such report'' in the second sentence and inserting ''The information''.

SEC. 4436. SPECIAL PERMITS AND EXCLUSIONS.

(a) SPECIAL PERMITS AND EXCLUSIONS.—

(1) IN GENERAL.—Section 5117(a)(1) is amended by striking ''the Secretary of Transportation may issue'' and all that follows through ''in a way'' and inserting ''the Secretary may issue, modify, or terminate a special permit authorizing variances from this chapter, or a regulation prescribed under section 5103(b), 5104, 5110, or 5112 of this title, to a person performing a function regulated by the Secretary under section 5103(b)(1) of this title in a way''.

(2) DURATION.—Section 5117(a)(2) is amended to read as follows:

''(2) A special permit under this subsection—

''(A) shall be effective when first issued for not more than 2 years; and

''(B) may be renewed for successive periods of not more than 4 years each.''.

(b) REFERENCES TO SPECIAL PERMITS.—Section 5117 is further amended—

(1) by striking ''an exemption'' each place it appears and inserting ''a special permit''; and

(2) by striking ''the exemption'' each place it appears and inserting ''the special permit''.

(c) CONFORMING AND CLERICAL AMENDMENTS.—

(1) CONFORMING AMENDMENT.—The heading of section 5117 is amended to read as follows:

''§ 5117. Special permits and exclusions''

(2) CLERICAL AMENDMENT.—The chapter analysis for chapter 51 is amended by striking the item relating to section 5117 and inserting the following:

''5117. Special permits and exclusions.''.

(d) REPEAL OF SECTION 5118.—

(1) Section 5118 is repealed.

(2) The chapter analysis for chapter 51 is amended by striking the item relating to section 5118 and inserting the following:

''5118. Repealed''

SEC. 4437. UNIFORM FORMS AND PROCEDURES.

The text of section 5119 is amended to read as follows:

''(a) IN GENERAL.—The Secretary may prescribe regulations to establish uniform forms and regulations for States on the following:

''(1) To register and issue permits to persons that transport or cause to be transported hazardous material by motor vehicles in a State.

''(2) To permit the transportation of hazardous material in a State.

''(b) UNIFORMITY IN FORMS AND PROCEDURES.—In prescribing regulations under subsection (a) of this section, the Secretary shall develop procedures to eliminate discrepancies among the States in carrying out the activities covered by the regulations.

''(c) LIMITATION.—The regulations prescribed under subsection (a) of this section may not define or limit the amount of any fees imposed or collected by a State for any activities covered by the regulations.

''(d) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection, the regulations prescribed under subsection (a) of this section shall take effect 1 year after the date on which prescribed.

''(2) EXTENSION.—The Secretary may extend the 1-year period in subsection (a) for an additional year for good cause.

''(e) STATE REGULATIONS.—After the regulations prescribed under subsection (a) of this section take effect under subsection (d) of this section, a State may establish, maintain, or enforce a requirement relating to the same subject matter only if the requirement is consistent with applicable requirements with respect to such activity in the regulations.

''(f) INTERIM STATE PROGRAMS.—Pending the prescription of regulations under subsection (a) of this section, States may participate in the program of uniform forms and procedures recommended by the Alliance for Uniform Hazmat Transportation Procedures.''.

SEC. 4438. INTERNATIONAL UNIFORMITY OF STANDARDS AND REQUIREMENTS.

Section 5120 is amended by striking ''of Transportation'' each place it appears in subsections (a), (b), and (c)(1).

SEC. 4439. HAZARDOUS MATERIALS TRANSPORTATION SAFETY AND SECURITY.

The text of section 5121 is amended to read as follows:

''(a) GENERAL AUTHORITY.—

''(1) To carry out this chapter, the Secretary may investigate, conduct tests, make reports, issue subpoenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities.

''(2) Except as provided in subsections (c) and (d) of this section, the Secretary shall provide notice and an opportunity for a hearing before issuing an order directing compliance with this chapter, a regulation prescribed under this chapter, or an order, special permit, or approval issued under this chapter.

''(b) RECORDS, REPORTS, PROPERTY, AND INFORMATION.—A person subject to this chapter shall—

''(1) maintain records, make reports, and provide property and information that the Secretary by regulation or order requires; and

''(2) make the records, reports, property, and information available for inspection when the Secretary undertakes an inspection or investigation.

''(c) INSPECTIONS AND INVESTIGATIONS.—

''(1) A designated officer or employee of the Secretary may—

''(A) inspect and investigate, at a reasonable time and in a reasonable way, records and property relating to a function described in section 5103(b)(1) of this title;

''(B) except for packaging immediately adjacent to the hazardous material contents, gain access to, open, and examine a package offered for or in transportation when the officer or employees has an objectively reasonable and articulable belief that the package may contain hazardous material;

''(C) remove from transportation a package or related packages in a shipment offered for or in transportation for which—

''(i) such officer or employee has an objectively reasonable and articulable belief that the package may pose an imminent hazard; and

''(ii) such officer or employee contemporaneously documents such belief in accordance with procedures set forth in regulations prescribed under subsection (e) of this section;

''(D) gather information from the offeror, carrier, packaging manufacturer or retester, or other person responsible for a package or packages to ascertain the nature and hazards of the contents of the package or packages;

''(E) as necessary under terms and conditions prescribed by the Secretary, order the offeror, carrier, or other person responsible for a package or packages to have the package or packages transported to an appropriate facility, opened, examined, and analyzed; and

''(F) when safety might otherwise be compromised, authorize properly qualified personnel to assist in activities carried out under this paragraph.

''(2) An officer or employee acting under the authority of the Secretary under this subsection shall display proper credentials when requested.

''(3) In instances when, as a result of an inspection or investigation under this subsection, an imminent hazards is not found to exist, the Secretary shall, in accordance with procedures set forth in regulations prescribed under subsection (e) of this section, assist the safe resumption of transportation of the package, packages, or transport unit concerned.

''(d) EMERGENCY ORDERS.—

''(1) If, upon inspection, investigation, testing, or research, the Secretary determines that a violation of a provision of this chapter, or a regulation prescribed under this chapter, or an unsafe condition or practice, constitutes or is causing an imminent hazard, the Secretary may issue or impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for a hearing, but only to the extent necessary to abate the imminent hazard.

''(2) The action of the Secretary under paragraph (1) of this subsection shall be in a written emergency order that—

''(A) describes the violation, condition, or practice that constitutes or is causing the imminent hazard;

''(B) states the restrictions, prohibitions, recalls, or out-of-service orders issued or imposed; and

''(C) describe the standards and procedures for obtaining relief from the order.

''(3) After taking action under paragraph (1) of this subsection, the Secretary shall provide for review of the action under section 554 of title 5 if a petition for review is filed within 20 calendar days of the issuance of the order for the action.

''(4) If a petition for review of an action is filed under paragraph (3) of this subsection and the review under that paragraph is not completed by the end of the 30-day period beginning on the date the petition is filed, the action shall cease to be effective at the end of such period unless the Secretary determines, in writing, that the imminent hazard providing a basis for the action continues to exist.

''(5) In this subsection, the term 'out-of-service order' means a requirement that an aircraft, vessel, motor vehicle, train, railcar, locomotive, other vehicle, transport unit, transport vehicle, freight container, potable tank, or other package not be moved until specified conditions have been met.

''(e) REGULATIONS.—The Secretary shall prescribe in accordance with section 553 of title 5 regulations to carry out the authority in subsections (c) and (d) of this section.

''(f) FACILITY, STAFF, AND REPORTING SYSTEM ON RISKS, EMERGENCIES, AND ACTIONS.—

''(1) The Secretary shall—

''(A) maintain a facility and technical staff sufficient to provide, within the United States Government, the capability of evaluating a risk relating to the transportation of hazardous material and material alleged to be hazardous;

''(B) maintain a central reporting system and information center capable of providing information and advice to law enforcement and firefighting personnel, and other interested individuals, and officers and employees of the United States Government and State and local governments on meeting an emergency relating to the transportation of hazardous material; and

''(C) conduct a continuous review on all aspects of transporting hazardous material to decide on and take appropriate actions to ensure safe transportation of hazardous material.

''(2) Paragraph (1) of this subsection shall not prevent the Secretary from making a contract with a private entity for use of a supplemental reporting system and information center operated and maintained by the contractor.

''(g) GRANTS, COOPERATIVE AGREEMENTS, AND OTHER TRANSACTIONS.—The Secretary may enter into grants, cooperative agreements, and other transactions with a person, agency, or instrumentality of the United States, a unit of State or local government, an Indian tribe, a foreign government (in coordination with the Department of State), an educational institution, or other appropriate entity—

''(1) to expand risk assessment and emergency response capabilities with respect to the security of transportation of hazardous material;

''(2) to conduct research, development, demonstration, risk assessment and emergency response planning and training activities; or

''(3) to otherwise carry out this chapter.

''(h) REPORTS.—

''(1) The Secretary shall, once every 2 years, submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a comprehensive report on the transportation of hazardous material during the preceding 2 calendar years. Each report shall include, for the period covered by such report—

''(A) a statistical compilation of the accidents, incidents, and casualties related to the transportation of hazardous material during such period;

''(B) a list and summary of applicable Government regulations, criteria, orders, and special permits;

''(C) a summary of the basis for each special permit issued;

''(D) an evaluation of the effectiveness of enforcement activities relating to the transportation of hazardous material during such period, and of the degree of voluntary compliance with regulations;

''(E) a summary of outstanding problems in carrying out this chapter, set forth in order of priority; and

''(F) any recommendations for legislative or administrative action that the Secretary considers appropriate.

''(2) Before December 31, 2005, and every 3 years thereafter, the Secretary, through the Bureau of Transportation Statistics and in consultation with other Federal departments and agencies, shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the transportation of hazardous material in all modes of transportation during the preceding 3 calendar years. Each report shall include, for the period covered by such report—

''(A) a summary of the hazardous material shipments, deliveries, and movements during such period, set forth by hazardous materials type, by tonnage and ton-miles, and by mode, both domestically and across United States borders; and

''(B) a summary of shipment estimates during such period as a proxy for risk.

''(i) SECURITY SENSITIVE INFORMATION.—

''(1) If the Secretary determines that particular information may reveal a vulnerability of a hazardous material to attack during transportation in commerce, or may facilitate the diversion of hazardous material during transportation in commerce for use in an attack on people or property, the Secretary may disclose such information only—

''(A) to the owner, custodian, offeror, or carrier of such hazardous material;

''(B) to an officer, employee, or agent of the United States Government, or a State or local government, including volunteer fire departments, concerned with carrying out transportation safety laws, protecting hazardous material in the course of transportation in commerce, protecting public safety or national security, or enforcing Federal law designed to protect public health or the environment; or

''(C) in an administrative or judicial proceeding brought under this chapter, under other Federal law intended to protect public health or the environment, or under other Federal law intended to address terrorist actions or threats of terrorist actions.

''(2) The Secretary may make determinations under paragraph (1) of this subsection with respect categories of information in accordance with regulations prescribed by the Secretary.

''(3) A release of information pursuant to a determination under paragraph (1) of this subsection shall not be treated as a release of such information to the public for purposes of section 552 of title 5.''.

SEC. 4440. ENFORCEMENT.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5122(a) is amended by striking ''of Transportation''.

(b) GENERAL.—Section 5122(a) is further amended—

(1) by striking ''chapter or a regulation prescribed or order''in the first sentence and inserting ''chapter, a regulation prescribed under this chapter, or an order, special permit, or approval''; and

(2) by striking the second sentence and inserting ''In an action under this subsection, the court may award appropriate relief, including a temporary or permanent injunction, civil penalties under section 5123 of this title, and punitive damages.''.

(c) IMMINENT HAZARDS.—Section 5122(b)(1)(B) is amended by striking ''ameliorate'' and inserting ''mitigate''.

SEC. 4441. CIVIL PENALTIES.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5123(b) is amended by striking ''of Transportation''.

(b) PENALTY.—Section 5123(a)(1) is amended—

(1) by striking ''chapter or a regulation prescribed or order'' and inserting ''chapter, a regulation prescribed under this chapter, or an order, special permit, or approval''; and

(2) by striking ''$25,000'' and inserting ''$100,000''.

(c) HEARING REQUIREMENT.—Section 5123(b) is amended by striking ''chapter or a regulation prescribed'' and inserting ''chapter, a regulation prescribed under this chapter, or an order, special permit, or approval issued''.

(d) CIVIL ACTIONS TO COLLECT.—Section 5123(d) is amended by striking ''section.'' and inserting ''section and any accrued interest on the civil penalty as calculated in accordance with section 1005 of the Oil Pollution Act of 1990 (33 U.S.C. 2705). In the civil action, the amount and appropriateness of the civil penalty shall not be subject to review.''.

(e) EFFECTIVE DATE.—(1) The amendments made by subsections (b) and (c) of this section shall take effect on the date of the enactment of this Act, and shall apply with respect to violations described in section 5123(a) of title 49, United States Code (as amended by this section), that occur on or after that date.

(2) The amendment made by subsection (d) of this section shall apply with respect to civil penalties imposed on violations described in section 5123(a) of title 49, United States Code (as amended by this section), which violations occur on or after the date of the enactment of this Act.

SEC. 4442. CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 5124 is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''A person''; and

(2) by striking ''chapter or a regulation prescribed or order'' and inserting ''chapter, a regulation prescribed under this chapter, or an order, special permit, or approval''.

(b) ADDITIONAL MATTERS.—That section is further amended by adding at the end the following:

''(b) AGGRAVATED VIOLATIONS.—A person knowingly violating section 5104(b) of this title or willfully violating this chapter or a regulation prescribed, or an order, special permit, or approval issued, under this chapter, who thereby causes the release of hazardous material shall be fined under title 18, imprisoned for not more than 20 years, or both.

''(c) SEPARATE VIOLATIONS.—A separate violation occurs for each day the violation, committed by a person who transports or causes to be transported hazardous material, continues.''.

SEC. 4443. PREEMPTION.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5125(b)(2) is amended by striking ''of Transportation''.

(b) PURPOSES.—Section 5125 is amended—

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

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

''(a) PURPOSES.—The Secretary shall exercise the authority in this section—

''(1) to achieve uniform regulation of the transportation of hazardous material;

''(2) to eliminate rules that are inconsistent with the regulations prescribed under this chapter; and

''(3) to otherwise promote the safe and efficient movement of hazardous material in commerce.'';

(3) by striking subsection (g), as redesignated; and

(4) by redesignating subsection (h), as redesignated, as subsection (g).

(c) GENERAL PREEMPTION.—Section 5125(b), as redesignated by subsection (b)(1) of this section, is further amended by striking ''GENERAL.—Except as provided in subsection (b), (c), and (e)'' and inserting ''PREEMPTION GENERALLY.—Except as provided in subsections (c), (d), and (f)''.

(d) SUBSTANTIVE DIFFERENCES.—Section 5125(c), as so redesignated, is further amended—

(1) in the matter preceding subparagraph (A) of paragraph (1), by striking ''subsection (c)'' and inserting ''subsection (d)'';

(2) by striking subparagraph (E) of paragraph (1) and inserting the following:

''(E) the manufacturing, designing, inspecting, testing, reconditioning, or repairing of a packaging or packaging component that is represented as qualified for use in transporting hazardous material in commerce.''; and

(3) by striking ''prescribes after November 16, 1990. However, the'' in paragraph (2) and inserting ''prescribes. The''.

(e) DECISIONS ON PREEMPTION.—Section 5125(e), as so redesignated, is further amended by striking ''subsection (a), (b)(1), or (c) of this section.'' in the first sentence and inserting ''subsection (b), (c)(1), or (d) of this section or section 5119(b) of this title.''.

(f) WAIVER OF PREEMPTION.—Section 5125(f), as so redesignated, is further amended by striking ''subsection (a), (b)(1), or (c) of this section.'' and inserting ''subsection (b), (c)(1), or (d) of this section or section 5119(b) of this title.''.

(g) EMERGENCY WAIVER OF PREEMPTION; ADDITIONAL MATTERS.—Section 5125 is further amended—

(1) by redesignating subsection (g), as redesignated by subsection (b)(4) of this section, as subsection (j); and

(2) by inserting after subsection (f), as redesignated by subsection (b)(1) of this section, the following:

''(g) EMERGENCY WAIVER OF PREEMPTION.—

''(1) The Secretary may, upon a finding of good cause, waive the preemption of a requirement of a State, political subdivision of a State, or Indian tribe under this section without prior notice or an opportunity for public comment thereon.

''(2) For purposes of paragraph (1) of this subsection, good cause exists when—

''(A) there is a potential threat that hazardous material being transported in commerce may be used in an attack on people or property; and

''(B) notice and an opportunity for public comment thereon are impracticable or contrary to the public interest.

''(3)(A) A waiver of preemption under paragraph (1) of this subsection shall be in effect for a period specified by the Secretary, but not more than 6 months.

''(B) If the Secretary determines before the expiration of a waiver of preemption under subparagraph (A) of this paragraph that the potential threat providing the basis for the waiver continues to exist, the Secretary may, after providing notice and an opportunity for public comment thereon, extend the duration of the waiver for such period after the expiration of the waiver under that subparagraph as the Secretary considers appropriate.

''(4) An action of the Secretary under paragraph (1) or (3) of this subsection shall be in writing and shall set forth the standards and procedures for seeking reconsideration of the action.

''(5) After taking action under paragraph (1) or (3) of this subsection, the Secretary shall provide for review of the action if a petition for review of the action is filed within 20 calendar days after the date of the action.

''(6) If a petition for review of an action is filed under paragraph (5) of this subsection and review of the action is not completed by the end of the 30-day period beginning on the date the petition is filed, the waiver under this subsection shall cease to be effective at

the end of such period unless the Secretary determines, in writing, that the potential threat providing the basis for the waiver continues.

''(h) APPLICATION OF EACH PREEMPTION STANDARD.—Each standard for preemption in subsection (b), (c)(1), or (d) of this section, and in section 5119(b) of this title, is independent in its application to a requirement of a State, political subdivision of a State, or Indian tribe.

''(i) NON-FEDERAL ENFORCEMENT STANDARDS.—This section does not apply to any procedure, penalty, required mental state, or other standard utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material.''.

SEC. 4444. RELATIONSHIP TO OTHER LAWS.

Section 5126 is amended—

(1) by striking ''or causes to be transported hazardous material,'' in subsection (a) and inserting ''hazardous material, or causes hazardous material to be transported,'';

(2) by striking ''manufactures,'' and all that follows through ''or sells'' in subsection (a) and inserting ''manufactures, designs, inspects, tests, reconditions, marks, or repairs a packaging or packaging component that is represented'';

(3) by striking ''must'' in subsection (a) and inserting ''shall'';

(4) by striking ''manufacturing,'' in subsection (a) and all that follows through ''testing'' and inserting ''manufacturing, designing, inspecting, testing, reconditioning, marking, or repairing''; and

(5) by striking ''39.'' in subsection (b)(2) and inserting ''39, except in the case of an imminent hazard.''.

SEC. 4445. JUDICIAL REVIEW.

(a) IN GENERAL.—Chapter 51 is amended—

(1) by redesignating section 5127 as section 5128; and

(2) by inserting after section 5126 the following:

''§ 5127. Judicial review

''(a) FILING AND VENUE.—Except as provided in section 20114(c) of this title, a person suffering legal wrong or adversely affected or aggrieved by a final action of the Secretary under this chapter may petition for review of the final action in the United States Court of Appeals for the District of Columbia or in the court of appeals of the United States for the circuit in which the person or resides or has the principal place of business. The petition shall be filed not more than 60 days after the action of the Secretary becomes final.

''(b) PROCEDURES.—When a petition on a final action is filed under subsection (a) of this section, the clerk of the court shall immediately send a copy of the petition to the Secretary. The Secretary shall file with the court a record of any proceeding in which the final action was issued as provided in section 2112 of title 28.

''(c) AUTHORITY OF COURT.—The court in which a petition on a final action is filed under subsection (a) of this section has exclusive jurisdiction, as provided in subchapter II of chapter 5 of title 5 to affirm or set aside any part of the final action and may order the Secretary to conduct further proceedings. Findings of fact by the Secretary, if supported by substantial evidence, are conclusive.

''(d) REQUIREMENT FOR PRIOR OBJECTIONS.—In reviewing a final action under this section, the court may consider an objection to the final action only if—

''(1) the objection was made in the course of a proceeding or review conducted by the Secretary; or

''(2) there was a reasonable ground for not making the objection in the proceeding.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 51 is amended by striking the item relating to section 5127 and inserting the following:

''5127. Judicial review.

''5128. Authorization of appropriations.''.

SEC. 4446. AUTHORIZATION OF APPROPRIATIONS.

Section 5128, as redesignated by section 4445 of this title, is amended to read as follows:

''§ 5128. Authorization of appropriations

''(a) GENERAL.—In order to carry out this chapter (except sections 5107(e), 5108(g), 5112, 5113, 5115, 5116, and 5119 of this title), the following amounts are authorized to be appropriated to the Secretary:

''(1) For fiscal year 2004, not more than $24,981,000.

''(2) For fiscal year 2005, not more than $27,000,000.

''(3) For fiscal year 2006, not more than $29,000,000.

''(4) For each of fiscal years 2007 through 2009, not more than $30,000,000.

''(b) EMERGENCY PREPAREDNESS FUND.—There shall be available from the Emergency Preparedness Fund under section 5116(i) of this title, amounts as follows:

''(1) To carry out section 5107(e) of this title, $4,000,000 for each of fiscal years 2004 through 2009.

''(2) To carry out section 5115 of this title, $200,000 for each of fiscal years 2004 through 2009.

''(3) To carry out section 5116(a) of this title, $8,000,000 for each of fiscal years 2004 through 2009.

''(4) To carry out section 5116(b) of this title, $13,800,000 for each of fiscal years 2004 through 2009.

''(5) To carry out section 5116(f) of this title, $150,000 for each of fiscal years 2004 through 2009.

''(6) To carry out section 5116(i)(4) of this title, $150,000 for each of fiscal years 2004 through 2009.

''(7) To carry out section 5116(j) of this title, $1,000,000 for each of fiscal years 2004 through 2009.

''(8) To publish and distribute an emergency response guidebook under section 5116(i)(3) of title 49, United States Code, $500,000 for each of fiscal years 2004 through 2009.

''(c) SECTION 5121 REPORTS.—There are authorized to be appropriated to the Secretary of Transportation for the use of the Bureau of Transportation Statistics such sums as may be necessary to carry out section 5121(h) of this title.''.

''(c) CREDIT TO APPROPRIATIONS.—The Secretary may credit to any appropriation to carry out this chapter an amount received from a State, political subdivision of a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, political subdivision, Indian tribe, or other authority or entity.

''(d) AVAILABILITY OF AMOUNTS.—Amounts available under subsections (a) and (b) of this section shall remain available until expended.''.

SEC. 4447. ADDITIONAL CIVIL AND CRIMINAL PENALTIES.

(a) TITLE 49 PENALTIES.—Section 46312 is amended—

(1) by striking ''part—'' in subsection (a) and inserting ''part or chapter 51 of this title—''; and

(2) by inserting ''or chapter 51 of this title'' in subsection (b) after ''under this part''.

(b) TITLE 18 PENALTIES.—Section 3663(a)(1)(A) of title 18, United States Code, is amended by inserting ''5124,'' before ''46312,''.

PART 2—OTHER MATTERS

SEC. 4461. ADMINISTRATIVE AUTHORITY FOR RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION.

Section 112 is amended—

(1) by redesignating subsection (e) as subsection (f); and

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

''(e) ADMINISTRATIVE AUTHORITIES.—

''(1) GRANTS, COOPERATIVE AGREEMENTS, AND OTHER TRANSACTIONS.—The Administrator may enter into grants, cooperative agreements, and other transactions with Federal agencies, State and local government agencies, other public entities, private organizations, and other persons—

''(A) to conduct research into transportation service and infrastructure assurance; and

''(B) to carry out other research activities of the Administration.

''(2) LIMITATION ON DISCLOSURE OF CERTAIN INFORMATION.—

''(A) LIMITATION.—If the Administrator determines that particular information developed in research sponsored by the Administration may reveal a systemic vulnerability of transportation service or infrastructure, such information may be disclosed only to—

''(i) a person responsible for the security of the transportation service or infrastructure; or

''(ii) a person responsible for protecting public safety; or

''(iii) an officer, employee, or agent of the Federal Government, or a State or local government, who, as determined by the Administrator, has need for such information in the performance of official duties.

''(B) TREATMENT OF RELEASE.—The release of information under subparagraph (A) shall not be treated as a release to the public for purposes of section 552 of title 5.''.

SEC. 4462. MAILABILITY OF HAZARDOUS MATERIALS.

(a) NONMAILABILITY GENERALLY.—Section 3001 of title 39, United States Code, is amended—

(1) by redesignating subsection (n) as subsection (o); and

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

''(n)(1) Except as otherwise authorized by law or regulations of the Postal Service under section 3018 of this title, hazardous material is nonmailable.

''(2) In this subsection, the term 'hazardous material' means a substance or material designated by the Secretary of Transportation as hazardous material under section 5103(a) of title 49.''.

(b) MAILABILITY.—

(1) IN GENERAL.—Chapter 30 of title 39, United States Code, is amended by adding at the end the following:

''§ 3018. Hazardous material

''(a) IN GENERAL.—The Postal Service shall prescribe regulations for the safe transportation of hazardous material in the mails.

''(b) PROHIBITIONS.—No person may—

''(1) mail or cause to be mailed hazardous material that has been declared by statute or Postal Service regulation to be nonmailable;

''(2) mail or cause to be mailed hazardous material in violation of any statute or Postal Service regulation restricting the time, place, or manner in which hazardous material may be mailed; or

''(3) manufacture, distribute, or sell any container, packaging kit, or similar device that—

''(A) is represented, marked, certified, or sold by such person for use in the mailing of hazardous material; and

''(B) fails to conform with any statute or Postal Service regulation setting forth

standards for a container, packaging kit, or similar device used for the mailing of hazardous material.

''(c) CIVIL PENALTY.—

''(1) IN GENERAL.—A person who knowingly violates this section or a regulation prescribed under this section shall be liable to the Postal Service for—

''(A) a civil penalty of at least $250, but not more than $100,000, for each violation;

''(B) the costs of any clean-up associated with such violation; and

''(C) damages.

''(2) KNOWING ACTION.—A person acts knowingly for purposes of paragraph (1) when—

''(A) the person has actual knowledge of the facts giving rise to the violation; or

''(B) a reasonable person acting in the circumstances and exercising reasonable care would have had that knowledge.

''(3) KNOWLEDGE OF STATUTE OR REGULATION NOT ELEMENT OF OFFENSE.—Knowledge of the existence of a statutory provision or Postal Service regulation is not an element of an offense under this subsection.

''(4) SEPARATE VIOLATIONS.—

''(A) VIOLATIONS OVER TIME.—A separate violation under this subsection occurs for each day hazardous material, mailed or cause to be mailed in noncompliance with this section, is in the mail.

''(B) SEPARATE ITEMS.—A separate violation under this subsection occurs for each item containing hazardous material that is mailed or caused to be mailed in noncompliance with this section.

''(d) HEARINGS.—The Postal Service may determine that a person has violated this section or a regulation prescribed under this section only after notice and an opportunity for a hearing.

''(e) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty for a violation of this section, the Postal Service shall consider—

''(1) the nature, circumstances, extent, and gravity of the violation;

''(2) with respect to the person who committed the violation, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue in business;

''(3) the impact on Postal Service operations; and

''(4) any other matters that justice requires.

''(f) CIVIL ACTIONS TO COLLECT.—

''(1) IN GENERAL.—In accordance with section 4409(d) of this title, a civil action may be commenced in an appropriate district court of the United States to collect a civil penalty, clean-up costs, and damages assessed under subsection (c).

''(2) LIMITATION.—In a civil action under paragraph (1), the validity, amount, and appropriateness of the civil penalty, clean-up costs, and damages covered by the civil action shall not be subject to review.

''(3) COMPROMISE.—The Postal Service may compromise the amount a civil penalty, clean-up costs, and damages assessed under subsection (c) before commencing a civil action with respect to such civil penalty, clean-up costs, and damages under paragraph (1).

''(g) CIVIL JUDICIAL PENALTIES.—

''(1) IN GENERAL.—At the request of the Postal Service, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this section or a regulation prescribed under this section.

''(2) RELIEF.—The court in a civil action under paragraph (1) may award appropriate relief, including a temporary or permanent injunction, civil penalties as determined in accordance with this section, or punitive damages.

''(3) CONSTRUCTION.—A civil action under this subsection shall be in lieu of civil penalties for the same violation under subsection (c)(1)(A).

''(h) DEPOSIT OF AMOUNTS COLLECTED.—Amounts collected under this section shall be deposited into the Postal Service Fund under section 2003 of this title.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 30 of title 39, United States Code, is amended by adding at the end the following:

''3018. Hazardous material.''.

(c) CONFORMING AMENDMENT.—Section 2003(b) of title 39, United States Code, is amended—

(1) by striking ''and'' after the semicolon in paragraph (7);

(2) by striking ''purposes.'' in paragraph (8) and inserting ''purposes; and''; and

(3) by adding at the end the following:

''(9) any amounts collected under section 3018 of this title.''.

SEC. 4463. CRIMINAL MATTERS.

Section 845(a)(1) of title 18, United States Code, is amended by striking ''which are regulated'' and all that follows and inserting ''that is subject to the authority of the Departments of Transportation and Homeland Security;''.

SEC. 4464. CARGO INSPECTION PROGRAM.

(a) IN GENERAL.—The Secretary of Transportation may establish a program of random inspections of cargo at points of entry into the United States for the purpose of determining the extent to which undeclared hazardous material is being offered for transportation in commerce through such points of entry.

(b) INSPECTIONS.—Under the program under subsection (a)—

(1) an officer of the Department of Transportation who is not located at a point of entry into the United States may select at random cargo shipments at points of entry into the United States for inspection; and

(2) an officer or employee of the Department may open and inspect each cargo shipment so selected for the purpose described in subsection (a).

(c) COORDINATION.—The Secretary of Transportation shall coordinate any inspections under the program under subsection (a) with the Secretary of Homeland Security.

(d) DISPOSITION OF HAZARDOUS MATERIALS.—The Secretary of Transportation shall provide for the appropriate handling and disposition of any hazardous material discovered pursuant to inspections under the program under subsection (a).

SEC. 4465. INFORMATION ON HAZMAT REGISTRATIONS.

The Administrator of the Department of Transportation's Research and Special Programs Administration shall—

(1) transmit current hazardous material registrant information to the Federal Motor Carrier Safety Administration to cross reference the registrant's Federal motor carrier registration number; and

(2) notify the Federal Motor Carrier Safety Administration immediately, and provide a registrant's United States Department of Transportation identification number to the Administration, whenever a new registrant registers to transport hazardous materials as a motor carrier.

SEC. 4466. REPORT ON APPLYING HAZARDOUS MATERIALS REGULATIONS TO PERSONS WHO REJECT HAZARDOUS MATERIALS.

Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall complete an assessment of the costs and benefits of subjecting persons who reject hazardous material for transportation in commerce to the hazardous materials laws and regulations. In completing this assessment, the Secretary shall—

(1) estimate the number of affected employers and employees;

(2) determine what actions would be required by them to comply with such laws and regulations; and

(3) consider whether and to what extent the application of Federal hazardous materials laws and regulations should be limited to—

(A) particular modes of transportation;

(B) certain categories of employees; or

(C) certain classes or categories of hazardous materials.

PART 3—SANITARY FOOD TRANSPORTATION

SEC. 4481. SHORT TITLE.

This part may be cited as the ''Sanitary Food Transportation Act of 2004''.

SEC. 4482. RESPONSIBILITIES OF THE SECRETARY OF HEALTH AND HUMAN SERVICES.

(a) UNSANITARY TRANSPORT DEEMED ADULTERATION.—Section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) is amended by adding at the end the following:

''(i) NONCOMPLIANCE WITH SANITARY TRANSPORTATION PRACTICES.—If the food is transported under conditions that are not in compliance with the sanitary transportation practices prescribed by the Secretary under section 416.''.

(b) SANITARY TRANSPORTATION REQUIREMENTS.—Chapter IV of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341 et seq.) is amended by adding at the end the following:

''SEC. 416. SANITARY TRANSPORTATION PRACTICES.

''(a) DEFINITIONS.—In this section:

''(1) BULK VEHICLE.—The term 'bulk vehicle' includes a tank truck, hopper truck, rail tank car, hopper car, cargo tank, portable tank, freight container, or hopper bin, and any other vehicle in which food is shipped in bulk, with the food coming into direct contact with the vehicle.

''(2) TRANSPORTATION.—The term 'transportation' means any movement in commerce by motor vehicle or rail vehicle.

''(b) REGULATIONS.—The Secretary shall by regulation require shippers, carriers by motor vehicle or rail vehicle, receivers, and other persons engaged in the transportation of food to use sanitary transportation practices prescribed by the Secretary to ensure that food is not transported under conditions that may render the food adulterated.

''(c) CONTENTS.—The regulations shall—

''(1) prescribe such practices as the Secretary determines to be appropriate relating to—

''(A) sanitation;

''(B) packaging, isolation, and other protective measures;

''(C) limitations on the use of vehicles;

''(D) information to be disclosed—

''(i) to a carrier by a person arranging for the transport of food; and

''(ii) to a manufacturer or other person that—

''(I) arranges for the transportation of food by a carrier; or

''(II) furnishes a tank vehicle or bulk vehicle for the transportation of food; and

''(E) recordkeeping; and

''(2) include—

''(A) a list of nonfood products that the Secretary determines may, if shipped in a bulk vehicle, render adulterated food that is subsequently transported in the same vehicle; and

''(B) a list of nonfood products that the Secretary determines may, if shipped in a motor vehicle or rail vehicle (other than a tank vehicle or bulk vehicle), render adulterated food that is simultaneously or subsequently transported in the same vehicle.

''(d) WAIVERS.—

''(1) IN GENERAL.—The Secretary may waive any requirement under this section, with respect to any class of persons, vehicles, food, or nonfood products, if the Secretary determines that the waiver—

''(A) will not result in the transportation of food under conditions that would be unsafe for human or animal health; and

''(B) will not be contrary to the public interest.

''(2) PUBLICATION.—The Secretary shall publish in the Federal Register any waiver and the reasons for the waiver.

''(e) PREEMPTION.—

''(1) IN GENERAL.—No State or political subdivision of a State may directly or indirectly establish or continue in effect, as to any food in interstate commerce, any authority or requirement concerning transportation of food that is not identical to an authority or requirement under this section.

''(2) APPLICABILITY.—This subsection applies to transportation that occurs on or after the effective date of the regulations promulgated under subsection (b).

''(f) ASSISTANCE OF OTHER AGENCIES.—The Secretary of Transportation, the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, and the heads of other Federal agencies, as appropriate, shall provide assistance on request, to the extent resources are available, to the Secretary for the purposes of carrying out this section.''.

(c) INSPECTION OF TRANSPORTATION RECORDS.—

(1) REQUIREMENT.—Section 703 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 373) is amended—

(A) by striking the section heading and all that follows through ''For the purpose'' and inserting the following:

''SEC. 703. RECORDS.

''(a) IN GENERAL.—For the purpose''; and

(B) by adding at the end the following:

''(b) FOOD TRANSPORTATION RECORDS.—A shipper, carrier by motor vehicle or rail vehicle, receiver, or other person subject to section 416 shall, on request of an officer or employee designated by the Secretary, permit the officer or employee, at reasonable times, to have access to and to copy all records that the Secretary requires to be kept under section 416(c)(1)(E).''.

(2) CONFORMING AMENDMENT.—Subsection (a) of section 703 of the Federal Food, Drug, and Cosmetic Act (as designated by paragraph (1)(A)) is amended by striking ''carriers.'' and inserting ''carriers, except as provided in subsection (b)''.

(d) PROHIBITED ACTS.—

(1) RECORDS INSPECTION.—Section 301(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(e)) is amended by inserting ''416,'' before ''504,'' each place it appears.

(2) UNSAFE FOOD TRANSPORTATION.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by adding at the end the following:

''(hh) NONCOMPLIANCE WITH SANITARY TRANSPORTATION PRACTICES.—The failure by a shipper, carrier by motor vehicle or rail vehicle, receiver, or any other person engaged in the transportation of food to comply with the sanitary transportation practices prescribed by the Secretary under section 416.''.

SEC. 4483. DEPARTMENT OF TRANSPORTATION REQUIREMENTS.

Chapter 57 of title 49, United States Code, is amended to read as follows:

''CHAPTER 57—SANITARY FOOD TRANSPORTATION

''Sec.

''5701. Food transportation safety inspections.

''§ 5701. Food transportation safety inspections

''(a) INSPECTION PROCEDURES.—

''(1) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture, shall—

''(A) establish procedures for transportation safety inspections for the purpose of identifying suspected incidents of contamination or adulteration of—

''(i) food in violation of regulations promulgated under section 416 of the Federal Food, Drug, and Cosmetic Act; and

''(ii) meat subject to detention under section 402 of the Federal Meat Inspection Act (21 U.S.C. 672); and

''(iii) poultry products subject to detention under section 19 of the Poultry Products Inspection Act (21 U.S.C. 467a); and

''(B) train personnel of the Department of Transportation in the appropriate use of the procedures.

''(2) APPLICABILITY.—The procedures established under paragraph (1) of this subsection shall apply, at a minimum, to Department of Transportation personnel that perform commercial motor vehicle or railroad safety inspections.

''(b) NOTIFICATION OF SECRETARY OF HEALTH AND HUMAN SERVICES OR SECRETARY OF AGRICULTURE.—The Secretary of Transportation shall promptly notify the Secretary of Health and Human Services or the Secretary of Agriculture, as applicable, of any instances of potential food contamination or adulteration of a food identified during transportation safety inspections.

''(c) USE OF STATE EMPLOYEES.—The means by which the Secretary of Transportation carries out subsection (b) of this section may include inspections conducted by State employees using funds authorized to be appropriated under sections 31102 through 31104 of this title.''.

SEC. 4484. EFFECTIVE DATE.

This part takes effect on October 1, 2003.

Subtitle E—Recreational Boating Safety Programs

SEC. 4501. SHORT TITLE.

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

PART 1—FEDERAL AID IN SPORT FISH RESTORATION ACT AMENDMENTS

SEC. 4521. AMENDMENT OF FEDERAL AID IN FISH RESTORATION ACT.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Act entitled ''An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes,'' approved August 9, 1950 (64 Stat. 430; 16 U.S.C. 777 et seq.).

SEC. 4522. AUTHORIZATION OF APPROPRIATIONS.

Section 3 (16 U.S.C. 777b) is amended—

(1) by striking ''the succeeding fiscal year.'' in the third sentence and inserting ''succeeding fiscal years.''; and

(2) by striking ''in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport and recreation.'' and inserting ''to supplement the 55.3 percent of each annual appropriation to be apportioned among the States, as provided for in section 4(b) of this title.''.

SEC. 4523. DIVISION OF ANNUAL APPROPRIATIONS.

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

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

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

''(a) IN GENERAL.—For fiscal years 2004 through 2009, each annual appropriation made in accordance with the provisions of section 3 of this title shall be distributed as follows:

''(1) COASTAL WETLANDS.—18 percent to the Secretary of the Interior for distribution as provided in the Coastal Wetlands Planning, Protection, and Restoration Act (16 U.S.C. 3951 et seq.).

''(2) BOATING SAFETY.—18 percent to the Secretary of Homeland Security for State recreational boating safety programs under section 13106 of title 46, United States Code.

''(3) CLEAN VESSEL ACT.—1.9 percent to the Secretary of the Interior for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

''(4) BOATING INFRASTRUCTURE.—1.9 percent to the Secretary of the Interior for obligation for qualified projects under section 7404(d) of the Sportfishing and Boating Safety Act of 1998 (16 U.S.C. 777g-1(d)).

''(5) NATIONAL OUTREACH AND COMMUNICATIONS.—1.9 percent to the Secretary of the Interior for the National Outreach and Communications Program under section 8(d) of this title. Such amounts shall remain available for 3 fiscal years, after which any portion thereof that is unobligated by the Secretary for that program may be expended by the Secretary under subsection (b) of this section.

''(6) SET-ASIDE FOR EXPENSES FOR ADMINISTRATION OF THIS CHAPTER.—

''(A) IN GENERAL.—2.1 percent to the Secretary of the Interior for expenses for administration incurred in implementation of this title, in accordance with this section, section 9, and section 14 of this title.

''(B) APPORTIONMENT OF UNOBLIGATED FUNDS.—If any portion of the amount made available to the Secretary under subparagraph (A) remains unexpended and unobligated at the end of a fiscal year, that portion shall be apportioned among the States, on the same basis and in the same manner as other amounts made available under this title are apportioned among the States under subsection (b) of this section, within 60 days after the end of that fiscal year. Any amount apportioned among the States under this subparagraph shall be in addition to any amounts otherwise available for apportionment among the States under subsection (b) for the fiscal year.'';

(3) by striking ''of the Interior, after the distribution, transfer, use, and deduction under subsections (a), (b), (c), and (d), respectively, and after deducting amounts used for grants under section 14, shall apportion the remainder'' in subsection (b), as redesignated, and inserting ''shall apportion 55.3 percent'';

(4) by striking ''per centum'' each place it appears in subsection (b), as redesignated, and inserting ''percent'';

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

(6) by adding at the end the following:

''(e) TRANSFER OF CERTAIN FUNDS.—Amounts available under paragraphs (3) and (4) of subsection (a) that are unobligated by the Secretary after 3 fiscal years shall be transferred to the Secretary of Homeland Security and shall be expended for State recreational boating safety programs under section 13106(a) of title 46, United States Code.''.

SEC. 4524. MAINTENANCE OF PROJECTS.

Section 8 (16 U.S.C. 777g) is amended—

(1) by striking ''in carrying out the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.'' in subsection (b)(2)

and inserting ''to supplement the 55.3 percent of each annual appropriation to be apportioned among the States under section 4(b) of this title.''; and

(2) by striking ''subsection (c) or (d) of section 4'' in subsection (d)(3) and inserting ''paragraph (5) or (6) of section 4(a)''.

SEC. 4525. BOATING INFRASTRUCTURE.

Section 7404(d)(1) of the Sportfishing and Boating Safety Act of 1998 (16 U.S.C. 777g-1(d)(1)) is amended by striking ''section 4(b)(3)(B)'' and inserting ''section 4(a)(4)''.

SEC. 4526. REQUIREMENTS AND RESTRICTIONS CONCERNING USE OF AMOUNTS FOR EXPENSES FOR ADMINISTRATION.

Section 9 (16 U.S.C. 777h) is amended—

(1) by striking ''section 4(d)(1)'' in subsection (a) and inserting ''section 4(a)(6)''; and

(2) by striking ''section 4(d)(1)'' in subsection (b)(1) and inserting ''section 4(a)(6)''.

SEC. 4527. PAYMENTS OF FUNDS TO AND COOPERATION WITH PUERTO RICO, THE DISTRICT OF COLUMBIA, GUAM, AMERICAN SAMOA, THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, AND THE VIRGIN ISLANDS.

Section 12 (16 U.S.C. 777k) is amended by striking ''in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.'' and inserting ''to supplement the 55.3 percent of each annual appropriation to be apportioned among the States under section 4(b) of this title.''.

SEC. 4528. MULTISTATE CONSERVATION GRANT PROGRAM.

Section 14 (16 U.S.C. 777m) is amended—

(1) by striking so much of subsection (a) as precedes paragraph (2) and inserting the following:

''(a) IN GENERAL.—

''(1) AMOUNT FOR GRANTS.—For each of fiscal years 2004 through 2009, 0.9 percent of each annual appropriation made in accordance with the provisions of section 3 of this title shall be distributed to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.'';

(2) by striking ''section 4(e)'' each place it appears in subsection (a)(2)(B) and inserting ''section 4(b)''; and

(3) by striking ''Of the balance of each annual appropriation made under section 3 remaining after the distribution and use under subsections (a), (b), and (c) of section 4 for each fiscal year and after deducting amounts used for grants under subsection (a)—'' in subsection (e) and inserting ''Of amounts made available under section 4(a)(6) for each fiscal year—''.

PART 2—CLEAN VESSEL ACT AMENDMENTS

SEC. 4541. GRANT PROGRAM.

Section 5604(c)(2) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note) is amended—

(1) by striking subparagraph (A); and

(2) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

PART 3—RECREATIONAL BOATING SAFETY PROGRAM AMENDMENTS

SEC. 4561. STATE MATCHING FUNDS REQUIREMENT.

Section 13103(b) of title 46, United States Code, is amended by striking ''one-half'' and inserting ''75 percent''.

SEC. 4562. AVAILABILITY OF ALLOCATIONS.

Section 13104(a) of title 46, United States Code, is amended—

(1) by striking ''2 years'' in paragraph (1) and inserting ''3 years''; and

(2) by striking ''2-year'' in paragraph (2) and inserting ''3-year''.

SEC. 4563. AUTHORIZATION OF APPROPRIATIONS FOR STATE RECREATIONAL BOATING SAFETY PROGRAMS.

Section 13106(c) of title 46, United States Code, is amended—

(1) by striking ''Secretary of Transportation under paragraphs (2) and (3) of section 4(b)'' and inserting ''Secretary under subsections (a)(2) and (e) of section 4''; and

(2) by inserting ''a minimum of'' before ''$2,083,333''.

SEC. 4564. MAINTENANCE OF EFFORT FOR STATE RECREATIONAL BOATING SAFETY PROGRAMS.

(a) IN GENERAL.—Chapter 131 of title 46, United States Code, is amended by inserting after section 13106 the following:

''§ 13107. Maintenance of effort for State recreational boating safety programs

''(a) IN GENERAL.—The amount payable to a State for a fiscal year from an allocation under section 13103 of this chapter shall be reduced if the usual amounts expended by the State for the State's recreational boating safety program, as determined under section 13105 of this chapter, for the previous fiscal year is less than the average of the total of such expenditures for the 3 fiscal years immediately preceding that previous fiscal year. The reduction shall be proportionate, as a percentage, to the amount by which the level of State expenditures for such previous fiscal year is less than the average of the total of such expenditures for the 3 fiscal years immediately preceding that previous fiscal year.

''(b) REDUCTION OF THRESHHOLD.—If the total amount available for allocation and distribution under this chapter in a fiscal year for all participating State recreational boating safety programs is less than such amount for the preceding fiscal year, the level of State expenditures required under subsection (a) of this section for the preceding fiscal year shall be decreased proportionately.

''(c) WAIVER.—

''(1) IN GENERAL.—Upon the written request of a State, the Secretary may waive the provisions of subsection (a) of this section for 1 fiscal year if the Secretary determines that a reduction in expenditures for the State's recreational boating safety program is attributable to a non- selective reduction in expenditures for the programs of all Executive branch agencies of the State government, or for other reasons if the State demonstrates to the Secretary's satisfaction that such waiver is warranted.

''(2) 30-DAY DECISION.—The Secretary shall approve or deny a request for a waiver not later than 30 days after the date the request is received.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 131 of title 46, United States Code, is amended by inserting after the item relating to section 13106 the following:

''13107. Maintenance of effort for State recreational boating safety programs.''.

PART 4—MISCELLANEOUS

SEC. 4581. TECHNICAL CORRECTION TO HOMELAND SECURITY ACT.

Section 1511(e)(2) of the Homeland Security Act of 2002 (Pub. L. 107-296) is amended by striking ''and to any funds provided to the Coast Guard from the Aquatic Resources Trust Fund of the Highway Trust Fund for boating safety programs.'' and inserting ''and any funds provided to the Coast Guard from the Highway Trust Fund and transferred into the Sport Fish Restoration Account of the Aquatic Resources Trust Fund for boating safety programs.''.

Subtitle F—Rail Transportation

PART 1—AMTRAK

SEC. 4601. AUTHORIZATION OF APPROPRIATIONS.

The text of section 24104 of title 49, United States Code, is amended to read as follows:

''There are authorized to be appropriated to the Secretary of Transportation $2,000,000,000 for each of fiscal years 2004, 2005, 2006, 2007, 2008, and 2009 for the benefit of Amtrak for operating expenses.''.

SEC. 4602. ESTABLISHMENT OF CORPORATION.

There is established a nonprofit corporation, to be known as the ''Rail Infrastructure Finance Corporation''. The Rail Infrastructure Finance Corporation is not an agency or establishment of the United States Government. The purpose of the Corporation is to support rail transportation capital projects through the issuance of rail capital infrastructure bonds. The Corporation shall be subject to the provisions of this title and, to the extent consistent with this section, to the laws of the State of Delaware applicable to corporations not for profit.

PART 2—RAILROAD TRACK MODERNIZATION

SEC. 4631. SHORT TITLE.

This part may be cited as the ''Railroad Track Modernization Act of 2004''.

SEC. 4632. CAPITAL GRANTS FOR RAILROAD TRACK.

(a) AUTHORITY.—Chapter 223 of title 49, United States Code, is amended to read as follows:

''CHAPTER 223—CAPITAL GRANTS FOR RAILROAD TRACK

''Sec.

''22301. Capital grants for railroad track.

''§ 22301. Capital grants for railroad track

''(a) ESTABLISHMENT OF PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary of Transportation shall establish a program of capital grants for the rehabilitation, preservation, or improvement of railroad track (including roadbed, bridges, and related track structures) of class II and class III railroads. Such grants shall be for rehabilitating, preserving, or improving track used primarily for freight transportation to a standard ensuring that the track can be operated safely and efficiently, including grants for rehabilitating, preserving, or improving track to handle 286,000 pound rail cars. Grants may be provided under this chapter—

''(A) directly to the class II or class III railroad; or

''(B) with the concurrence of the class II or class III railroad, to a State or local government.

''(2) STATE COOPERATION.—Class II and class III railroad applicants for a grant under this chapter are encouraged to utilize the expertise and assistance of State transportation agencies in applying for and administering such grants. State transportation agencies are encouraged to provide such expertise and assistance to such railroads.

''(3) REGULATIONS.—

''(A) IN GENERAL.—The Secretary shall prescribe regulations to carry out the program under this section.

''(B) CRITERIA.—In developing the regulations, the Secretary shall establish criteria that—

''(i) condition the award of a grant to a railroad on reasonable assurances by the railroad that the facilities to be rehabilitated and improved will be economically and efficiently utilized;

''(ii) ensure that the award of a grant is justified by present and probable future demand for rail services by the railroad to which the grant is to be awarded;

''(iii) ensure that consideration is given to projects that are part of a State-sponsored rail plan; and

''(iv) ensure that all such grants are awarded on a competitive basis.

''(b) MAXIMUM FEDERAL SHARE.—The maximum Federal share for carrying out a project under this section shall be 80 percent of the project cost. The non-Federal share may be provided by any non-Federal source in cash, equipment, or supplies. Other in-kind contributions may be approved by the Secretary on a case by case basis consistent with this chapter.

''(c) PROJECT ELIGIBILITY.—For a project to be eligible for assistance under this section the track must have been operated or owned by a class II or class III railroad as of the date of the enactment of the Railroad Track Modernization Act of 2004.

''(d) USE OF FUNDS.—Grants provided under this section shall be used to implement track capital projects as soon as possible. In no event shall grant funds be contractually obligated for a project later than the end of the third Federal fiscal year following the year in which the grant was awarded. Any funds not so obligated by the end of such fiscal year shall be returned to the Secretary for reallocation.

''(e) ADDITIONAL PURPOSE.—In addition to making grants for projects as provided in subsection (a), the Secretary may also make grants to supplement direct loans or loan guarantees made under title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(d)), for projects described in the last sentence of section 502(d) of such title. Grants made under this subsection may be used, in whole or in part, for paying credit risk premiums, lowering rates of interest, or providing for a holiday on principal payments.

''(f) EMPLOYEE PROTECTION.—The Secretary shall require as a condition of any grant made under this section that the recipient railroad provide a fair arrangement at least as protective of the interests of employees who are affected by the project to be funded with the grant as the terms imposed under section 11326(a), as in effect on the date of the enactment of the Railroad Track Modernization Act of 2001.

''(g) LABOR STANDARDS.—

''(1) PREVAILING WAGES.—The Secretary shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed by a grant made under this section will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.). The Secretary shall make a grant under this section only after being assured that required labor standards will be maintained on the construction work.

''(2) WAGE RATES.—Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. 151 et seq.) are deemed for purposes of this subsection to comply with the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a et seq.).''.

(b) CONFORMING AMENDMENT.—The item relating to chapter 223 in the table of chapters of subtitle V of title 49, United States Code, is amended to read as follows:

''223. CAPITAL GRANTS FOR RAILROAD TRACK ..... 22301''.

SEC. 4633. REGULATIONS.

(a) REGULATIONS.—The Secretary of Transporation shall prescribe under subsection (a)(3) of section 22301 of title 49, United States Code (as added by section 4601), interim and final regulations for the administration of the grant program under such section as follows:

(1) INTERIM REGULATIONS.—The Secretary shall prescribe the interim regulations to implement the program not later than December 31, 2003.

(2) FINAL REGULATIONS.—The Secretary shall prescribe the final regulations not later than October 1, 2004.

(b) INAPPLICABILITY OF RULEMAKING PROCEDURE TO INTERIM REGULATIONS.—Subchapter II of chapter 5 of title 5, United States Code, shall not apply to the issuance of an interim regulation or to any amendment of such an interim regulation.

(c) CRITERIA.—The requirement for the establishment of criteria under subparagraph (B) of section 22301(a)(3) of title 49, United States Code, applies to the interim regulations as well as to the final regulations.

SEC. 4634. STUDY OF GRANT-FUNDED PROJECTS.

(a) REQUIREMENT FOR STUDY.—The Secretary of Transportation shall conduct a study of the projects carried out with grant assistance under section 22301 of title 49, United States Code (as added by section 4601), to determine the public interest benefits associated with the light density railroad networks in the States and their contribution to a multimodal transportation system.

(b) REPORT.—Not later than March 31, 2004, the Secretary shall submit to Congress a report on the results of the study under subsection (a). The report shall include any recommendations that the Secretary considers appropriate regarding the eligibility of light density rail networks for Federal infrastructure financing.

SEC. 4635. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Transportation $350,000,000 for each of fiscal years 2004, 2005, and 2006 for carrying out section 22301 of title 49, United States Code (as added by section 4601).

PART 3—OTHER RAIL TRANSPORTATION-RELATED PROVISIONS

SEC. 4661. CAPITAL GRANTS FOR RAIL LINE RELOCATION PROJECTS.

(a) ESTABLISHMENT OF PROGRAM.—

(1) PROGRAM REQUIREMENTS.—Chapter 201 of title 49, United States Code, is amended by adding at the end of subchapter II the following:

''§ 20154. Capital grants for rail line relocation projects

''(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Transportation shall carry out a grant program to provide financial assistance for local rail line relocation projects.

''(b) ELIGIBILITY.—A State is eligible for a grant under this section for any project for the improvement of the route or structure of a rail line passing through a municipality of the State that—

''(1) is carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle traffic flow, or economic development in the municipality;

''(2) involves a lateral or vertical relocation of any portion of the rail line within the municipality to avoid a closing of a grade crossing or the construction of a road underpass or overpass; and

''(3) meets the costs-benefits requirement set forth in subsection (c).

''(c) COSTS-BENEFITS REQUIREMENT.—A grant may be awarded under this section for a project for the relocation of a rail line only if the benefits of the project for the period equal to the estimated economic life of the relocated rail line exceed the costs of the project for that period, as determined by the Secretary considering the following factors:

''(1) The effects of the rail line and the rail traffic on motor vehicle and pedestrian traffic, safety, and area commerce if the rail line were not so relocated.

''(2) The effects of the rail line, relocated as proposed, on motor vehicle and pedestrian traffic, safety, and area commerce.

''(3) The effects of the rail line, relocated as proposed, on the freight and passenger rail operations on the rail line.

''(d) CONSIDERATIONS FOR APPROVAL OF GRANT APPLICATIONS.—In addition to considering the relationship of benefits to costs in determining whether to award a grant to an eligible State under this section, the Secretary shall consider the following factors:

''(1) The capability of the State to fund the rail line relocation project without Federal grant funding.

''(2) The requirement and limitation relating to allocation of grant funds provided in subsection (e).

''(3) Equitable treatment of the various regions of the United States.

''(e) ALLOCATION REQUIREMENTS.—

''(1) GRANTS NOT GREATER THAN $20,000,000.—At least 50 percent of all grant funds awarded under this section out of funds appropriated for a fiscal year shall be provided as grant awards of not more than $20,000,000 each.

''(2) LIMITATION PER PROJECT.—Not more than 25 percent of the total amount available for carrying out this section for a fiscal year may be provided for any 1 project in that fiscal year.

''(f) FEDERAL SHARE.—The total amount of a grant awarded under this section for a rail line relocation project shall be 90 percent of the shared costs of the project, as determined under subsection (g)(4).

''(g) STATE SHARE.—

''(1) PERCENTAGE.—A State shall pay 10 percent of the shared costs of a project that is funded in part by a grant awarded under this section.

''(2) FORMS OF CONTRIBUTIONS.—The share required by paragraph (1) may be paid in cash or in kind.

''(3) IN-KIND CONTRIBUTIONS.—The in-kind contributions that are permitted to be counted under paragraph (2) for a project for a State are as follows:

''(A) A contribution of real property or tangible personal property (whether provided by the State or a person for the State).

''(B) A contribution of the services of employees of the State, calculated on the basis of costs incurred by the State for the pay and benefits of the employees, but excluding overhead and general administrative costs.

''(C) A payment of any costs that were incurred for the project before the filing of an application for a grant for the project under this section, and any in-kind contributions that were made for the project before the filing of the application, if and to the extent that the costs were incurred or in-kind contributions were made, as the case may be, to comply with a provision of a statute required to be satisfied in order to carry out the project.

''(4) COSTS NOT SHARED.—

''(A) IN GENERAL.—For the purposes of subsection (f) and this subsection, the shared costs of a project in a municipality do not include any cost that is defrayed with any funds or in-kind contribution that a source other than the municipality makes available for the use of the municipality without imposing at least 1 of the following conditions:

''(i) The condition that the municipality use the funds or contribution only for the project.

''(ii) The condition that the availability of the funds or contribution to the municipality is contingent on the execution of the project.

''(B) DETERMINATIONS OF THE SECRETARY.—The Secretary shall determine the amount of the costs, if any, that are not shared costs under this paragraph and the total amount of the shared costs. A determination of the Secretary shall be final.

''(h) MULTISTATE AGREEMENTS TO COMBINE AMOUNTS.—Two or more States (not including political subdivisions of States) may, pursuant to an agreement entered into by the States, combine any part of the amounts provided through grants for a project under this section if—

''(1) the project will benefit each of the States entering into the agreement; and

''(2) the agreement is not a violation of a law of any such State.

''(i) REGULATIONS.—The Secretary shall prescribe regulations for carrying out this section.

''(j) STATE DEFINED.—In this section, the term 'State' includes, except as otherwise specifically provided, a political subdivision of a State.

''(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for use in carrying out this section $350,000,000 for each of the fiscal years 2004 through 2008.''.

(2) CLERICAL AMENDMENT.—The chapter analysis for such chapter is amended by adding at the end the following:

''20154. Capital grants for rail line relocation projects.''.

(b) REGULATIONS.—

(1) INTERIM REGULATIONS.—Not later than October 1, 2003, the Secretary of Transportation shall issue temporary regulations to implement the grant program under section 20154 of title 49, United States Code, as added by subsection (a). Subchapter II of chapter 5 of title 5, United States Code, shall not apply to the issuance of a temporary regulation under this subsection or of any amendment of such a temporary regulation.

(2) FINAL REGULATIONS.—Not later than April 1, 2004, the Secretary shall issue final regulations implementing the program.

SEC. 4662. FEDERAL BONDS FOR TRANSPORTATION INFRASTRUCTURE.

(a) USE OF BOND PROCEEDS.—The proceeds from the sale of any bonds authorized, issued, or guaranteed by the Federal Government that are available to fund passenger rail projects pursuant to any Federal law (enacted before, on, or after the date of the enactment of this Act) may be used to fund a qualified project if the Secretary of Transportation determines that the qualified project is a more cost-effective alternative for efficiently maximizing mobility of individuals and goods than a passenger rail project.

(b) COMPLIANCE OF BENEFICIARIES WITH CERTAIN STANDARDS.—A recipient of proceeds of a grant, loan, Federal tax-credit bonds, or any other form of financial assistance provided under this title shall comply with the standards described in section 24312 of title 49, United States Code, as in effect on June 25, 2003, with respect to any qualified project in the same manner that the National Passenger Railroad Corporation is required to comply with such standards for construction work financed under an agreement entered into under section 24308(a) of such title.

(c) QUALIFIED PROJECT DEFINED.—In this section, the term ''qualified project'' means any transportation infrastructure project of any governmental unit or other person that is proposed by a State, including a highway project, a transit system project, a railroad project, an airport project, a port project, and an inland waterways project.

TITLE V—HIGHWAY REAUTHORIZATION AND EXCISE TAX SIMPLIFICATION

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

(a) SHORT TITLE.—This title may be cited as the ''Highway Reauthorization and Excise Tax Simplification Act of 2004''.

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

Subtitle A—Trust Fund Reauthorization

SEC. 5001. EXTENSION OF HIGHWAY TRUST FUND AND AQUATIC RESOURCES TRUST FUND EXPENDITURE AUTHORITY AND RELATED TAXES.

(a) HIGHWAY TRUST FUND EXPENDITURE AUTHORITY.—

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

(A) in the matter before subparagraph (A), by striking ''March 1, 2004'' and inserting ''October 1, 2009'',

(B) by striking ''or'' at the end of subparagraph (E),

(C) by striking the period at the end of subparagraph (F) and inserting '', or'',

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

''(G) authorized to be paid out of the Highway Trust Fund under the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004.'', and

(E) in the matter after subparagraph (G), as added by subparagraph (D), by striking ''Surface Transportation Extension Act of 2003'' and inserting ''Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004''.

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

(A) in the matter before subparagraph (A), by striking ''March 1, 2004'' and inserting ''October 1, 2009'',

(B) by striking ''or'' at the end of subparagraph (C),

(C) by striking the period at the end of subparagraph (D) and inserting '', or'',

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

''(E) the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004,'', and

(E) in the matter after subparagraph (E), as added by subparagraph (D), by striking ''Surface Transportation Extension Act of 2003'' and inserting ''Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004''.

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

(b) AQUATIC RESOURCES TRUST FUND EXPENDITURE AUTHORITY.—

(1) SPORT FISH RESTORATION ACCOUNT.—Paragraph (2) of section 9504(b) (relating to Sport Fish Restoration Account) is amended by striking ''Surface Transportation Extension Act of 2003'' each place it appears and inserting ''Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004''.

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

(A) by striking ''March 1, 2004'' and inserting ''October 1, 2009'', and

(B) by striking ''Surface Transportation Extension Act of 2003'' and inserting ''Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004''.

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

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

(c) EXTENSION OF TAXES.—

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

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

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

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

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

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

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

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

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

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

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

(A) by striking ''2005'' each place it appears and inserting ''2009'', and

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

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

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

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

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

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

(A) by striking ''2005'' each place it appears and inserting ''2009'', and

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

(2) CONFORMING AMENDMENTS TO LAND AND WATER CONSERVATION FUND.—Section 201(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–11(b)) is amended—

(A) by striking ''2003'' and inserting ''2007'', and

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

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

(1) by striking ''2007'' in subparagraph (C)(ii) and inserting ''2010'', and

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

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

''(6) PROHIBITION ON USE OF HIGHWAY ACCOUNT FOR RAIL PROJECTS.—With respect to projects beginning after the date of the enactment of this paragraph, no amount shall be available from the Highway Account (as defined in subsection (e)(5)(B)) for any rail project.''.

(h) HIGHWAY TRUST FUND EXPENDITURES FOR HIGHWAY USE TAX EVASION PROJECTS.—From amounts available in the Highway

Trust Fund, there is authorized to be expended such sums as are necessary for highway use tax evasion projects.

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

SEC. 5002. FULL ACCOUNTING OF FUNDS RECEIVED BY THE HIGHWAY TRUST FUND.

(a) IN GENERAL.—Section 9503(c) (relating to transfers from Highway Trust Fund for certain repayments and credits), as amended by section 5001 of this Act, is amended by striking paragraph (2) and redesignating paragraphs (3), (4), (5), and (6) as paragraphs (2), (3), (4), and (5), respectively.

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

(c) CONFORMING AMENDMENTS.—

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

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

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

(4) Paragraph (2) of section 9504(b), as amended by section 5001 of this Act, is amended by striking ''section 9503(c)(5)'' and inserting ''section 9503(c)(4)''.

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

(d) EFFECTIVE DATES.—

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

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

SEC. 5003. MODIFICATION OF ADJUSTMENTS OF APPORTIONMENTS.

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

(1) by striking ''24-month'' in paragraph (1)(B) and inserting ''48-month'', and

(2) by striking ''2 YEARS''' in the heading for paragraph (3) and inserting ''4 YEARS'''.

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

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

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

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

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

Subtitle B—Volumetric Ethanol Excise Tax Credit

SEC. 5101. SHORT TITLE.

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

SEC. 5102. ALCOHOL AND BIODIESEL EXCISE TAX CREDIT AND EXTENSION OF ALCOHOL FUELS INCOME TAX CREDIT.

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

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

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

''(1) the alcohol fuel mixture credit, plus

''(2) the biodiesel mixture credit.

''(b) ALCOHOL FUEL MIXTURE CREDIT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(c) BIODIESEL MIXTURE CREDIT.—

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

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

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

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

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

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

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

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

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

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

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

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

''(1) IMPOSITION OF TAX.—If—

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

''(B) any person—

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

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

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

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

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

(b) REGISTRATION REQUIREMENT.—Section 4101(a)(1) (relating to registration), as amended by sections 5211 and 5242 of this Act, is amended by inserting ''and every person producing or importing biodiesel (as defined in section 40A(d)(1)) or alcohol (as defined in section 6426(b)(4)(A))'' after ''4081''.

(c) ADDITIONAL AMENDMENTS.—

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

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

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

(3) Section 40(e)(1) is amended—

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

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

(4) Section 40(h) is amended—

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

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

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

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

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

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

''(2) GASOLINE.—The term 'gasoline'—

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

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

''(i) any gasoline blend stock, and

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Section 6427(i)(3) is amended—

(A) by striking ''subsection (f)'' both places it appears in subparagraph (A) and inserting ''subsection (e)(1)'',

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

(C) by adding at the end of subparagraph (A) the following new flush sentence:

''In the case of an electronic claim, this subparagraph shall be applied without regard to clause (i).'',

(D) by striking ''subsection (f)(1)'' in subparagraph (B) and inserting ''subsection (e)(1)'',

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

(F) by striking ''ALCOHOL MIXTURE'' in the heading and inserting ''ALCOHOL FUEL AND BIODIESEL MIXTURE''.

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

(12) Section 9503(b)(4), as amended by section 5101 of this Act, is amended—

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

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

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

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

''Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.''.

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

(d) EFFECTIVE DATES.—

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

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

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

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

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

SEC. 5103. BIODIESEL INCOME TAX CREDIT.

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

''SEC. 40A. BIODIESEL USED AS FUEL.

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

''(1) the biodiesel mixture credit, plus

''(2) the biodiesel credit.

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

''(1) BIODIESEL MIXTURE CREDIT.—

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

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

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

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

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

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

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

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

''(2) BIODIESEL CREDIT.—

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

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

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

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

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

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

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

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

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

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

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

''(2) AGRI-BIODIESEL.—The term 'agri-biodiesel' means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds, and from animal fats.

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

''(A) MIXTURES.—If—

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

''(ii) any person—

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

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

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

''(B) BIODIESEL.—If—

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

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

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

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

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

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

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit) is amended by striking ''plus'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '', plus'', and by adding at the end the following new paragraph:

''(16) the biodiesel fuels credit determined under section 40A(a).''.

(c) CONFORMING AMENDMENTS.—

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

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

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

''SEC. 87. ALCOHOL AND BIODIESEL FUELS CREDITS.

''Gross income includes—

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

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

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

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

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

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

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

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

Subtitle C—Fuel Fraud Prevention

SEC. 5200. SHORT TITLE.

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

PART I—AVIATION JET FUEL

SEC. 5211. TAXATION OF AVIATION-GRADE KEROSENE.

(a) RATE OF TAX.—

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

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

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

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

(3) NONTAXABLE USES.—

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

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

(B) CONFORMING AMENDMENTS.—

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

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

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

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

(B) CONFORMING AMENDMENT.—The heading for paragraph (1) of section 4041(a) is amended by inserting ''AND KEROSENE'' after ''DIESEL FUEL''.

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

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

(c) REFUNDS.—

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

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

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

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

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

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

''(i) is registered under section 4101, and

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

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

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

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

''(i) any use which is exempt from the tax imposed by section 4041(c) other than by reason of a prior imposition of tax, or

''(ii) any use in commercial aviation (within the meaning of section 4083(b)).''.

(d) REPEAL OF PRIOR TAXATION OF AVIATION FUEL.—

(1) IN GENERAL.—Part III of subchapter A of chapter 32 is amended by striking subpart B and by redesignating subpart C as subpart B.

(2) CONFORMING AMENDMENTS.—

(A) Section 4041(c) is amended to read as follows:

''(c) AVIATION-GRADE KEROSENE.—

''(1) IN GENERAL.—There is hereby imposed a tax upon aviation-grade kerosene—

''(A) sold by any person to an owner, lessee, or other operator of an aircraft for use in such aircraft, or

''(B) used by any person in an aircraft unless there was a taxable sale of such fuel under subparagraph (A).

''(2) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this subsection on the sale or use of any aviation-grade kerosene if tax was imposed on such liquid under section 4081 and the tax thereon was not credited or refunded.

''(3) RATE OF TAX.—The rate of tax imposed by this subsection shall be the rate of tax specified in section 4081(a)(2)(A)(iv) which is in effect at the time of such sale or use.''.

(B) Section 4041(d)(2) is amended by striking ''section 4091'' and inserting ''section 4081''.

(C) Section 4041 is amended by striking subsection (e).

(D) Section 4041 is amended by striking subsection (i).

(E) Section 4041(m)(1) is amended to read as follows:

''(1) IN GENERAL.—In the case of the sale or use of any partially exempt methanol or ethanol fuel, the rate of the tax imposed by subsection (a)(2) shall be—

''(A) after September 30, 1997, and before September 30, 2009—

''(i) in the case of fuel none of the alcohol in which consists of ethanol, 9.15 cents per gallon, and

''(ii) in any other case, 11.3 cents per gallon, and

''(B) after September 30, 2009—

''(i) in the case of fuel none of the alcohol in which consists of ethanol, 2.15 cents per gallon, and

''(ii) in any other case, 4.3 cents per gallon.''.

(F) Sections 4101(a), 4103, 4221(a), and 6206 are each amended by striking '', 4081, or 4091'' and inserting ''or 4081''.

(G) Section 6416(b)(2) is amended by striking ''4091 or''.

(H) Section 6416(b)(3) is amended by striking ''or 4091'' each place it appears.

(I) Section 6416(d) is amended by striking ''or to the tax imposed by section 4091 in the case of refunds described in section 4091(d)''.

(J) Section 6427 is amended by striking subsection (f).

(K) Section 6427(j)(1) is amended by striking '', 4081, and 4091'' and inserting ''and 4081''.

(L)(i) Section 6427(l)(1) is amended to read as follows:

''(1) IN GENERAL.—Except as otherwise provided in this subsection and in subsection (k), if any diesel fuel or kerosene on which tax has been imposed by section 4041 or 4081

is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4041 or 4081, as the case may be, reduced by any refund paid to the ultimate vendor under paragraph (4)(B).''.

(ii) Paragraph (5)(B) of section 6427(l) is amended by striking ''Paragraph (1)(A) shall not apply to kerosene'' and inserting ''Paragraph (1) shall not apply to kerosene (other than aviation-grade kerosene)''.

(M) Subparagraph (B) of section 6724(d)(1) is amended by striking clause (xv) and by redesignating the succeeding clauses accordingly.

(N) Paragraph (2) of section 6724(d) is amended by striking subparagraph (W) and by redesignating the succeeding subparagraphs accordingly.

(O) Paragraph (1) of section 9502(b) is amended by adding ''and'' at the end of subparagraph (B) and by striking subparagraphs (C) and (D) and inserting the following new subparagraph:

''(C) section 4081 with respect to aviation gasoline and aviation-grade kerosene, and''.

(P) The last sentence of section 9502(b) is amended to read as follows:

''There shall not be taken into account under paragraph (1) so much of the taxes imposed by section 4081 as are determined at the rate specified in section 4081(a)(2)(B).''.

(Q) Subsection (b) of section 9508 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(R) Section 9508(c)(2)(A) is amended by striking ''sections 4081 and 4091'' and inserting ''section 4081''.

(S) The table of subparts for part III of subchapter A of chapter 32 is amended to read as follows:

''Subpart A. Motor and aviation fuels.

''Subpart B. Special provisions applicable to fuels tax.''.

(T) The heading for subpart A of part III of subchapter A of chapter 32 is amended to read as follows:

''Subpart A—Motor and Aviation Fuels''.

(U) The heading for subpart B of part III of subchapter A of chapter 32 is amended to read as follows:

''Subpart B—Special Provisions Applicable to Fuels Tax''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to aviation-grade kerosene removed, entered, or sold after September 30, 2004.

(f) FLOOR STOCKS TAX.—

(1) IN GENERAL.—There is hereby imposed on aviation-grade kerosene held on October 1, 2004, by any person a tax equal to—

(A) the tax which would have been imposed before such date on such kerosene had the amendments made by this section been in effect at all times before such date, reduced by

(B) the tax imposed before such date under section 4091 of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—The person holding the kerosene on October 1, 2004, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD AND TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid at such time and in such manner as the Secretary of the Treasury shall prescribe, including the nonapplication of such tax on de minimis amounts of kerosene.

(3) TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4081 of the Internal Revenue Code of 1986—

(A) at the Leaking Underground Storage Tank Trust Fund financing rate under such section to the extent of 0.1 cents per gallon, and

(B) at the rate under section 4081(a)(2)(A)(iv) to the extent of the remainder.

(4) HELD BY A PERSON.—For purposes of this section, kerosene shall be considered as held by a person if title thereto has passed to such person (whether or not delivery to the person has been made).

(5) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the tax imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock tax imposed by paragraph (1) to the same extent as if such tax were imposed by such section.

SEC. 5212. TRANSFER OF CERTAIN AMOUNTS FROM THE AIRPORT AND AIRWAY TRUST FUND TO THE HIGHWAY TRUST FUND TO REFLECT HIGHWAY USE OF JET FUEL.

(a) IN GENERAL.—Section 9502(d) is amended by adding at the end the following new paragraph:

''(7) TRANSFERS FROM THE TRUST FUND TO THE HIGHWAY TRUST FUND TO REFLECT HIGHWAY USE OF JET FUEL.—

''(A) IN GENERAL.—The Secretary shall pay from the Airport and Airway Trust Fund into the Highway Trust Fund—

''(i) $395,000,000 in fiscal year 2005,

''(ii) $425,000,000 in fiscal year 2006,

''(iii) $429,000,000 in fiscal year 2007,

''(iv) $432,000,000 in fiscal year 2008, and

''(v) $435,000,000 in fiscal year 2009.

''(B) AMOUNTS TRANSFERRED TO MASS TRANSIT ACCOUNT.—The Secretary shall transfer 11 percent of the amounts paid into the Highway Trust Fund under subparagraph (A) to the Mass Transit Account established under section 9503(e).''.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 9503 is amended—

(A) by striking ''appropriated or credited'' and inserting ''paid, appropriated, or credited'', and

(B) by striking ''or section 9602(b)'' and inserting '', section 9502(d)(7), or section 9602(b)''.

(2) Subsection (e)(1) of section 9503 is amended by striking ''or section 9602(b)'' and inserting '', section 9502(d)(7), or section 9602(b)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

PART II—DYED FUEL

SEC. 5221. DYE INJECTION EQUIPMENT.

(a) IN GENERAL.—Section 4082(a)(2) (relating to exemptions for diesel fuel and kerosene) is amended by inserting ''by mechanical injection'' after ''indelibly dyed''.

(b) DYE INJECTOR SECURITY.—Not later than June 30, 2004, the Secretary of the Treasury shall issue regulations regarding mechanical dye injection systems described in the amendment made by subsection (a), and such regulations shall include standards for making such systems tamper resistant.

(c) PENALTY FOR TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding after section 6715 the following new section:

''SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.

''(a) IMPOSITION OF PENALTY—

''(1) TAMPERING.—If any person tampers with a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082, then such person shall pay a penalty in addition to the tax (if any).

''(2) FAILURE TO MAINTAIN SECURITY REQUIREMENTS.—If any operator of a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082 fails to maintain the security standards for such system as established by the Secretary, then such operator shall pay a penalty.

''(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

''(1) for each violation described in paragraph (1), the greater of—

''(A) $25,000, or

''(B) $10 for each gallon of fuel involved, and

''(2) for each—

''(A) failure to maintain security standards described in paragraph (2), $1,000, and

''(B) failure to correct a violation described in paragraph (2), $1,000 per day for each day after which such violation was discovered or such person should have reasonably known of such violation.

''(c) JOINT AND SEVERAL LIABILITY.—

''(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

''(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by adding after the item related to section 6715 the following new item:

''Sec. 6715A. Tampering with or failing to maintain security requirements for mechanical dye injection systems.''.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall take effect 180 days after the date on which the Secretary issues the regulations described in subsection (b).

SEC. 5222. ELIMINATION OF ADMINISTRATIVE REVIEW FOR TAXABLE USE OF DYED FUEL.

(a) IN GENERAL.—Section 6715 is amended by inserting at the end the following new subsection:

''(e) NO ADMINISTRATIVE APPEAL FOR THIRD AND SUBSEQUENT VIOLATIONS.—In the case of any person who is found to be subject to the penalty under this section after a chemical analysis of such fuel and who has been penalized under this section at least twice after the date of the enactment of this subsection, no administrative appeal or review shall be allowed with respect to such finding except in the case of a claim regarding—

''(1) fraud or mistake in the chemical analysis, or

''(2) mathematical calculation of the amount of the penalty.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to penalties assessed after the date of the enactment of this Act.

SEC. 5223. PENALTY ON UNTAXED CHEMICALLY ALTERED DYED FUEL MIXTURES.

(a) IN GENERAL.—Section 6715(a) (relating to dyed fuel sold for use or used in taxable

use, etc.) is amended by striking ''or'' in paragraph (2), by inserting ''or'' at the end of paragraph (3), and by inserting after paragraph (3) the following new paragraph:

''(4) any person who has knowledge that a dyed fuel which has been altered as described in paragraph (3) sells or holds for sale such fuel for any use which the person knows or has reason to know is not a nontaxable use of such fuel,''.

(b) CONFORMING AMENDMENT.—Section 6715(a)(3) is amended by striking ''alters, or attempts to alter,'' and inserting ''alters, chemically or otherwise, or attempts to so alter,''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5224. TERMINATION OF DYED DIESEL USE BY INTERCITY BUSES.

(a) IN GENERAL.—Paragraph (3) of section 4082(b) (relating to nontaxable use) is amended to read as follows:

''(3) any use described in section 4041(a)(1)(C)(iii)(II).''.

(b) ULTIMATE VENDOR REFUND.—Subsection (b) of section 6427 is amended by adding at the end the following new paragraph:

''(4) REFUNDS FOR USE OF DIESEL FUEL IN CERTAIN INTERCITY BUSES.—

''(A) IN GENERAL.—With respect to any fuel to which paragraph (2)(A) applies, if the ultimate purchaser of such fuel waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

''(i) is registered under section 4101, and

''(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).

''(B) CREDIT CARDS.—For purposes of this paragraph, if the sale of such fuel is made by means of a credit card, the person extending credit to the ultimate purchaser shall be deemed to be the ultimate vendor.''.

(c) PAYMENT OF REFUNDS.—Subparagraph (A) of section 6427(i)(4), as amended by section 5211 of this Act, is amended by inserting ''subsections (b)(4) and'' after ''filed under''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold after September 30, 2004.

PART III—MODIFICATION OF INSPECTION OF RECORDS PROVISIONS

SEC. 5231. AUTHORITY TO INSPECT ON-SITE RECORDS.

(a) IN GENERAL.—Section 4083(d)(1)(A) (relating to administrative authority), as amended by section 5211 of this Act, is amended by striking ''and'' at the end of clause (i) and by inserting after clause (ii) the following new clause:

''(iii) inspecting any books and records and any shipping papers pertaining to such fuel, and''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5232. ASSESSABLE PENALTY FOR REFUSAL OF ENTRY.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by section 5221 of this Act, is amended by adding at the end the following new section:

''SEC. 6717. REFUSAL OF ENTRY.

''(a) IN GENERAL.—In addition to any other penalty provided by law, any person who refuses to admit entry or refuses to permit any other action by the Secretary authorized by section 4083(d)(1) shall pay a penalty of $1,000 for such refusal.

''(b) JOINT AND SEVERAL LIABILITY.—

''(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

''(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 4083(d)(3), as amended by section 5211 of this Act, is amended—

(A) by striking ''ENTRY.—The penalty'' and inserting: ''ENTRY.—

''(A) FORFEITURE.—The penalty'', and

(B) by adding at the end the following new subparagraph:

''(B) ASSESSABLE PENALTY.—For additional assessable penalty for the refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), see section 6717.''.

(2) The table of sections for part I of subchapter B of chapter 68, as amended by section 5221 of this Act, is amended by adding at the end the following new item:

''Sec. 6717. Refusal of entry.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

PART IV—REGISTRATION AND REPORTING REQUIREMENTS

SEC. 5241. REGISTRATION OF PIPELINE OR VESSEL OPERATORS REQUIRED FOR EXEMPTION OF BULK TRANSFERS TO REGISTERED TERMINALS OR REFINERIES.

(a) IN GENERAL.—Section 4081(a)(1)(B) (relating to exemption for bulk transfers to registered terminals or refineries) is amended—

(1) by inserting ''by pipeline or vessel'' after ''transferred in bulk'', and

(2) by inserting '', the operator of such pipeline or vessel,'' after ''the taxable fuel''.

(b) CIVIL PENALTY FOR CARRYING TAXABLE FUELS BY NONREGISTERED PIPELINES OR VESSELS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by section 5232 of this Act, is amended by adding at the end the following new section:

''SEC. 6718. CARRYING TAXABLE FUELS BY NONREGISTERED PIPELINES OR VESSELS.

''(a) IMPOSITION OF PENALTY.—If any person knowingly transfers any taxable fuel (as defined in section 4083(a)(1)) in bulk pursuant to section 4081(a)(1)(B) to an unregistered, such person shall pay a penalty in addition to the tax (if any).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the penalty under subsection (a) on each act shall be an amount equal to the greater of—

''(A) $10,000, or

''(B) $1 per gallon.

''(2) MULTIPLE VIOLATIONS.—In determining the penalty under subsection (a) on any person, paragraph (1) shall be applied by increasing the amount in paragraph (1) by the product of such amount and the number of prior penalties (if any) imposed by this section on such person (or a related person or any predecessor of such person or related person).

''(c) JOINT AND SEVERAL LIABILITY.—

''(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

''(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.

''(d) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by section 5232 of this Act, is amended by adding at the end the following new item:

''Sec. 6718. Carrying taxable fuels by nonregistered pipelines or vessels.''.

(c) PUBLICATION OF REGISTERED PERSONS.—Not later than June 30, 2004, the Secretary of the Treasury shall publish a list of persons required to be registered under section 4101 of the Internal Revenue Code of 1986.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on October 1, 2004.

SEC. 5242. DISPLAY OF REGISTRATION.

(a) IN GENERAL.—Subsection (a) of section 4101 (relating to registration) is amended—

(1) by striking ''Every'' and inserting the following:

''(1) IN GENERAL.—Every'', and

(2) by adding at the end the following new paragraph:

''(2) DISPLAY OF REGISTRATION.—Every operator of a vessel required by the Secretary to register under this section shall display proof of registration through an electronic identification device prescribed by the Secretary on each vessel used by such operator to transport any taxable fuel.''.

(b) CIVIL PENALTY FOR FAILURE TO DISPLAY REGISTRATION.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by section 5241 of this Act, is amended by adding at the end the following new section:

''SEC. 6719. FAILURE TO DISPLAY REGISTRATION OF VESSEL.

''(a) FAILURE TO DISPLAY REGISTRATION.—Every operator of a vessel who fails to display proof of registration pursuant to section 4101(a)(2) shall pay a penalty of $500 for each such failure. With respect to any vessel, only one penalty shall be imposed by this section during any calendar month.

''(b) MULTIPLE VIOLATIONS.—In determining the penalty under subsection (a) on any person, subsection (a) shall be applied by increasing the amount in subsection (a) by the product of such amount and the number of prior penalties (if any) imposed by this section on such person (or a related person or any predecessor of such person or related person).

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by section 5241 of this Act, is amended by adding at the end the following new item:

''Sec. 6719. Failure to display registration of vessel.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 5243. REGISTRATION OF PERSONS WITHIN FOREIGN TRADE ZONES, ETC..

(a) IN GENERAL.—Section 4101(a), as amended by section 5242 of this Act, is amended by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following new paragraph:

''(2) REGISTRATION OF PERSONS WITHIN FOREIGN TRADE ZONES, ETC..—The Secretary shall require registration by any person which—

''(A) operates a terminal or refinery within a foreign trade zone or within a customs bonded storage facility, or

''(B) holds an inventory position with respect to a taxable fuel in such a terminal.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 5244. PENALTIES FOR FAILURE TO REGISTER AND FAILURE TO REPORT.

(a) INCREASED PENALTY.—Subsection (a) of section 7272 (relating to penalty for failure to register) is amended by inserting ''($10,000 in the case of a failure to register under section 4101)'' after ''$50''.

(b) INCREASED CRIMINAL PENALTY.—Section 7232 (relating to failure to register under section 4101, false representations of registration status, etc.) is amended by striking ''$5,000'' and inserting ''$10,000''.

(c) ASSESSABLE PENALTY FOR FAILURE TO REGISTER.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by section 5242 of this Act, is amended by adding at the end the following new section:

''SEC. 6720. FAILURE TO REGISTER.

''(a) FAILURE TO REGISTER.—Every person who is required to register under section 4101 and fails to do so shall pay a penalty in addition to the tax (if any).

''(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

''(1) $10,000 for each initial failure to register, and

''(2) $1,000 for each day thereafter such person fails to register.

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by section 5242 of this Act, is amended by adding at the end the following new item:

''Sec. 6720. Failure to register.''.

(d) ASSESSABLE PENALTY FOR FAILURE TO REPORT.—

(1) IN GENERAL.—Part II of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end the following new section:

''SEC. 6725. FAILURE TO REPORT INFORMATION UNDER SECTION 4101.

''(a) IN GENERAL.—In the case of each failure described in subsection (b) by any person with respect to a vessel or facility, such person shall pay a penalty of $10,000 in addition to the tax (if any).

''(b) FAILURES SUBJECT TO PENALTY.—For purposes of subsection (a), the failures described in this subsection are—

''(1) any failure to make a report under section 4101(d) on or before the date prescribed therefor, and

''(2) any failure to include all of the information required to be shown on such report or the inclusion of incorrect information.

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part II of subchapter B of chapter 68 is amended by adding at the end the following new item:

''Sec. 6725. Failure to report information under section 4101.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to failures pending or occurring after September 30, 2004.

SEC. 5245. INFORMATION REPORTING FOR PERSONS CLAIMING CERTAIN TAX BENEFITS.

(a) IN GENERAL.—Subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new section:

''SEC. 4104. INFORMATION REPORTING FOR PERSONS CLAIMING CERTAIN TAX BENEFITS.

''(a) IN GENERAL.—The Secretary shall require any person claiming tax benefits—

''(1) under the provisions of section 34, 40, and 40A to file a return at the time such person claims such benefits (in such manner as the Secretary may prescribe), and

''(2) under the provisions of section 4041(b)(2), 6426, or 6427(e) to file a monthly return (in such manner as the Secretary may prescribe).

''(b) CONTENTS OF RETURN.—Any return filed under this section shall provide such information relating to such benefits and the coordination of such benefits as the Secretary may require to ensure the proper administration and use of such benefits.

''(c) ENFORCEMENT.—With respect to any person described in subsection (a) and subject to registration requirements under this title, rules similar to rules of section 4222(c) shall apply with respect to any requirement under this section.''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new item:

''Sec. 4104. Information reporting for persons claiming certain tax benefits.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

PART V—IMPORTS

SEC. 5251. TAX AT POINT OF ENTRY WHERE IMPORTER NOT REGISTERED.

(a) TAX AT POINT OF ENTRY WHERE IMPORTER NOT REGISTERED.—

(1) IN GENERAL.—Subpart C of part III of subchapter A of chapter 31, as amended by section 5245 of this Act, is amended by adding at the end the following new section:

''SEC. 4105. TAX AT ENTRY WHERE IMPORTER NOT REGISTERED.

''(a) IN GENERAL.—Any tax imposed under this part on any person not registered under section 4101 for the entry of a fuel into the United States shall be imposed at the time and point of entry.

''(b) ENFORCEMENT OF ASSESSMENT.—If any person liable for any tax described under subsection (a) has not paid the tax or posted a bond, the Secretary may—

''(1) seize the fuel on which the tax is due, or

''(2) detain any vehicle transporting such fuel,

until such tax is paid or such bond is filed.

''(c) LEVY OF FUEL.—If no tax has been paid or no bond has been filed within 5 days from the date the Secretary seized fuel pursuant to subsection (b), the Secretary may sell such fuel as provided under section 6336.''.

(2) CONFORMING AMENDMENT.—The table of sections for subpart C of part III of subchapter A of chapter 31 of the Internal Revenue Code of 1986, as amended by section 5245 of this Act, is amended by adding after the last item the following new item:

''Sec. 4105. Tax at entry where importer not registered.''.

(b) DENIAL OF ENTRY WHERE TAX NOT PAID.—The Secretary of Homeland Security is authorized to deny entry into the United States of any shipment of a fuel which is taxable under section 4081 of the Internal Revenue Code of 1986 if the person entering such shipment fails to pay the tax imposed under such section or post a bond in accordance with the provisions of section 4105 of such Code.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5252. RECONCILIATION OF ON-LOADED CARGO TO ENTERED CARGO.

(a) IN GENERAL.—Subsection (a) of section 343 of the Trade Act of 2002 is amended by inserting at the end the following new paragraph:

''(4) IN GENERAL.—Subject to paragraphs (2) and (3), not later than 1 year after the enactment of this paragraph, the Secretary of Homeland Security, together with the Secretary of the Treasury, shall promulgate regulations providing for the transmission to the Internal Revenue Service, through an electronic data interchange system, of information pertaining to cargo of taxable fuels (as defined in section 4083 of the Internal Revenue Code of 1986) destined for importation into the United States prior to such importation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

PART VI—MISCELLANEOUS PROVISIONS

SEC. 5261. TAX ON SALE OF DIESEL FUEL WHETHER SUITABLE FOR USE OR NOT IN A DIESEL-POWERED VEHICLE OR TRAIN.

(a) IN GENERAL.—Section 4083(a)(3) is amended—

(1) by striking ''The term'' and inserting the following:

''(A) IN GENERAL.—The term'', and

(2) by inserting at the end the following new subparagraph:

''(B) LIQUID SOLD AS DIESEL FUEL.—The term 'diesel fuel' includes any liquid which is sold as or offered for sale as a fuel in a diesel-powered highway vehicle or a diesel-powered train.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 40A(b)(1)(B), as amended by section 5103 of this Act, is amended by striking ''4083(a)(3)'' and inserting ''4083(a)(3)(A)''.

(2) Section 6426(c)(3), as added by section 5102 of this Act, is amended by striking ''4083(a)(3)'' and inserting ''4083(a)(3)(A)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5262. MODIFICATION OF ULTIMATE VENDOR REFUND CLAIMS WITH RESPECT TO FARMING.

(a) IN GENERAL.—

(1) REFUNDS.—Section 6427(l) is amended by adding at the end the following new paragraph:

''(6) REGISTERED VENDORS PERMITTED TO ADMINISTER CERTAIN CLAIMS FOR REFUND OF DIESEL FUEL AND KEROSENE SOLD TO FARMERS.—

''(A) IN GENERAL.—In the case of diesel fuel or kerosene used on a farm for farming purposes (within the meaning of section 6420(c)), paragraph (1) shall not apply to the aggregate amount of such diesel fuel or kerosene if such amount does not exceed 500 gallons (as determined under subsection (i)(5)(A)(iii)).

''(B) PAYMENT TO ULTIMATE VENDOR.—The amount which would (but for subparagraph (A)) have been paid under paragraph (1) with respect to any fuel shall be paid to the ultimate vendor of such fuel, if such vendor—

''(i) is registered under section 4101, and

''(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).''.

(2) FILING OF CLAIMS.—Section 6427(i) is amended by inserting at the end the following new paragraph:

''(5) SPECIAL RULE FOR VENDOR REFUNDS WITH RESPECT TO FARMERS.—

''(A) IN GENERAL.—A claim may be filed under subsection (l)(6) by any person with respect to fuel sold by such person for any period—

''(i) for which $200 or more ($100 or more in the case of kerosene) is payable under subsection (l)(6),

''(ii) which is not less than 1 week, and

''(iii) which is for not more than 500 gallons for each farmer for which there is a claim.

Notwithstanding subsection (l)(1), paragraph (3)(B) shall apply to claims filed under the preceding sentence.

''(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim.''.

(3) CONFORMING AMENDMENTS.—

(A) Section 6427(l)(5)(A) is amended to read as follows:

''(A) IN GENERAL.—Paragraph (1) shall not apply to diesel fuel or kerosene used by a State or local government.''.

(B) The heading for section 6427(l)(5) is amended by striking ''FARMERS AND''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to fuels sold for nontaxable use after the date of the enactment of this Act.

SEC. 5263. TAXABLE FUEL REFUNDS FOR CERTAIN ULTIMATE VENDORS.

(a) IN GENERAL.—Paragraph (4) of section 6416(a) (relating to abatements, credits, and refunds) is amended to read as follows:

''(4) REGISTERED ULTIMATE VENDOR TO ADMINISTER CREDITS AND REFUNDS OF GASOLINE TAX.—

''(A) IN GENERAL.—For purposes of this subsection, if an ultimate vendor purchases any gasoline on which tax imposed by section 4081 has been paid and sells such gasoline to an ultimate purchaser described in subparagraph (C) or (D) of subsection (b)(2) (and such gasoline is for a use described in such subparagraph), such ultimate vendor shall be treated as the person (and the only person) who paid such tax, but only if such ultimate vendor is registered under section 4101. For purposes of this subparagraph, if the sale of gasoline is made by means of a credit card, the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.

''(B) TIMING OF CLAIMS.—The procedure and timing of any claim under subparagraph (A) shall be the same as for claims under section 6427(i)(4), except that the rules of section 6427(i)(3)(B) regarding electronic claims shall not apply unless the ultimate vendor has certified to the Secretary for the most recent quarter of the taxable year that all ultimate purchasers of the vendor are certified and entitled to a refund under subparagraph (C) or (D) of subsection (b)(2).''.

(b) CREDIT CARD PURCHASES OF DIESEL FUEL OR KEROSENE BY STATE AND LOCAL GOVERNMENTS.—Section 6427(l)(5)(C) (relating to nontaxable uses of diesel fuel, kerosene, and aviation fuel), as amended by section 5252 of this Act, is amended by adding at the end the following new sentence: ''For purposes of this subparagraph, if the sale of diesel fuel or kerosene is made by means of a credit card, the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 5264. TWO-PARTY EXCHANGES.

(a) IN GENERAL.—Subpart C of part III of subchapter A of chapter 32, as amended by section 5251 of this Act, is amended by adding at the end the following new section:

''SEC. 4106. TWO-PARTY EXCHANGES.

''(a) IN GENERAL.—In a two-party exchange, the delivering person shall not be liable for the tax imposed under of section 4081(a)(1)(A)(ii).

''(b) TWO-PARTY EXCHANGE.—The term 'two-party exchange' means a transaction, other than a sale, in which taxable fuel is transferred from a delivering person registered under section 4101 as a taxable fuel registrant to a receiving person who is so registered where all of the following occur:

''(1) The transaction includes a transfer from the delivering person, who holds the inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator.

''(2) The exchange transaction occurs before or contemporaneous with completion of removal across the rack from the terminal by the receiving person.

''(3) The terminal operator in its books and records treats the receiving person as the person that removes the product across the terminal rack for purposes of reporting the transaction to the Secretary.

''(4) The transaction is the subject of a written contract.''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part III of subchapter A of chapter 32, as amended by section 5251 of this Act, is amended by adding after the last item the following new item:

''Sec. 4106. Two-party exchanges.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 5265. MODIFICATIONS OF TAX ON USE OF CERTAIN VEHICLES.

(a) NO PRORATION OF TAX UNLESS VEHICLE IS DESTROYED OR STOLEN.—

(1) IN GENERAL.—Section 4481(c) (relating to proration of tax) is amended to read as follows:

''(c) PRORATION OF TAX WHERE VEHICLE SOLD, DESTROYED, OR STOLEN.—

''(1) IN GENERAL.—If in any taxable period a highway motor vehicle is sold, destroyed, or stolen before the first day of the last month in such period and not subsequently used during such taxable period, the tax shall be reckoned proportionately from the first day of the month in such period in which the first use of such highway motor vehicle occurs to and including the last day of the month in which such highway motor vehicle was sold, destroyed, or stolen.

''(2) DESTROYED.—For purposes of paragraph (1), a highway motor vehicle is destroyed if such vehicle is damaged by reason of an accident or other casualty to such an extent that it is not economic to rebuild.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 6156 (relating to installment payment of tax on use of highway motor vehicles) is repealed.

(B) The table of sections for subchapter A of chapter 62 is amended by striking the item relating to section 6156.

(b) DISPLAY OF TAX CERTIFICATE.—Paragraph (2) of section 4481(d) (relating to one tax liability for period) is amended to read as follows:

''(2) DISPLAY OF TAX CERTIFICATE.—Every taxpayer which pays the tax imposed under this section with respect to a highway motor vehicle shall, not later than 1 month after the due date of the return of tax with respect to each taxable period, receive and display on such vehicle an electronic identification device prescribed by the Secretary.''.

(c) ELECTRONIC FILING.—Section 4481, as amended by section 5001 of this Act, is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

''(e) ELECTRONIC FILING.—Any taxpayer who files a return under this section with respect to 25 or more vehicles for any taxable period shall file such return electronically.''.

(d) REPEAL OF REDUCTION IN TAX FOR CERTAIN TRUCKS.—Section 4483 of the Internal Revenue Code of 1986 is amended by striking subsection (f).

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable periods beginning after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall take effect on October 1, 2005.

SEC. 5266. DEDICATION OF REVENUES FROM CERTAIN PENALTIES TO THE HIGHWAY TRUST FUND.

(a) IN GENERAL.—Subsection (b) of section 9503 (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes), as amended by section 5001 of this Act, is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

''(5) CERTAIN PENALTIES.—There are hereby appropriated to the Highway Trust Fund amounts equivalent to the penalties assessed under sections 6715, 6715A, 6717, 6718, 6719, 6720, 6725, 7232, and 7272 (but only with regard to penalties under such section related to failure to register under section 4101).''.

(b) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 9503 is amended by inserting ''AND PENALTIES'' after ''TAXES''.

(2) The heading of paragraph (1) of section 9503(b) is amended by striking ''IN GENERAL'' and inserting ''CERTAIN TAXES''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties assessed after October 1, 2004.

SEC. 5267. NONAPPLICATION OF EXPORT EXEMPTION TO DELIVERY OF FUEL TO MOTOR VEHICLES REMOVED FROM UNITED STATES.

(a) IN GENERAL.—Section 4221(d)(2) (defining export) is amended by adding at the end the following new sentence: ''Such term does not include the delivery of a taxable fuel (as defined in section 4083(a)(1)) into a fuel tank of a motor vehicle which is shipped or driven out of the United States.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 4041(g) (relating to other exemptions) is amended by adding at the end the following new sentence: ''Paragraph (3) shall not apply to the sale for delivery of a liquid into a fuel tank of a motor vehicle which is shipped or driven out of the United States.''.

(2) Clause (iv) of section 4081(a)(1)(A) (relating to tax on removal, entry, or sale) is amended by inserting ''or at a duty-free sales enterprise (as defined in section 555(b)(8) of the Tariff Act of 1930)'' after ''section 4101''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or deliveries made after the date of the enactment of this Act.

PART VII—TOTAL ACCOUNTABILITY

SEC. 5271. TOTAL ACCOUNTABILITY.

(a) TAXATION OF REPORTABLE LIQUIDS.—

(1) IN GENERAL.—Section 4081(a), as amended by this Act, is amended—

(A) by inserting ''or reportable liquid'' after ''taxable fuel'' each place it appears, and

(B) by inserting ''such liquid'' after ''such fuel'' in paragraph (1)(A)(iv).

(2) RATE OF TAX.—Subparagraph (A) of section 4081(a)(2), as amended by section 5211 of this Act, is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', and'', and by adding at the end the following new clause:

''(v) in the case of reportable liquids, the rate determined under section 4083(c)(2).''.

(3) EXEMPTION.—Section 4081(a)(1) is amended by adding at the end the following new subparagraph:

''(C) EXEMPTION FOR REGISTERED TRANSFERS OF REPORTABLE LIQUIDS.—The tax imposed by this paragraph shall not apply to any removal, entry, or sale of a reportable liquid if—

''(i) such removal, entry, or sale is to a registered person who certifies that such liquid will not be used as a fuel or in the production of a fuel, or

''(ii) the sale is to the ultimate purchaser of such liquid.''.

(4) REPORTABLE LIQUIDS.—Section 4083, as amended by this Act, is amended by redesignating subsections (c) and (d) (as redesignated by section 5211 of this Act) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new section:

''(c) REPORTABLE LIQUID.—For purposes of this subpart—

''(1) IN GENERAL.—The term 'reportable liquid' means any petroleum-based liquid other than a taxable fuel.

''(2) TAXATION.—

''(A) GASOLINE BLEND STOCKS AND ADDITIVES.—Gasoline blend stocks and additives which are reportable liquids (as defined in paragraph (1)) shall be subject to the rate of tax under clause (i) of section 4081(a)(2)(A).

''(B) OTHER REPORTABLE LIQUIDS.—Any reportable liquid (as defined in paragraph (1)) not described in subparagraph (A) shall be subject to the rate of tax under clause (iii) of section 4081(a)(2)(A).''.

(5) CONFORMING AMENDMENTS.—

(A) Section 4081(e) is amended by inserting ''or reportable liquid'' after ''taxable fuel''.

(B) Section 4083(d) (relating to certain use defined as removal), as redesignated by paragraph (4), is amended by inserting ''or reportable liquid'' after ''taxable fuel''.

(C) Section 4083(e)(1) (relating to administrative authority), as redesignated by paragraph (4), is amended—

(i) in subparagraph (A)—

(I) by inserting ''or reportable liquid'' after ''taxable fuel'', and

(II) by inserting ''or such liquid'' after ''such fuel'' each place it appears, and

(ii) in subparagraph (B), by inserting ''or any reportable liquid'' after ''any taxable fuel''.

(D) Section 4101(a)(2), as added by section 5243 of this Act, is amended by inserting ''or a reportable liquid'' after ''taxable fuel''.

(E) Section 4101(a)(3), as added by section 5242 of this Act and redesignated by section 5243 of this Act, is amended by inserting ''or any reportable liquid'' before the period at the end.

(F) Section 4102 is amended by inserting ''or any reportable liquid'' before the period at the end.

(G)(i) Section 6718, as added by section 5241 of this Act, is amended—

(I) in subsection (a), by inserting ''or any reportable liquid (as defined in section 4083(c)(1))'' after ''section 4083(a)(1))'', and

(II) in the heading, by inserting ''or reportable liquids'' after ''taxable fuel''.

(ii) The item relating to section 6718 in table of sections for part I of subchapter B of chapter 68, as added by section 5241 of this Act, is amended by inserting ''or reportable liquids'' after ''taxable fuels''.

(H) Section 6427(h) is amended to read as follows:

''(h) GASOLINE BLEND STOCKS OR ADDITIVES AND REPORTABLE LIQUIDS.—Except as provided in subsection (k)—

''(1) if any gasoline blend stock or additive (within the meaning of section 4083(a)(2)) is not used by any person to produce gasoline and such person establishes that the ultimate use of such gasoline blend stock or additive is not to produce gasoline, or

''(2) if any reportable liquid (within the meaning of section 4083(c)(1)) is not used by any person to produce a taxable fuel and such person establishes that the ultimate use of such reportable liquid is not to produce a taxable fuel,

then the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of the tax imposed on such person with respect to such gasoline blend stock or additive or such reportable fuel.''.

(I) Section 7232, as amended by this Act, is amended by inserting ''or reportable liquid (within the meaning of section 4083(c)(1))'' after ''section 4083)''.

(J) Section 343 of the Trade Act of 2002, as amended by section 5252 of this Act, is amended by inserting ''and reportable liquids (as defined in section 4083(c)(1) of such Code)'' after ''Internal Revenue Code of 1986)''.

(b) DYED DIESEL.—Section 4082(a) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ''and'', and by inserting after paragraph (3) the following new paragraph:

''(4) which is removed, entered, or sold by a person registered under section 4101.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to reportable liquids (as defined in section 4083(c) of the Internal Revenue Code) and fuel sold or used after September 30, 2004.

SEC. 5272. EXCISE TAX REPORTING.

(a) IN GENERAL.—Part II of subchapter A of chapter 61 is amended by adding at the end the following new subpart:

''SUBPART E—EXCISE TAX REPORTING

''SEC. 6025. RETURNS RELATING TO FUEL TAXES.

''(a) IN GENERAL.—The Secretary shall require any person liable for the tax imposed under Part III of subchapter A of chapter 32 to file a return of such tax on a monthly basis.

''(b) INFORMATION INCLUDED WITH RETURN.—The Secretary shall require any person filing a return under subsection (a) to provide information regarding any refined product (whether or not such product is taxable under this title) removed from a terminal during the period for which such return applies.''.

(b) CONFORMING AMENDMENT.—The table of parts for subchapter A of chapter 61 is amended by adding at the end the following new item:

''Subpart E—Excise Tax Reporting''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold or used after September 30, 2004.

SEC. 5273. INFORMATION REPORTING.

(a) IN GENERAL.—Section 4101(d) is amended by adding at the end the following new flush sentence:

''The Secretary shall require reporting under the previous sentence with respect to taxable fuels removed, entered, or transferred from any refinery, pipeline, or vessel which is registered under this section.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply on October 1, 2004.

Subtitle D—Definition of Highway Vehicle

SEC. 5301. EXEMPTION FROM CERTAIN EXCISE TAXES FOR MOBILE MACHINERY.

(a) EXEMPTION FROM TAX ON HEAVY TRUCKS AND TRAILERS SOLD AT RETAIL.—

(1) IN GENERAL.—Section 4053 (relating to exemptions) is amended by adding at the end the following new paragraph:

''(8) MOBILE MACHINERY.—Any vehicle which consists of a chassis—

''(A) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

''(B) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

''(C) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the day after the date of the enactment of this Act.

(b) EXEMPTION FROM TAX ON USE OF CERTAIN VEHICLES.—

(1) IN GENERAL.—Section 4483 (relating to exemptions) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

''(g) EXEMPTION FOR MOBILE MACHINERY.—No tax shall be imposed by section 4481 on the use of any vehicle described in section 4053(8).''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the day after the date of the enactment of this Act.

(d) EXEMPTION FROM FUEL TAXES.—

(1) IN GENERAL.—Section 6421(e)(2) (defining off-highway business use) is amended by adding at the end the following new subparagraph:

''(C) USES IN MOBILE MACHINERY.—

''(i) IN GENERAL.—The term 'off-highway business use' shall include any use in a vehicle which meets the requirements described in clause (ii).

''(ii) REQUIREMENTS FOR MOBILE MACHINERY.—The requirements described in this clause are—

''(I) the design-based test, and

''(II) the use-based test.

''(iii) DESIGN-BASED TEST.—For purposes of clause (ii)(I), the design-based test is met if the vehicle consists of a chassis—

''(I) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

''(II) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

''(III) which, by reason of such special design, could not, without substantial structural modification, be used as a component

of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

''(iv) USE-BASED TEST.—For purposes of clause (ii)(II), the use-based test is met if the use of the vehicle on public highways was less than 5,000 miles during the taxpayer's taxable year.

''(v) SPECIAL RULE FOR USE BY CERTAIN TAX-EXEMPT ORGANIZATIONS.—In the case of any use in a vehicle by an organization which is described in section 501(c) and exempt from tax under section 501(a), clause (ii) shall be applied without regard to subclause (II) thereof.''.

(2) ANNUAL REFUND OF TAX PAID.—Section 6427(i)(2) (relating to exceptions) is amended by adding at the end the following new subparagraph:

''(C) NONAPPLICATION OF PARAGRAPH.—This paragraph shall not apply to any fuel used in any off-highway business use described in section 6421(e)(2)(C).''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 5302. MODIFICATION OF DEFINITION OF OFF-HIGHWAY VEHICLE.

(a) IN GENERAL.—Section 7701(a) (relating to definitions) is amended by adding at the end the following new paragraph:

''(48) OFF-HIGHWAY VEHICLES.—

''(A) OFF-HIGHWAY TRANSPORTATION VEHICLES.—

''(i) IN GENERAL.—A vehicle shall not be treated as a highway vehicle if such vehicle is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design such vehicle's capability to transport a load over the public highway is substantially limited or impaired.

''(ii) DETERMINATION OF VEHICLE'S DESIGN.—For purposes of clause (i), a vehicle's design is determined solely on the basis of its physical characteristics.

''(iii) DETERMINATION OF SUBSTANTIAL LIMITATION OR IMPAIRMENT.—For purposes of clause (i), in determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether such vehicle is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether such vehicle can transport a load at a sustained speed of at least 25 miles per hour. It is immaterial that a vehicle can transport a greater load off the public highway than such vehicle is permitted to transport over the public highway.

''(B) NONTRANSPORTATION TRAILERS AND SEMITRAILERS.—A trailer or semitrailer shall not be treated as a highway vehicle if it is specially designed to function only as an enclosed stationary shelter for the carrying on of an off-highway function at an off-highway site.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section shall take effect on the date of the enactment of this Act.

(2) FUEL TAXES.—With respect to taxes imposed under subchapter B of chapter 31 and part III of subchapter A of chapter 32, the amendment made by this section shall apply to taxable periods beginning after the date of the enactment of this Act.

Subtitle E—Excise Tax Reform and Simplification

PART I—HIGHWAY EXCISE TAXES

SEC. 5401. DEDICATION OF GAS GUZZLER TAX TO HIGHWAY TRUST FUND.

(a) IN GENERAL.—Section 9503(b)(1) (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes), as amended by section 5101 of this Act, is amended by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively, and by inserting after subparagraph (B) the following new subparagraph:

''(C) section 4064 (relating to gas guzzler tax),''.

(b) UNIFORM APPLICATION OF TAX.—Subparagraph (A) of section 4064(b)(1) (defining automobile) is amended by striking the second sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5402. REPEAL CERTAIN EXCISE TAXES ON RAIL DIESEL FUEL AND INLAND WATERWAY BARGE FUELS.

(a) TAXES ON TRAINS.—

(1) IN GENERAL.—Subparagraph (A) of section 4041(a)(1) is amended by striking ''or a diesel-powered train'' each place it appears and by striking ''or train''.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (C) of section 4041(a)(1), as amended by section 5001 of this Act, is amended by striking clause (ii) and by redesignating clause (iii) as clause (ii).

(B) Subparagraph (C) of section 4041(b)(1) is amended by striking all that follows ''section 6421(e)(2)'' and inserting a period.

(C) Subsection (d) of section 4041 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

''(3) DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

''(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

''(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.''.

(D) Subsection (f) of section 4082 is amended by striking ''section 4041(a)(1)'' and inserting ''subsections (d)(3) and (a)(1) of section 4041, respectively''.

(E) Subparagraphs (A) and (B) of section 4083(a)(3), as amended by section 5261 of this Act, are amended by striking ''or a diesel-powered train''.

(F) Paragraph (3) of section 6421(f) is amended to read as follows:

''(3) GASOLINE USED IN TRAINS.—In the case of gasoline used as a fuel in a train, this section shall not apply with respect to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081.''.

(G) Paragraph (3) of section 6427(l) is amended to read as follows:

''(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term 'nontaxable use' includes fuel used in a diesel-powered train. The preceding sentence shall not apply to the tax imposed by section 4041(d) and the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 except with respect to fuel sold for exclusive use by a State or any political subdivision thereof.''.

(b) FUEL USED ON INLAND WATERWAYS.—

(1) IN GENERAL.—Paragraph (1) of section 4042(b) is amended by adding ''and'' at the end of subparagraph (A), by striking '', and'' at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 4042(b) is amended by striking subparagraph (C).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

PART II—AQUATIC EXCISE TAXES

SEC. 5411. ELIMINATION OF AQUATIC RESOURCES TRUST FUND AND TRANSFORMATION OF SPORT FISH RESTORATION ACCOUNT.

(a) SIMPLIFICATION OF FUNDING FOR BOAT SAFETY ACCOUNT.—

(1) IN GENERAL.—Section 9503(c)(3) (relating to transfers from Trust Fund for motorboat fuel taxes), as redesignated by section 5002 of this Act, is amended—

(A) by striking ''Fund—'' and all that follows through ''shall be transferred'' in subparagraph (B) and inserting ''Fund which is attributable to motorboat fuel taxes shall be transferred'', and

(B) by striking subparagraph (A), and

(C) by redesignating subparagraphs (B) through (E) as subparagraphs (A) through (D), respectively.

(2) CONFORMING AMENDMENTS.—

(A) Section 9503(b)(4), as amended by section 5102 of this Act, is amended—

(i) by adding ''or'' at the end of subparagraph (B),

(ii) by striking the comma at the end of subparagraph (C) and inserting a period, and

(iii) by striking subparagraph (D).

(B) Subparagraph (B) of section 9503(c)(3), as redesignated by section 5002 of this Act and subsection (a)(3), is amended—

(i) by striking ''ACCOUNT'' in the heading and inserting ''TRUST FUND'',

(ii) by striking ''or (B)'' in clause (ii), and

(iii) by striking ''Account in the Aquatic Resources''.

(C) Subparagraph (C) of section 9503(c)(3), as redesignated by section 5002 of this Act and subsection (a)(3), is amended by striking '', but only to the extent such taxes are deposited into the Highway Trust Fund''.

(D) Paragraph (4) of section 9503(c), as redesignated by section 5002 of this Act, is amended—

(i) by striking ''Account in the Aquatic Resources'' in subparagraph (A), and

(ii) by striking '', but only to the extent such taxes are deposited into the Highway Trust Fund'' in subparagraph (B).

(b) MERGING OF ACCOUNTS.—

(1) IN GENERAL.—Subsection (a) of section 9504 is amended to read as follows:

''(a) CREATION OF TRUST FUND.—There is hereby established in the Treasury of the United States a trust fund to be known as the 'Sport Fish Restoration Trust Fund'. Such Trust Fund shall consist of such amounts as may be appropriated, credited, or paid to it as provided in this section, section 9503(c)(3), section 9503(c)(4), or section 9602(b).''.

(2) CONFORMING AMENDMENTS.—

(A) Subsection (b) of section 9504 is amended—

(i) by striking ''ACCOUNT'' in the heading and inserting ''TRUST FUND'',

(ii) by striking ''Account'' both places it appears in paragraphs (1) and (2) and inserting ''Trust Fund'', and

(iii) by striking ''ACCOUNT'' both places it appears in the headings for paragraphs (1) and (2) and inserting ''TRUST FUND''.

(B) Subsection (d) of section 9504, as amended by section 5001 of this Act, is amended—

(i) by striking ''AQUATIC RESOURCES'' in the heading,

(ii) by striking ''any Account in the Aquatic Resources'' in paragraph (1) and inserting ''the Sports Fish Restoration'', and

(iii) by striking ''any such Account'' in paragraph (1) and inserting ''such Trust Fund''.

(C) Subsection (e) of section 9504, as amended by section 5002 of this Act, is amended by striking ''Boat Safety Account and Sport Fish Restoration Account'' and inserting ''Sport Fish Restoration Trust Fund''.

(D) Section 9504 is amended by striking ''aquatic resources'' in the heading and inserting ''sport fish restoration''.

(E) The item relating to section 9504 in the table of sections for subchapter A of chapter 98 is amended by striking ''aquatic resources'' and inserting ''sport fish restoration''.

(c) PHASEOUT OF BOAT SAFETY ACCOUNT.—Subsection (c) of section 9504 is amended to read as follows:

''(c) EXPENDITURES FROM BOAT SAFETY ACCOUNT.—Amounts remaining in the Boat Safety Account on October 1, 2004, and amounts thereafter credited to the Account under section 9602(b), shall be available, as provided by appropriation Acts, for making expenditures before October 1, 2009, to carry out the purposes of section 13106 of title 46, United States Code (as in effect on the date of the enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 5412. EXEMPTION OF LED DEVICES FROM SONAR DEVICES SUITABLE FOR FINDING FISH.

(a) IN GENERAL.—Section 4162(b) (defining sonar device suitable for finding fish) is amended by striking ''or'' at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting '', or'', and by adding at the end the following new paragraph:

''(5) an LED display.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2004.

SEC. 5413. REPEAL OF HARBOR MAINTENANCE TAX ON EXPORTS.

(a) IN GENERAL.—Subsection (d) of section 4462 (relating to definitions and special rules) is amended to read as follows:

''(d) NONAPPLICABILITY OF TAX TO EXPORTS.—The tax imposed by section 4461(a) shall not apply to any port use with respect to any commercial cargo to be exported from the United States.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 4461(c)(1) is amended by adding ''or'' at the end of subparagraph (A), by striking subparagraph (B), and by redesignating subparagraph (C) as subparagraph (B).

(2) Section 4461(c)(2) is amended by striking ''imposed—'' and all that follows through ''in any other case,'' and inserting ''imposed''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect before, on, and after the date of the enactment of this Act.

SEC. 5414. CAP ON EXCISE TAX ON CERTAIN FISHING EQUIPMENT.

(a) IN GENERAL.—Paragraph (1) of section 4161(a) (relating to sport fishing equipment) is amended to read as follows:

''(1) IMPOSITION OF TAX.—

''(A) IN GENERAL.—There is hereby imposed on the sale of any article of sport fishing equipment by the manufacturer, producer, or importer a tax equal to 10 percent of the price for which so sold.

''(B) LIMITATION ON TAX IMPOSED ON FISHING RODS AND POLES.—The tax imposed by subparagraph (A) on any fishing rod or pole shall not exceed $10.''.

(b) CONFORMING AMENDMENTS.—Section 4161(a)(2) is amended by striking ''paragraph (1)'' both places it appears and inserting ''paragraph (1)(A)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2004.

SEC. 5415. REDUCTION IN RATE OF TAX ON PORTABLE AERATED BAIT CONTAINERS.

(a) IN GENERAL.—Section 4161(a)(2)(A) (relating to 3 percent rate of tax for electric outboard motors and sonar devices suitable for finding fish) is amended by inserting ''or a portable aerated bait container'' after ''fish''.

(b) CONFORMING AMENDMENT.—The heading of section 4161(a)(2) is amended by striking ''ELECTRIC OUTBOARD MOTORS AND SONAR DEVICES SUITABLE FOR FINDING FISH'' and inserting ''CERTAIN SPORT FISHING EQUIPMENT''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2004.

PART III—AERIAL EXCISE TAXES

SEC. 5421. CLARIFICATION OF EXCISE TAX EXEMPTIONS FOR AGRICULTURAL AERIAL APPLICATORS AND EXEMPTION FOR FIXED-WING AIRCRAFT ENGAGED IN FORESTRY OPERATIONS.

(a) NO WAIVER BY FARM OWNER, TENANT, OR OPERATOR NECESSARY.—Subparagraph (B) of section 6420(c)(4) (relating to certain farming use other than by owner, etc.) is amended to read as follows:

''(B) if the person so using the gasoline is an aerial or other applicator of fertilizers or other substances and is the ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial or other applicator shall be treated as having used such gasoline on a farm for farming purposes.''.

(b) EXEMPTION INCLUDES FUEL USED BETWEEN AIRFIELD AND FARM.—Section 6420(c)(4), as amended by subsection (a), is amended by adding at the end the following new flush sentence:

''For purposes of this paragraph, in the case of an aerial applicator, gasoline shall be treated as used on a farm for farming purposes if the gasoline is used for the direct flight between the airfield and 1 or more farms.''.

(c) EXEMPTION FROM TAX ON AIR TRANSPORTATION OF PERSONS FOR FORESTRY PURPOSES EXTENDED TO FIXED-WING AIRCRAFT.—Subsection (f) of section 4261 (relating to tax on air transportation of persons) is amended to read as follows:

''(f) EXEMPTION FOR CERTAIN USES.—No tax shall be imposed under subsection (a) or (b) on air transportation—

''(1) by helicopter for the purpose of transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

''(2) by helicopter or by fixed-wing aircraft for the purpose of the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations),

but only if the helicopter or fixed-wing aircraft does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such use. In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel use or air transportation after the date of the enactment of this Act.

SEC. 5422. MODIFICATION OF RURAL AIRPORT DEFINITION.

(a) IN GENERAL.—Section 4261(e)(1)(B) (defining rural airport) is amended—

(1) by inserting ''(in the case of any airport described in clause (ii)(III), on flight segments of at least 100 miles)'' after ''by air'' in clause (i), and

(2) by striking the period at the end of subclause (II) of clause (ii) and inserting '', or'', and by adding at the end of clause (ii) the following new subclause:

''(III) is not connected by paved roads to another airport.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 2004.

SEC. 5423. EXEMPTION FROM TICKET TAXES FOR TRANSPORTATION PROVIDED BY SEAPLANES.

(a) IN GENERAL.—Section 4261 (relating to imposition of tax) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

''(i) EXEMPTION FOR SEAPLANES.—No tax shall be imposed by this section or section 4271 on any air transportation by a seaplane with respect to any segment consisting of a takeoff from, and a landing on, water, but only if the places at which such takeoff and landing occur have not received and are not receiving financial assistance from the Airport and Airways Trust Fund.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transportation beginning after March 31, 2004.

SEC. 5424. CERTAIN SIGHTSEEING FLIGHTS EXEMPT FROM TAXES ON AIR TRANSPORTATION.

(a) IN GENERAL.—Section 4281 (relating to small aircraft on nonestablished lines) is amended by adding at the end the following new sentence: ''For purposes of this section, an aircraft shall not be considered as operated on an established line if such aircraft is operated on a flight the sole purpose of which is sightseeing.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to transportation beginning on or after the date of the enactment of this Act, but shall not apply to any amount paid before such date for such transportation.

PART IV—ALCOHOLIC BEVERAGE EXCISE TAXES

SEC. 5431. REPEAL OF SPECIAL OCCUPATIONAL TAXES ON PRODUCERS AND MARKETERS OF ALCOHOLIC BEVERAGES.

(a) REPEAL OF OCCUPATIONAL TAXES.—

(1) IN GENERAL.—The following provisions of part II of subchapter A of chapter 51 (relating to occupational taxes) are hereby repealed:

(A) Subpart A (relating to proprietors of distilled spirits plants, bonded wine cellars, etc.).

(B) Subpart B (relating to brewer).

(C) Subpart D (relating to wholesale dealers) (other than sections 5114 and 5116).

(D) Subpart E (relating to retail dealers) (other than section 5124).

(E) Subpart G (relating to general provisions) (other than sections 5142, 5143, 5145, and 5146).

(2) NONBEVERAGE DOMESTIC DRAWBACK.—Section 5131 is amended by striking '', on payment of a special tax per annum,''.

(3) INDUSTRIAL USE OF DISTILLED SPIRITS.—Section 5276 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1)(A) The heading for part II of subchapter A of chapter 51 and the table of subparts for such part are amended to read as follows:

"PART II—MISCELLANEOUS PROVISIONS

''Subpart A. Manufacturers of stills.

''Subpart B. Nonbeverage domestic drawback claimants.

''Subpart C. Recordkeeping by dealers.

''Subpart D. Other provisions.''.

(B) The table of parts for such subchapter A is amended by striking the item relating to part II and inserting the following new item:

''Part II. Miscellaneous provisions.''.

(2) Subpart C of part II of such subchapter (relating to manufacturers of stills) is redesignated as subpart A.

(3)(A) Subpart F of such part II (relating to nonbeverage domestic drawback claimants) is redesignated as subpart B and sections 5131 through 5134 are redesignated as sections 5111 through 5114, respectively.

(B) The table of sections for such subpart B, as so redesignated, is amended—

(i) by redesignating the items relating to sections 5131 through 5134 as relating to sections 5111 through 5114, respectively, and

(ii) by striking ''and rate of tax'' in the item relating to section 5111, as so redesignated.

(C) Section 5111, as redesignated by subparagraph (A), is amended—

(i) by striking ''and rate of tax'' in the section heading,

(ii) by striking the subsection heading for subsection (a), and

(iii) by striking subsection (b).

(4) Part II of subchapter A of chapter 51 is amended by adding after subpart B, as redesignated by paragraph (3), the following new subpart:

"Subpart C—Recordkeeping by Dealers

''Sec. 5121. Recordkeeping by wholesale dealers.

''Sec. 5122. Recordkeeping by retail dealers.

''Sec. 5123. Preservation and inspection of records, and entry of premises for inspection.''.

(5)(A) Section 5114 (relating to records) is moved to subpart C of such part II and inserted after the table of sections for such subpart.

(B) Section 5114 is amended—

(i) by striking the section heading and inserting the following new heading:

"SEC. 5121. RECORDKEEPING BY WHOLESALE DEALERS.",

and

(ii) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) WHOLESALE DEALERS.—For purposes of this part—

''(1) WHOLESALE DEALER IN LIQUORS.—The term 'wholesale dealer in liquors' means any dealer (other than a wholesale dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to another dealer.

''(2) WHOLESALE DEALER IN BEER.—The term 'wholesale dealer in beer' means any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to another dealer.

''(3) DEALER.—The term 'dealer' means any person who sells, or offers for sale, any distilled spirits, wines, or beer.

''(4) PRESUMPTION IN CASE OF SALE OF 20 WINE GALLONS OR MORE.—The sale, or offer for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumptive evidence that the person making such sale, or offer for sale, is engaged in or carrying on the business of a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be. Such presumption may be overcome by evidence satisfactorily showing that such sale, or offer for sale, was made to a person other than a dealer.''.

(C) Paragraph (3) of section 5121(d), as so redesignated, is amended by striking ''section 5146'' and inserting ''section 5123''.

(6)(A) Section 5124 (relating to records) is moved to subpart C of part II of subchapter A of chapter 51 and inserted after section 5121.

(B) Section 5124 is amended—

(i) by striking the section heading and inserting the following new heading:

"SEC. 5122. RECORDKEEPING BY RETAIL DEALERS.",

(ii) by striking ''section 5146'' in subsection (c) and inserting ''section 5123'', and

(iii) by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

''(c) RETAIL DEALERS.—For purposes of this section—

''(1) RETAIL DEALER IN LIQUORS.—The term 'retail dealer in liquors' means any dealer (other than a retail dealer in beer or a limited retail dealer) who sells, or offers for sale, distilled spirits, wines, or beer, to any person other than a dealer.

''(2) RETAIL DEALER IN BEER.—The term 'retail dealer in beer' means any dealer (other than a limited retail dealer) who sells, or offers for sale, beer, but not distilled spirits or wines, to any person other than a dealer.

''(3) LIMITED RETAIL DEALER.—The term 'limited retail dealer' means any fraternal, civic, church, labor, charitable, benevolent, or ex-servicemen's organization making sales of distilled spirits, wine or beer on the occasion of any kind of entertainment, dance, picnic, bazaar, or festival held by it, or any person making sales of distilled spirits, wine or beer to the members, guests, or patrons of bona fide fairs, reunions, picnics, carnivals, or other similar outings, if such organization or person is not otherwise engaged in business as a dealer.

''(4) DEALER.—The term 'dealer' has the meaning given such term by section 5121(c)(3).''.

(7) Section 5146 is moved to subpart C of part II of subchapter A of chapter 51, inserted after section 5122, and redesignated as section 5123.

(8) Part II of subchapter A of chapter 51 is amended by inserting after subpart C the following new subpart:

"Subpart D—Other Provisions

''Sec. 5131. Packaging distilled spirits for industrial uses.

''Sec. 5132. Prohibited purchases by dealers.''.

(9) Section 5116 is moved to subpart D of part II of subchapter A of chapter 51, inserted after the table of sections, redesignated as section 5131, and amended by inserting ''(as defined in section 5121(c))'' after ''dealer'' in subsection (a).

(10) Subpart D of part II of subchapter A of chapter 51 is amended by adding at the end thereof the following new section:

"SEC. 5132. PROHIBITED PURCHASES BY DEALERS.

''(a) IN GENERAL.—Except as provided in regulations prescribed by the Secretary, it shall be unlawful for a dealer to purchase distilled spirits for resale from any person other than a wholesale dealer in liquors who is required to keep the records prescribed by section 5121.

''(b) LIMITED RETAIL DEALERS.—A limited retail dealer may lawfully purchase distilled spirits for resale from a retail dealer in liquors.

''(c) PENALTY AND FORFEITURE.—

"For penalty and forfeiture provisions applicable to violations of subsection (a), see sections 5687 and 7302.".

(11) Subsection (b) of section 5002 is amended—

(A) by striking ''section 5112(a)'' and inserting ''section 5121(c)(3)'',

(B) by striking ''section 5112'' and inserting ''section 5121(c)'',

(C) by striking ''section 5122'' and inserting ''section 5122(c)''.

(12) Subparagraph (A) of section 5010(c)(2) is amended by striking ''section 5134'' and inserting ''section 5114''.

(13) Subsection (d) of section 5052 is amended to read as follows:

''(d) BREWER.—For purposes of this chapter, the term 'brewer' means any person who brews beer or produces beer for sale. Such term shall not include any person who produces only beer exempt from tax under section 5053(e).''.

(14) The text of section 5182 is amended to read as follows:

''For provisions requiring recordkeeping by wholesale liquor dealers, see section 5121, and by retail liquor dealers, see section 5122.''.

(15) Subsection (b) of section 5402 is amended by striking ''section 5092'' and inserting ''section 5052(d)''.

(16) Section 5671 is amended by striking ''or 5091''.

(17)(A) Part V of subchapter J of chapter 51 is hereby repealed.

(B) The table of parts for such subchapter J is amended by striking the item relating to part V.

(18)(A) Sections 5142, 5143, and 5145 are moved to subchapter D of chapter 52, inserted after section 5731, redesignated as sections 5732, 5733, and 5734, respectively, and amended by striking ''this part'' each place it appears and inserting ''this subchapter''.

(B) Section 5732, as redesignated by subparagraph (A), is amended by striking ''(except the tax imposed by section 5131)'' each place it appears.

(C) Paragraph (2) of section 5733(c), as redesignated by subparagraph (A), is amended by striking ''liquors'' both places it appears and inserting ''tobacco products and cigarette papers and tubes''.

(D) The table of sections for subchapter D of chapter 52 is amended by adding at the end thereof the following:

''Sec. 5732. Payment of tax.

''Sec. 5733. Provisions relating to liability for occupational taxes.

''Sec. 5734. Application of State laws.''.

(E) Section 5731 is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(19) Subsection (c) of section 6071 is amended by striking ''section 5142'' and inserting ''section 5732''.

(20) Paragraph (1) of section 7652(g) is amended—

(A) by striking ''subpart F'' and inserting ''subpart B'', and

(B) by striking ''section 5131(a)'' and inserting ''section 5111''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2004, but shall not apply to taxes imposed for periods before such date.

SEC. 5432. SUSPENSION OF LIMITATION ON RATE OF RUM EXCISE TAX COVER OVER TO PUERTO RICO AND VIRGIN ISLANDS.

(a) IN GENERAL.—Section 7652(f)(1) (relating to limitation on cover over of tax on distilled spirits) is amended by striking ''January 1, 2004'' and inserting ''October 1, 2004, and $13.50 in the case of distilled spirits brought into the United States after September 30, 2004, and before January 1, 2006''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to articles containing distilled spirits brought into the United States after December 31, 2003.

(2) SPECIAL RULE.—

(A) IN GENERAL.—After September 30, 2004, the treasury of Puerto Rico shall make a Conservation Trust Fund transfer within 30 days from the date of each cover over payment to such treasury under section 7652(e) of the Internal Revenue Code of 1986.

(B) CONSERVATION TRUST FUND TRANSFER.—

(i) IN GENERAL.—For purposes of this paragraph, the term ''Conservation Trust Fund transfer'' means a transfer to the Puerto Rico Conservation Trust Fund of an amount equal to 50 cents per proof gallon of the taxes imposed under section 5001 or section 7652 of such Code on distilled spirits that are covered over to the treasury of Puerto Rico under section 7652(e) of such Code.

(ii) TREATMENT OF TRANSFER.—Each Conservation Trust Fund transfer shall be treated as principal for an endowment, the income from which to be available for use by the Puerto Rico Conservation Trust Fund for the purposes for which the Trust Fund was established.

(iii) RESULT OF NONTRANSFER.—

(I) IN GENERAL.—Upon notification by the Secretary of the Interior that a Conservation Trust Fund transfer has not been made by the treasury of Puerto Rico, the Secretary of the Treasury shall, except as provided in subclause (II), deduct and withhold from the next cover over payment to be made to the treasury of Puerto Rico under section 7652(e) of such Code an amount equal to the appropriate Conservation Trust Fund transfer and interest thereon at the underpayment rate established under section 6621 of such Code as of the due date of such transfer. The Secretary of the Treasury shall transfer such amount deducted and withheld, and the interest thereon, directly to the Puerto Rico Conservation Trust Fund.

(II) GOOD CAUSE EXCEPTION.—If the Secretary of the Interior finds, after consultation with the Governor of Puerto Rico, that the failure by the treasury of Puerto Rico to make a required transfer was for good cause, and notifies the Secretary of the Treasury of the finding of such good cause before the due date of the next cover over payment following the notification of nontransfer, then the Secretary of the Treasury shall not deduct the amount of such nontransfer from any cover over payment.

(C) PUERTO RICO CONSERVATION TRUST FUND.—For purposes of this paragraph, the term ''Puerto Rico Conservation Trust Fund'' means the fund established pursuant to a Memorandum of Understanding between the United States Department of the Interior and the Commonwealth of Puerto Rico, dated December 24, 1968.

PART V—SPORT EXCISE TAXES

SEC. 5441. CUSTOM GUNSMITHS.

(a) SMALL MANUFACTURERS EXEMPT FROM FIREARMS EXCISE TAX.—Section 4182 (relating to exemptions) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) SMALL MANUFACTURERS, ETC.—

''(1) IN GENERAL.—The tax imposed by section 4181 shall not apply to any article described in such section if manufactured, produced, or imported by a person who manufactures, produces, and imports less than 50 of such articles during the calendar year.

''(2) CONTROLLED GROUPS.—All persons treated as a single employer for purposes of subsection (a) or (b) of section 52 shall be treated as one person for purposes of paragraph (1).''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer on or after the date which is the first day of the month beginning at least 2 weeks after the date of the enactment of this Act.

(2) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to create any inference with respect to the proper tax treatment of any sales before the effective date of such amendments.

SEC. 5442. MODIFIED TAXATION OF IMPORTED ARCHERY PRODUCTS.

(a) BOWS.—Paragraph (1) of section 4161(b) (relating to bows) is amended to read as follows:

''(1) BOWS.—

''(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a peak draw weight of 30 pounds or more, a tax equal to 11 percent of the price for which so sold.

''(B) ARCHERY EQUIPMENT.—There is hereby imposed on the sale by the manufacturer, producer, or importer—

''(i) of any part or accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

''(ii) of any quiver or broadhead suitable for use with an arrow described in paragraph (2),

a tax equal to 11 percent of the price for which so sold.''.

(b) ARROWS.—Subsection (b) of section 4161 (relating to bows and arrows, etc.) is amended by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

''(3) ARROWS.—

''(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any arrow, a tax equal to 12 percent of the price for which so sold.

''(B) EXCEPTION.—In the case of any arrow of which the shaft or any other component has been previously taxed under paragraph (1) or (2)—

''(i) section 6416(b)(3) shall not apply, and

''(ii) the tax imposed by subparagraph (A) shall be an amount equal to the excess (if any) of—

''(I) the amount of tax imposed by this paragraph (determined without regard to this subparagraph), over

''(II) the amount of tax paid with respect to the tax imposed under paragraph (1) or (2) on such shaft or component.

''(C) ARROW.—For purposes of this paragraph, the term 'arrow' means any shaft described in paragraph (2) to which additional components are attached.''.

(c) CONFORMING AMENDMENTS.—Section 4161(b)(2) is amended—

(1) by inserting ''(other than broadheads)'' after ''point'', and

(2) by striking ''ARROWS.—'' in the heading and inserting ''ARROW COMPONENTS.—''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after the date of the enactment of this Act.

SEC. 5443. TREATMENT OF TRIBAL GOVERNMENTS FOR PURPOSES OF FEDERAL WAGERING EXCISE AND OCCUPATIONAL TAXES.

(a) IN GENERAL.—Subsection (a) of section 7871 (relating to Indian tribal governments treated as States for certain purposes) is amended by striking ''and'' at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting ''; and'', and by adding at the end the following new paragraph:

''(8) for purposes of chapter 35 (relating to taxes on wagering).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2004, but shall not apply to taxes imposed for periods before such date.

PART VI—OTHER PROVISIONS

SEC. 5451. INCOME TAX CREDIT FOR DISTILLED SPIRITS WHOLESALERS AND FOR DISTILLED SPIRITS IN CONTROL STATE BAILMENT WAREHOUSES FOR COSTS OF CARRYING FEDERAL EXCISE TAXES ON BOTTLED DISTILLED SPIRITS.

(a) IN GENERAL.—Subpart A of part I of subchapter A of chapter 51 (relating to gallonage and occupational taxes) is amended by adding at the end the following new section:

''SEC. 5011. INCOME TAX CREDIT FOR AVERAGE COST OF CARRYING EXCISE TAX.

''(a) IN GENERAL.—For purposes of section 38, the amount of the distilled spirits credit for any taxable year is the amount equal to the product of—

''(1) in the case of—

''(A) any eligible wholesaler—

''(i) the number of cases of bottled distilled spirits—

''(I) which were bottled in the United States, and

''(II) which are purchased by such wholesaler during the taxable year directly from the bottler of such spirits, or

''(B) any person which is subject to section 5005 and which is not an eligible wholesaler, the number of cases of bottled distilled spirits which are stored in a warehouse operated by, or on behalf of, a State, or agency or political subdivision thereof, on which title has not passed on an unconditional sale basis, and

''(2) the average tax-financing cost per case for the most recent calendar year ending before the beginning of such taxable year.

''(b) ELIGIBLE WHOLESALER.—For purposes of this section, the term 'eligible wholesaler' means any person which holds a permit under the Federal Alcohol Administration Act as a wholesaler of distilled spirits which is not a State, or agency or political subdivision thereof.

''(c) AVERAGE TAX-FINANCING COST.—

''(1) IN GENERAL.—For purposes of this section, the average tax-financing cost per case for any calendar year is the amount of interest which would accrue at the deemed financing rate during a 60-day period on an amount equal to the deemed Federal excise tax per case.

''(2) DEEMED FINANCING RATE.—For purposes of paragraph (1), the deemed financing rate for any calendar year is the average of the corporate overpayment rates under paragraph (1) of section 6621(a) (determined without regard to the last sentence of such paragraph) for calendar quarters of such year.

''(3) DEEMED FEDERAL EXCISE TAX PER CASE.—For purposes of paragraph (1), the deemed Federal excise tax per case is $25.68.

''(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) CASE.—The term 'case' means 12 80-proof 750 milliliter bottles.

''(2) NUMBER OF CASES IN LOT.—The number of cases in any lot of distilled spirits shall be determined by dividing the number of liters in such lot by 9.''.

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by section 5103 of this Act, is amended by striking ''plus'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting '', plus'', and by adding at the end the following new paragraph:

''(17) the distilled spirits credit determined under section 5011(a).''.

(c) CONFORMING AMENDMENTS.—

(1) Section 39(d), as amended by section 5103 of this Act, is amended by adding at the end the following new paragraph:

''(12) NO CARRYBACK OF SECTION 5011 CREDIT BEFORE EFFECTIVE DATE.—No portion of the

unused business credit for any taxable year which is attributable to the credit determined under section 5011(a) may be carried back to a taxable year beginning before the date of the enactment of section 5011.''.

(2) The table of sections for subpart A of part I of subchapter A of chapter 51 is amended by adding at the end the following new item:

''Sec. 5011. Income tax credit for average cost of carrying excise tax.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 5452. CREDIT FOR TAXPAYERS OWNING COMMERCIAL POWER TAKEOFF VEHICLES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits) is amended by adding at the end the following new section:

''SEC. 45G. COMMERCIAL POWER TAKEOFF VEHICLES CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, the amount of the commercial power takeoff vehicles credit determined under this section for the taxable year is $250 for each qualified commercial power takeoff vehicle owned by the taxpayer as of the close of the calendar year in which or with which the taxable year of the taxpayer ends.

''(b) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED COMMERCIAL POWER TAKEOFF VEHICLE.—The term 'qualified commercial power takeoff vehicle' means any highway vehicle described in paragraph (2) which is propelled by any fuel subject to tax under section 4041 or 4081 if such vehicle is used in a trade or business or for the production of income (and is licensed and insured for such use).

''(2) HIGHWAY VEHICLE DESCRIBED.—A highway vehicle is described in this paragraph if such vehicle is—

''(A) designed to engage in the daily collection of refuse or recyclables from homes or businesses and is equipped with a mechanism under which the vehicle's propulsion engine provides the power to operate a load compactor, or

''(B) designed to deliver ready mixed concrete on a daily basis and is equipped with a mechanism under which the vehicle's propulsion engine provides the power to operate a mixer drum to agitate and mix the product en route to the delivery site.

''(c) EXCEPTION FOR VEHICLES USED BY GOVERNMENTS, ETC.—No credit shall be allowed under this section for any vehicle owned by any person at the close of a calendar year if such vehicle is used at any time during such year by—

''(1) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions, or

''(2) an organization exempt from tax under section 501(a).

''(d) TERMINATION.—This section shall not apply with respect to any calendar year after 2006.''.

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by section 5451 of this Act, is amended by striking ''plus'' at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting '', plus'', and by adding at the end the following new paragraph:

''(18) the commercial power takeoff vehicles credit under section 45G(a).''.

(c) CONFORMING AMENDMENTS.—

(1) Section 39(d), as amended by section 5451 of this Act, is amended by adding at the end the following new paragraph:

''(13) NO CARRYBACK OF SECTION 45G CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45G(a) may be carried back to a taxable year beginning on or before the date of the enactment of section 45G.''.

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Sec. 45G. Commercial power takeoff vehicles credit.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 5453. CREDIT FOR AUXILIARY POWER UNITS INSTALLED ON DIESEL-POWERED TRUCKS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by section 5452 of this Act, is amended by adding at the end the following new section:

''SEC. 45H. AUXILIARY POWER UNIT CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, the amount of the auxiliary power unit credit determined under this section for the taxable year is $250 for each qualified auxiliary power unit—

''(1) purchased by the taxpayer, and

''(2) installed or caused to be installed by the taxpayer on a qualified heavy-duty highway vehicle during such taxable year.

''(b) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED AUXILIARY POWER UNIT.—The term 'qualified auxiliary power unit' means any integrated system which—

''(A) provides heat, air conditioning, engine warming, and electricity to the factory installed components on a qualified heavy-duty highway vehicle as if the main drive engine of such vehicle was in operation,

''(B) is employed to reduce long-term idling of the diesel engine on such a vehicle, and

''(C) is certified by the Environmental Protection Agency as meeting emission standards in regulations in effect on the date of the enactment of this section.

''(2) QUALIFIED HEAVY-DUTY HIGHWAY VEHICLE.—The term 'qualified heavy-duty highway vehicle' means any highway vehicle weighing more than 12,500 pounds and powered by a diesel engine.

''(c) TERMINATION.—This section shall not apply with respect to any installation occurring after December 31, 2006.''.

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by section 5452 of this Act, is amended by striking ''plus'' at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting '', plus'', and by adding at the end the following new paragraph:

''(19) the auxiliary power unit credit under section 45H(a).''.

(c) CONFORMING AMENDMENTS.—

(1) Section 39(d), as amended by section 5452 of this Act, is amended by adding at the end the following new paragraph:

''(14) NO CARRYBACK OF SECTION 45H CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45H(a) may be carried back to a taxable year beginning on or before the date of the enactment of section 45H.''.

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by section 5452 of this Act, is amended by adding at the end the following new item:

''Sec. 45H. Auxiliary power unit credit.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to auxiliary power units purchased and installed for taxable years beginning after the date of the enactment of this Act.

Subtitle F—Miscellaneous Provisions

SEC. 5501. MOTOR FUEL TAX ENFORCEMENT ADVISORY COMMISSION.

(a) ESTABLISHMENT.—There is established a Motor Fuel Tax Enforcement Advisory Commission (in this section referred to as the ''Commission'').

(b) FUNCTION.—The Commission shall—

(1) review motor fuel revenue collections, historical and current;

(2) review the progress of investigations;

(3) develop and review legislative proposals with respect to motor fuel taxes;

(4) monitor the progress of administrative regulation projects relating to motor fuel taxes;

(5) review the results of Federal and State agency cooperative efforts regarding motor fuel taxes;

(6) review the results of Federal interagency cooperative efforts regarding motor fuel taxes; and

(7) evaluate and make recommendations regarding—

(A) the effectiveness of existing Federal enforcement programs regarding motor fuel taxes,

(B) enforcement personnel allocation, and

(C) proposals for regulatory projects, legislation, and funding.

(c) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of the following representatives appointed by the Chairmen and the Ranking Members of the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives:

(A) At least 1 representative from each of the following Federal entities: the Department of Homeland Security, the Department of Transportation - Office of Inspector General, the Federal Highway Administration, the Department of Defense, and the Department of Justice.

(B) At least 1 representative from the Federation of State Tax Administrators.

(C) At least 1 representative from any State department of transportation.

(D) 2 representatives from the highway construction industry.

(E) 5 representatives from industries relating to fuel distribution — refiners (2 representatives), distributors (1 representative), pipelines (1 representative), and terminal operators (2 representatives).

(F) 1 representative from the retail fuel industry.

(G) 2 representatives from the staff of the Committee on Finance of the Senate and 2 representatives from the staff of the Committee on Ways and Means of the House of Representatives.

(2) TERMS.—Members shall be appointed for the life of the Commission.

(3) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(4) TRAVEL EXPENSES.—Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(5) CHAIRMAN.—The Chairman of the Commission shall be elected by the members.

(d) FUNDING.—Such sums as are necessary shall be available from the Highway Trust fund for the expenses of the Commission.

(e) CONSULTATION.—Upon request of the Commission, representatives of the Department of the Treasury and the Internal Revenue Service shall be available for consultation to assist the Commission in carrying out its duties under this section.

(f) OBTAINING DATA.—The Commission may secure directly from any department or agency of the United States, information (other than information required by any law to be kept confidential by such department or agency) necessary for the Commission to carry out its duties under this section. Upon request of the Commission, the head of that department or agency shall furnish such nonconfidential information to the Commission. The Commission shall also gather evidence through such means as it may deem appropriate, including through holding hearings and soliciting comments by means of Federal Register notices.

(g) TERMINATION.—The Commission shall terminate after September 30, 2009.

SEC. 5502. NATIONAL SURFACE TRANSPORTATION INFRASTRUCTURE FINANCING COMMISSION.

(a) ESTABLISHMENT.—There is established a National Surface Transportation Infrastructure Financing Commission (in this section referred to as the ''Commission''). The Commission shall hold its first meeting within 90 days of the appointment of the eighth individual to be named to the Commission.

(b) FUNCTION.—

(1) IN GENERAL.—The Commission shall—

(A) make a thorough investigation and study of revenues flowing into the Highway Trust Fund under current law, including the individual components of the overall flow of such revenues;

(B) consider whether the amount of such revenues is likely to increase, decline, or remain unchanged, absent changes in the law, particularly by taking into account the impact of possible changes in public vehicular choice, fuel use, or travel alternatives that could be expected to reduce or increase revenues into the Highway Trust Fund;

(C) consider alternative approaches to generating revenues for the Highway Trust Fund, and the level of revenues that such alternatives would yield;

(D) consider highway and transit needs and whether additional revenues into the Highway Trust Fund, or other Federal revenues dedicated to highway and transit infrastructure, would be required in order to meet such needs; and

(E) study such other matters closely related to the subjects described in the preceding subparagraphs as it may deem appropriate.

(2) TIME FRAME OF INVESTIGATION AND STUDY.—The time frame to be considered by the Commission shall extend through the year 2015.

(3) PREPARATION OF REPORT.—Based on such investigation and study, the Commission shall develop a final report, with recommendations and the bases for those recommendations, indicating policies that should be adopted, or not adopted, to achieve various levels of annual revenue for the Highway Trust Fund and to enable the Highway Trust Fund to receive revenues sufficient to meet highway and transit needs. Such recommendations shall address, among other matters as the Commission may deem appropriate—

(A) what levels of revenue are required by the Federal Highway Trust Fund in order for it to meet needs to—

(i) maintain, and

(ii) improve the condition and performance of the Nation's highway and transit systems;

(B) what levels of revenue are required by the Federal Highway Trust Fund in order to ensure that Federal levels of investment in highways and transit do not decline in real terms; and

(C) the extent, if any, to which the Highway Trust Fund should be augmented by other mechanisms or funds as a Federal means of financing highway and transit infrastructure investments.

(c) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of 15 members, appointed as follows:

(A) 7 members appointed by the Secretary of Transportation, in consultation with the Secretary of the Treasury.

(B) 2 members appointed by the Chairman of the Committee on Ways and Means of the House of Representatives.

(C) 2 members appointed by the Ranking Minority Member of the Committee on Ways and Means of the House of Representatives.

(D) 2 members appointed by the Chairman of the Committee on Finance of the Senate.

(E) 2 members appointed by the Ranking Minority Member of the Committee on Finance of the Senate.

(2) QUALIFICATIONS.—Members appointed pursuant to paragraph (1) shall be appointed from among individuals knowledgeable in the fields of public transportation finance or highway and transit programs, policy, and needs, and may include representatives of interested parties, such as State and local governments or other public transportation authorities or agencies, representatives of the transportation construction industry (including suppliers of technology, machinery and materials), transportation labor (including construction and providers), transportation providers, the financial community, and users of highway and transit systems.

(3) TERMS.—Members shall be appointed for the life of the Commission.

(4) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(5) TRAVEL EXPENSES.—Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(6) CHAIRMAN.—The Chairman of the Commission shall be elected by the members.

(d) STAFF.—The Commission may appoint and fix the pay of such personnel as it considers appropriate.

(e) FUNDING.—Funding for the Commission shall be provided by the Secretary of the Treasury and by the Secretary of Transportation, out of funds available to those agencies for administrative and policy functions.

(f) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any department or agency of the United States may detail any of the personnel of that department or agency to the Commission to assist in carrying out its duties under this section.

(g) OBTAINING DATA.—The Commission may secure directly from any department or agency of the United States, information (other than information required by any law to be kept confidential by such department or agency) necessary for the Commission to carry out its duties under this section. Upon request of the Commission, the head of that department or agency shall furnish such nonconfidential information to the Commission. The Commission shall also gather evidence through such means as it may deem appropriate, including through holding hearings and soliciting comments by means of Federal Register notices.

(h) REPORT.—Not later than 2 years after the date of its first meeting, the Commission shall transmit its final report, including recommendations, to the Secretary of Transportation, the Secretary of the Treasury, and the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Environment and Public Works of the Senate, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(i) TERMINATION.—The Commission shall terminate on the 180th day following the date of transmittal of the report under subsection (h). All records and papers of the Commission shall thereupon be delivered to the Administrator of General Services for deposit in the National Archives.

SEC. 5503. TREASURY STUDY OF FUEL TAX COMPLIANCE AND INTERAGENCY COOPERATION.

(a) IN GENERAL.—Not later than January 31, 2006, the Secretary of the Treasury shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report regarding fuel tax enforcement which shall include the information and analysis specified in subsections (b) and (c) and any other information and recommendations the Secretary of the Treasury may deem appropriate.

(b) AUDITS.—With respect to audits conducted by the Internal Revenue Service, the report required under subsection (a) shall include—

(1) the number and geographic distribution of audits conducted annually, by fiscal year, between October 1, 2001, and September 30, 2005;

(2) the total volume involved for each of the taxable fuels covered by such audits and a comparison to the annual production of such fuels;

(3) the staff hours and number of personnel devoted to the audits per year; and

(4) the results of such audits by year, including total tax collected, total penalties collected, and number of referrals for criminal prosecution.

(c) ENFORCEMENT ACTIVITIES.—With respect to enforcement activities, the report required under subsection (a) shall include—

(1) the number and geographic distribution of criminal investigations and prosecutions annually, by fiscal year, between October 1, 2001, and September 30, 2005, and the results of such investigations and prosecutions;

(2) to the extent such investigations and prosecutions involved other agencies, State or Federal, a breakdown by agency of the number of joint investigations involved;

(3) an assessment of the effectiveness of joint action and cooperation between the Department of the Treasury and other Federal and State agencies, including a discussion of the ability and need to share information across agencies for both civil and criminal Federal tax enforcement and enforcement of State or Federal laws relating to fuels;

(4) the staff hours and number of personnel devoted to criminal investigations and prosecutions per year;

(5) the staff hours and number of personnel devoted to administrative collection of fuel taxes; and

(6) the results of administrative collection efforts annually, by fiscal year, between October 1, 2001, and September 30, 2005.

SEC. 5504. EXPANSION OF HIGHWAY TRUST FUND EXPENDITURE PURPOSES TO INCLUDE FUNDING FOR STUDIES OF SUPPLEMENTAL OR ALTERNATIVE FINANCING FOR THE HIGHWAY TRUST FUND.

(a) IN GENERAL.—From amounts available in the Highway Trust Fund, there is authorized to be expended for 2 comprehensive studies of supplemental or alternative funding sources for the Highway Trust Fund—

(1) $1,000,000 to the Western Transportation Institute of the College of Engineering at Montana State University for the study and report described in subsection (b), and

(2) $16,500,000 to the Public Policy Center of the University of Iowa for the study and report described in subsection (c).

(b) STUDY OF FUNDING MECHANISMS.—Not later than December 31, 2006, the Western Transportation Institute of the College of Engineering at Montana State University shall report to the Secretary of the Treasury and the Secretary of Transportation on a study of highway funding mechanisms of other industrialized nations, an examination of the viability of alternative funding proposals, including congestion pricing, greater reliance on tolls, privatization of facilities, and bonding for construction of added capacity, and an examination of increasing the rates of motor fuels taxes in effect on the date of the enactment of this Act, including the indexation of such rates.

(c) STUDY ON FIELD TEST OF ON-BOARD COMPUTER ASSESSMENT OF HIGHWAY USE TAXES.—Not later than December 31, 2011, the Public Policy Center of the University of Iowa shall direct, analyze, and report to the Secretary of the Treasury and the Secretary of Transportation on a long-term field test of an approach to assessing highway use taxes based upon actual mileage driven by a specific vehicle on specific types of highways by use of an on-board computer—

(1) which is linked to satellites to calculate highway mileage traversed,

(2) which computes the appropriate highway use tax for each of the Federal, State, and local governments as the vehicle makes use of the highways, and

(3) the data from which is periodically downloaded by the vehicle owner to a collection center for an assessment of highway use taxes due in each jurisdiction traversed.The components of the field test shall include 2 years for preparation, including selection of vendors and test participants, and 3-year testing period.

SEC. 5505. TREASURY STUDY OF HIGHWAY FUELS USED BY TRUCKS FOR NON-TRANSPORTATION PURPOSES.

(a) STUDY.—The Secretary of the Treasury shall conduct a study regarding the use of highway motor fuel by trucks that is not used for the propulsion of the vehicle. As part of such study—

(1) in the case of vehicles carrying equipment that is unrelated to the transportation function of the vehicle—

(A) the Secretary of the Treasury, in consultation with the Secretary of Transportation, and with public notice and comment, shall determine the average annual amount of tax paid fuel consumed per vehicle, by type of vehicle, used by the propulsion engine to provide the power to operate the equipment attached to the highway vehicle, and

(B) the Secretary of the Treasury shall review the technical and administrative feasibility of exempting such nonpropulsive use of highway fuels for the highway motor fuels excise taxes,

(2) in the case where non-transportation equipment is run by a separate motor—

(A) the Secretary of the Treasury shall determine the annual average amount of fuel exempted from tax in the use of such equipment by equipment type, and

(B) the Secretary of the Treasury shall review issues of administration and compliance related to the present-law exemption provided for such fuel use, and

(3) the Secretary of the Treasury shall—

(A) estimate the amount of taxable fuel consumed by trucks and the emissions of various pollutants due to the long-term idling of diesel engines, and

(B) determine the cost of reducing such long-term idling through the use of plug-ins at truck stops, auxiliary power units, or other technologies.

(b) REPORT.—Not later than January 1, 2006, the Secretary of the Treasury shall report the findings of the study required under subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 5506. DELTA REGIONAL TRANSPORTATION PLAN.

(a) STUDY.—The Delta Regional Authority shall conduct a study of the transportation assets and needs in the States of Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee which comprise the Delta region.

(b) REGIONAL STRATEGIC TRANSPORTATION PLAN.—Upon completion of the study required under subsection (a), the Delta Regional Authority shall establish a regional strategic transportation plan to achieve efficient transportation systems in the Delta region. In developing the regional strategic transportation plan, the Delta Regional Authority shall consult with local planning and development districts, local and regional governments, metropolitan planning organizations, State transportation entities, and Federal transportation agencies.

(c) ELEMENTS OF STUDY AND PLAN.—The study and plan under this section shall include the following transportation modes and systems: transit, rail, highway, interstate, bridges, air, airports, waterways and ports.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Delta Regional Authority $1,000,000 to carry out the purposes of this section, to remain available until expended.

SEC. 5507. TREATMENT OF EMPLOYER-PROVIDED TRANSIT AND VAN POOLING BENEFITS.

(a) IN GENERAL.—Subparagraph (A) of section 132(f)(2) (relating to limitation on exclusion) is amended by striking ''$100'' and inserting ''$120''.

(b) INFLATION ADJUSTMENT CONFORMING AMENDMENTS.—The last sentence of section 132(f)(6)(A) (relating to inflation adjustment) is amended—

(1) by striking ''2002'' and inserting ''2005'', and

(2) by striking ''2001'' and inserting ''2004''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 5508. STUDY OF INCENTIVES FOR PRODUCTION OF BIODIESEL.

(a) STUDY.—The General Comptroller of the United States shall conduct a study related to biodiesel fuels and the tax credit for biodiesel fuels established under this Act. Such study shall include—

(1) an assessment on whether such credit provides sufficient assistance to the producers of biodiesel fuel to establish the fuel as a viable energy alternative in the current market place,

(2) an assessment on how long such credit or similar subsidy would have to remain in effect before biodiesel fuel can compete in the market place without such assistance,

(3) a cost-benefit analysis of such credit, comparing the cost of the credit in forgone revenue to the benefits of lower fuel costs for consumers, increased profitability for the biodiesel industry, increased farm income, reduced program outlays from the Department of Agriculture, and the improved environmental conditions through the use of biodiesel fuel, and

(4) an assessment on whether such credit results in any unintended consequences for unrelated industries, including the impact, if any, on the glycerin market.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall report the findings of the study required under subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

Subtitle G—Revenue Offsets

PART I—LIMITATION ON EXPENSING CERTAIN PASSENGER AUTOMOBILES

SEC. 5601. EXPANSION OF LIMITATION ON DEPRECIATION OF CERTAIN PASSENGER AUTOMOBILES.

(a) IN GENERAL.—Section 179(b) (relating to limitations) is amended by adding at the end the following new paragraph:

''(6) LIMITATION ON COST TAKEN INTO ACCOUNT FOR CERTAIN PASSENGER VEHICLES.—

''(A) IN GENERAL.—The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed $25,000.

''(B) SPORT UTILITY VEHICLE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—The term 'sport utility vehicle' means any 4-wheeled vehicle which—

''(I) is manufactured primarily for use on public streets, roads, and highways,

''(II) is not subject to section 280F, and

''(III) is rated at not more than 14,000 pounds gross vehicle weight.

''(ii) CERTAIN VEHICLES EXCLUDED.—Such term does not include any vehicle which—

''(I) does not have the primary load carrying device or container attached,

''(II) has a seating capacity of more than 12 individuals,

''(III) is designed for more than 9 individuals in seating rearward of the driver's seat,

''(IV) is equipped with an open cargo area, or a covered box not readily accessible from the passenger compartment, of at least 72.0 inches in interior length, or

''(V) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after February 2, 2004.

PART II—PROVISIONS DESIGNED TO CURTAIL TAX SHELTERS

SEC. 5611. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

''(1) GENERAL RULES.—

''(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

''(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—A transaction has economic substance only if—

''(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer's economic position, and

''(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

''(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall

not be treated as having economic substance by reason of having a potential for profit unless—

''(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

''(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

''(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

''(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

''(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

''(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

''(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

''(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

''(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

''(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

''(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

''(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

''(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

''(I) depreciation,

''(II) any tax credit, or

''(III) any other deduction as provided in guidance by the Secretary, and

''(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

''(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

''(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after February 2, 2004.

SEC. 5612. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

''SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

''(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

''(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

''(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

''(A) IN GENERAL.—In the case of a failure under subsection (a) by—

''(i) a large entity, or

''(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

''(B) LARGE ENTITY.—For purposes of subparagraph (A), the term 'large entity' means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of $10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

''(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term 'high net worth individual' means, with respect to a reportable transaction, a natural person whose net worth exceeds $2,000,000 immediately before the transaction.

''(c) DEFINITIONS.—For purposes of this section—

''(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

''(2) LISTED TRANSACTION.—Except as provided in regulations, the term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

''(d) AUTHORITY TO RESCIND PENALTY.—

''(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

''(A) the violation is with respect to a reportable transaction other than a listed transaction,

''(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

''(C) it is shown that the violation is due to an unintentional mistake of fact;

''(D) imposing the penalty would be against equity and good conscience, and

''(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

''(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

''(A) the facts and circumstances of the transaction,

''(B) the reasons for the rescission, and

''(C) the amount of the penalty rescinded.

''(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

''(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

''(B) a description of each penalty rescinded under this subsection and the reasons therefor.

''(e) PENALTY REPORTED TO SEC.—In the case of a person—

''(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

''(2) which—

''(A) is required to pay a penalty under this section with respect to a listed transaction,

''(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

''(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction,

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

''(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

SEC. 5613. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

"SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

''(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'reportable transaction understatement' means the sum of—

''(A) the product of—

''(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

''(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

''(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

''(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

''(A) any listed transaction, and

''(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

''(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

''(1) IN GENERAL.—Subsection (a) shall be applied by substituting '30 percent' for '20 percent' with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

''(2) RULES APPLICABLE TO ASSERTION AND COMPROMISE OF PENALTY.—

''(A) IN GENERAL.—Only upon the approval by the Chief Counsel for the Internal Revenue Service or the Chief Counsel's delegate at the national office of the Internal Revenue Service may a penalty to which paragraph (1) applies be included in a 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. If such a letter is provided to the taxpayer, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

''(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

''(e) SPECIAL RULES.—

''(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

''(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

''(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

''(2) COORDINATION WITH OTHER PENALTIES.—

''(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

''(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

''(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

''(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).

''(5) CROSS REFERENCE.—

"For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).".

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

''The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies and without regard to items with respect to which a penalty is imposed by section 6662B.''.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

''(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

''(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

''(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

''(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

''(B) there is or was substantial authority for such treatment, and

''(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

''(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

''(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

''(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

''(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

''(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

''(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

''(I) the tax advisor is described in clause (ii), or

''(II) the opinion is described in clause (iii).

''(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

''(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

''(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

''(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

''(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

''(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

''(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

''(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

''(III) does not identify and consider all relevant facts, or

''(IV) fails to meet any other requirement as the Secretary may prescribe.''.

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting ''FOR UNDERPAYMENTS'' after ''EXCEPTION''.

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking ''(as defined in section 6662(d)(2)(C)(iii))'' in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

''(C) TAX SHELTER.—For purposes of subparagraph (B), the term 'tax shelter' means—

''(i) a partnership or other entity,

''(ii) any investment plan or arrangement, or

''(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.''.

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking ''this part'' and inserting ''section 6662 or 6663''.

(5) Subsection (b) of section 7525 is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(6)(A) The heading for section 6662 is amended to read as follows:

''SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.''.

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

''Sec. 6662. Imposition of accuracy-related penalty on underpayments.

''Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 5614. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

''SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

''(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

''(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

''(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term 'noneconomic substance transaction' means any transaction if—

''(A) there is a lack of economic substance (within the meaning of section 7701(n)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(n)(2), or

''(B) the transaction fails to meet the requirements of any similar rule of law.

''(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

''(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(2) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

''(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

''(f) CROSS REFERENCES.—

''(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

''(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).''.

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

''Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after February 2, 2004.

SEC. 5615. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NONREPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

''(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

''(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or

''(ii) $10,000,000.''.

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

''(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or''.

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

''(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 5616. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

''(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

''(1) between a federally authorized tax practitioner and—

''(A) any person,

''(B) any director, officer, employee, agent, or representative of the person, or

''(C) any other person holding a capital or profits interest in the person, and

''(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

SEC. 5617. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

''SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

''(1) information identifying and describing the transaction,

''(2) information describing any potential tax benefits expected to result from the transaction, and

''(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

''(b) DEFINITIONS.—For purposes of this section—

''(1) MATERIAL ADVISOR.—

''(A) IN GENERAL.—The term 'material advisor' means any person—

''(i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, or carrying out any reportable transaction, and

''(ii) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice.

''(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

''(i) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

''(ii) $250,000 in any other case.

''(2) REPORTABLE TRANSACTION.—The term 'reportable transaction' has the meaning given to such term by section 6707A(c).

''(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

''(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

''(2) exemptions from the requirements of this section, and

''(3) such rules as may be necessary or appropriate to carry out the purposes of this section.''.

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6111. Disclosure of reportable transactions.''.

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

''SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.

''(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

''(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

''(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.''.

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting ''written'' before ''request'' in paragraph (1)(A), and

(ii) by striking ''shall prescribe'' in paragraph (2) and inserting ''may prescribe''.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.''.

(3)(A) The heading for section 6708 is amended to read as follows:

''SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.''.

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

''Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.''.

(c) REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.—Subparagraph (A) of section 6112(b)(1), as redesignated by subsection (b)(2)(B), is amended by adding at the end the following new flush sentence:

''For purposes of this section, the identity of any person on such list shall not be privileged.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

(2) NO CLAIM OF CONFIDENTIALITY AGAINST DISCLOSURE.—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 142 of the Deficit Reduction Act of 1984.

SEC. 5618. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

(a) IN GENERAL.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

''SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

''(1) fails to file such return on or before the date prescribed therefor, or

''(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

''(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

''(A) $200,000, or

''(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (a).

''(c) CERTAIN RULES TO APPLY.—The provisions of section 6707A(d) shall apply to any penalty imposed under this section.

''(d) REPORTABLE AND LISTED TRANSACTIONS.—The terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).''.

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking ''tax shelters'' and inserting ''reportable transactions''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

SEC. 5619. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

''(a) IMPOSITION OF PENALTY.—

''(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary's request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

''(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 5620. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

''(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

''(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

''(1) that the person has engaged in any specified conduct, and

''(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

''(c) SPECIFIED CONDUCT.—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, or 6708.''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

''SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.''.

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

''Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 5621. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking ''realistic possibility of being sustained on its merits'' in paragraph (1) and inserting ''reasonable belief that the tax treatment in such position was more likely than not the proper treatment'',

(2) by striking ''or was frivolous'' in paragraph (3) and inserting ''or there was no reasonable basis for the tax treatment of such position'', and

(3) by striking ''UNREALISTIC'' in the heading and inserting ''IMPROPER''.

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking ''$250'' in subsection (a) and inserting ''$1,000'', and

(2) by striking ''$1,000'' in subsection (b) and inserting ''$5,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

SEC. 5622. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

''(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

''(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

''(B) AMOUNT OF PENALTY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $5,000.

''(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

''(I) such violation was due to reasonable cause, and

''(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

''(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

''(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

''(I) $25,000, or

''(II) the amount (not exceeding $100,000) determined under subparagraph (D), and

''(ii) subparagraph (B)(ii) shall not apply.

''(D) AMOUNT.—The amount determined under this subparagraph is—

''(i) in the case of a violation involving a transaction, the amount of the transaction, or

''(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be

provided with respect to an account, the balance in the account at the time of the violation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 5623. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

''SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

''(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(ii) reflects a desire to delay or impede the administration of Federal tax laws.

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 6159 (relating to agreements for payment of tax liability in installments),

''(II) section 7122 (relating to compromises), or

''(III) section 7811 (relating to taxpayer assistance orders).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''.

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

''(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking ''(A)'' and inserting ''(A)(i)'';

(B) by striking ''(B)'' and inserting ''(ii)'';

(C) by striking the period at the end of the first sentence and inserting ''; or''; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

''(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).''.

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing''.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing'', and

(2) in subsection (c), by striking ''and (e)'' and inserting ''(e), and (g)''.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

''(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 5624. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting '', or censure,'' after ''Department'', and

(B) by adding at the end the following new flush sentence:

''The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

''(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.''.

SEC. 5625. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: ''Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 5626. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.

(a) IN GENERAL.—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

''(10) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

''(A) the date on which the Secretary is furnished the information so required; or

''(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

SEC. 5627. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE AND NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS AND NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

''(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

''(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

SEC. 5628. AUTHORIZATION OF APPROPRIATIONS FOR TAX LAW ENFORCEMENT.

There is authorized to be appropriated $300,000,000 for each fiscal year beginning after September 30, 2003, for the purpose of carrying out tax law enforcement to combat tax avoidance transactions and other tax shelters, including the use of offshore financial accounts to conceal taxable income.

PART III—OTHER CORPORATE GOVERNANCE PROVISIONS

SEC. 5631. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end the following new sentence: ''In prescribing such regulations, the Secretary may prescribe rules applicable to corporations filing consolidated returns under section 1501 that are different from other provisions of this title that would apply if such corporations filed separate returns.''.

(b) RESULT NOT OVERTURNED.—Notwithstanding subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury regulation §1.1502–20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the type of factual situation in 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 5632. DECLARATION BY CHIEF EXECUTIVE OFFICER RELATING TO FEDERAL ANNUAL CORPORATE INCOME TAX RETURN.

(a) IN GENERAL.—The Federal tax return of a corporation with respect to income shall also include a declaration signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary of the Treasury may designate if the corporation does not have a chief executive officer), under penalties of perjury, that the chief executive officer has established processes and procedures that ensure that such return complies with the Internal Revenue Code of 1986 and that the chief executive officer was provided reasonable assurance of the accuracy of all material aspects of such return. The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851 of such Code).

(b) EFFECTIVE DATE.—This section shall apply to Federal tax returns filed after the date of the enactment of this Act.

SEC. 5633. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

''(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

''(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION.—Paragraph (1) shall not apply to any amount which the taxpayer establishes constitutes restitution for damage or harm caused by the violation of any law or the potential violation of any law. This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

''(3) EXCEPTION FOR AMOUNTS PAID OR INCURRED AS THE RESULT OF CERTAIN COURT ORDERS.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

''(4) CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—An entity is described in this paragraph if it is—

''(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

''(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after April 27, 2003, except that such amendment shall not apply to amounts paid or incurred under any binding order or agreement entered into on or before April 27, 2003. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained on or before April 27, 2003.

SEC. 5634. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) DISALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended by adding at the end the following new paragraph:

''(2) PUNITIVE DAMAGES.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 162(g) is amended—

(i) by striking ''If'' and inserting:

''(1) TREBLE DAMAGES.—If'', and

(ii) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively.

(B) The heading for section 162(g) is amended by inserting ''OR PUNITIVE DAMAGES'' after ''LAWS''.

(b) INCLUSION IN INCOME OF PUNITIVE DAMAGES PAID BY INSURER OR OTHERWISE.—

(1) IN GENERAL.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

''SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

''Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages.''.

(2) REPORTING REQUIREMENTS.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

''(f) SECTION TO APPLY TO PUNITIVE DAMAGES COMPENSATION.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.''.

(3) CONFORMING AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

''Sec. 91. Punitive damages compensated by insurance or otherwise.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

SEC. 5635. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking ''Any person who—'' and inserting ''(a) IN GENERAL.—Any person who—'', and

(2) by adding at the end the following new subsection:

''(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.''.

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''5 years'' and inserting ''10 years''.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking ''misdemeanor'' and inserting ''felony'', and

(ii) by striking ''1 year'' and inserting ''10 years'', and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''3 years'' and inserting ''5 years''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

SEC. 5636. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

(a) GENERAL RULE.—If—

(1) a taxpayer eligible to participate in—

(A) the Department of the Treasury's Offshore Voluntary Compliance Initiative, or

(B) the Department of the Treasury's voluntary disclosure initiative which applies to the taxpayer by reason of the taxpayer's underreporting of United States income tax liability through financial arrangements which rely on the use of offshore arrangements which were the subject of the initiative described in subparagraph (A), and

(2) any interest or applicable penalty is imposed with respect to any arrangement to which any initiative described in paragraph (1) applied or to any underpayment of Federal income tax attributable to items arising in connection with any arrangement described in paragraph (1),

then, notwithstanding any other provision of law, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(b) DEFINITIONS AND RULES.—For purposes of this section—

(1) APPLICABLE PENALTY.—The term ''applicable penalty'' means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) VOLUNTARY OFFSHORE COMPLIANCE INITIATIVE.—The term ''Voluntary Offshore Compliance Initiative'' means the program established by the Department of the Treasury in January of 2003 under which any taxpayer was eligible to voluntarily disclose previously undisclosed income on assets placed in offshore accounts and accessed through credit card and other financial arrangements.

(3) PARTICIPATION.—A taxpayer shall be treated as having participated in the Voluntary Offshore Compliance Initiative if the taxpayer submitted the request in a timely manner and all information requested by the Secretary of the Treasury or his delegate within a reasonable period of time following the request.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

PART IV—ENRON-RELATED TAX SHELTER PROVISIONS

SEC. 5641. LIMITATION ON TRANSFER OR IMPORTATION OF BUILT-IN LOSSES.

(a) IN GENERAL.—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

''(e) LIMITATIONS ON BUILT-IN LOSSES.—

''(1) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—

''(A) IN GENERAL.—If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

''(B) PROPERTY DESCRIBED.—For purposes of subparagraph (A), property is described in this subparagraph if—

''(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

''(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

''(C) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.''.

''(2) LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 351 TRANSACTIONS.—

''(A) IN GENERAL.—If—

''(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

''(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

''(B) ALLOCATION OF BASIS REDUCTION.—The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

''(C) EXCEPTION FOR TRANSFERS WITHIN AFFILIATED GROUP.—Subparagraph (A) shall not apply to any transaction if the transferor owns stock in the transferee meeting the requirements of section 1504(a)(2). In the case of property to which subparagraph (A) does not apply by reason of the preceding sentence, the transferor's basis in the stock received for such property shall not exceed its fair market value immediately after the transfer.''.

(b) COMPARABLE TREATMENT WHERE LIQUIDATION.—Paragraph (1) of section 334(b) (relating to liquidation of subsidiary) is amended to read as follows:

''(1) IN GENERAL.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

''(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

''(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after February 13, 2003.

SEC. 5642. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.

(a) IN GENERAL.—Section 755 is amended by adding at the end the following new subsection:

''(c) NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

''(1) no allocation may be made to stock in a corporation (or any person which is related (within the meaning of section 267(b) or 707(b)(1)) to such corporation) which is a partner in the partnership, and

''(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property in such manner as the Secretary may prescribe.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after February 13, 2003.

SEC. 5643. REPEAL OF SPECIAL RULES FOR FASITS.

(a) IN GENERAL.—Part V of subchapter M of chapter 1 (relating to financial asset securitization investment trusts) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (6) of section 56(g) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(2) Clause (ii) of section 382(l)(4)(B) is amended by striking ''a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies,'' and inserting ''or a REMIC to which part IV of subchapter M applies,''.

(3) Paragraph (1) of section 582(c) is amended by striking '', and any regular interest in a FASIT,''.

(4) Subparagraph (E) of section 856(c)(5) is amended by striking the last sentence.

(5)(A) Section 860G(a)(1) is amended by adding at the end the following new sentence: ''An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.''.

(B) The last sentence of section 860G(a)(3) is amended by inserting '', and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property'' before the period at the end.

(6) Paragraph (3) of section 860G(a) is amended by adding ''and'' at the end of subparagraph (B), by striking '', and'' at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

(7) Section 860G(a)(3), as amended by paragraph (6), is amended by adding at the end the following new sentence: ''For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.''.

(8)(A) Section 860G(a)(3)(A) is amended by striking ''or'' at the end of clause (i), by inserting ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

''(I) is attributable to an advance made to the obligor pursuant to the original terms of the obligation,

''(II) occurs after the startup day, and

''(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.''.

(B) Section 860G(a)(7)(B) is amended to read as follows:

''(B) QUALIFIED RESERVE FUND.—For purposes of subparagraph (A), the term 'qualified reserve fund' means any reasonably required reserve to—

''(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

''(ii) provide a source of funds for the purchase of obligations described in clause (ii) or (iii) of paragraph (3)(A).

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of paragraph (3)(A).''.

(9) Subparagraph (C) of section 1202(e)(4) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(10) Clause (xi) of section 7701(a)(19)(C) is amended—

(A) by striking ''and any regular interest in a FASIT,'', and

(B) by striking ''or FASIT'' each place it appears.

(11) The table of parts for subchapter M of chapter 1 is amended by striking the item relating to part V.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on February 14, 2003.

(2) EXCEPTION FOR EXISTING FASITS.—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance.

SEC. 5644. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.

(a) IN GENERAL.—Paragraph (2) of section 163(l) is amended by striking ''or a related party'' and inserting ''or equity held by the issuer (or any related party) in any other person''.

(b) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—Section 163(l) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6) and by inserting after paragraph (3) the following new paragraph:

''(4) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.''.

(c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—Section 163(l), as amended by subsection (b), is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7) and by inserting after paragraph (4) the following new paragraph:

''(5) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of this subsection, the term 'disqualified debt instrument' does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term 'dealer in securities' has the meaning given such term by section 475.''.

(c) CONFORMING AMENDMENTS.—Paragraph (3) of section 163(l) is amended—

(1) by striking ''or a related party'' in the material preceding subparagraph (A) and inserting ''or any other person'', and

(2) by striking ''or interest'' each place it appears.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after February 13, 2003.

SEC. 5645. EXPANDED AUTHORITY TO DISALLOW TAX BENEFITS UNDER SECTION 269.

(a) IN GENERAL.—Subsection (a) of section 269 (relating to acquisitions made to evade or avoid income tax) is amended to read as follows:

''(a) IN GENERAL.—If—

''(1)(A) any person or persons acquire, directly or indirectly, control of a corporation, or

''(B) any corporation acquires, directly or indirectly, property of another corporation and the basis of such property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and

''(2) the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax,

then the Secretary may disallow such deduction, credit, or other allowance. For purposes of paragraph (1)(A), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of all shares of all classes of stock of the corporation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to stock and property acquired after February 13, 2003.

SEC. 5646. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) (relating to passive foreign investment company) is amended by adding at the end the following flush sentence:

''Such term shall not include any period if the earning of subpart F income by such corporation during such period would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of controlled foreign corporations beginning after February 13, 2003, and to taxable years of United States shareholders with or within which such taxable years of controlled foreign corporations end.

PART V—PROVISIONS TO DISCOURAGE EXPATRIATION

SEC. 5651. TAX TREATMENT OF INVERTED CORPORATE ENTITIES

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

''SEC. 7874. RULES RELATING TO INVERTED CORPORATE ENTITIES

''(a) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—

''(1) IN GENERAL.—If a foreign incorporated entity is treated as an inverted domestic corporation, then, notwithstanding section 7701(a)(4), such entity shall be treated for purposes of this title as a domestic corporation.

''(2) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

''(A) the entity completes after March 20, 2002, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

''(B) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

''(i) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

''(ii) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

''(C) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (A) if none of the corporation's stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.

''(b) PRESERVATION OF DOMESTIC TAX BASE IN CERTAIN INVERSION TRANSACTIONS TO WHICH SUBSECTION (a) DOES NOT APPLY.—

''(1) IN GENERAL.—If a foreign incorporated entity would be treated as an inverted domestic corporation with respect to an acquired entity if either—

''(A) subsection (a)(2)(A) were applied by substituting 'after December 31, 1996, and on or before March 20, 2002' for 'after March 20, 2002' and subsection (a)(2)(B) were applied by substituting 'more than 50 percent' for 'at least 80 percent', or

''(B) subsection (a)(2)(B) were applied by substituting 'more than 50 percent' for 'at least 80 percent',

then the rules of subsection (c) shall apply to any inversion gain of the acquired entity during the applicable period and the rules of subsection (d) shall apply to any related party transaction of the acquired entity during the applicable period. This subsection shall not apply for any taxable year if subsection (a) applies to such foreign incorporated entity for such taxable year.

''(2) ACQUIRED ENTITY.—For purposes of this section—

''(A) IN GENERAL.—The term 'acquired entity' means the domestic corporation or partnership substantially all of the properties of which are directly or indirectly acquired in an acquisition described in subsection (a)(2)(A) to which this subsection applies.

''(B) AGGREGATION RULES.—Any domestic person bearing a relationship described in section 267(b) or 707(b) to an acquired entity shall be treated as an acquired entity with respect to the acquisition described in subparagraph (A).

''(3) APPLICABLE PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The term 'applicable period' means the period—

''(i) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(A) to which this subsection applies, and

''(ii) ending on the date which is 10 years after the last date properties are acquired as part of such acquisition.

''(B) SPECIAL RULE FOR INVERSIONS OCCURRING BEFORE MARCH 21, 2002.—In the case of any acquired entity to which paragraph (1)(A) applies, the applicable period shall be the 10-year period beginning on January 1, 2003.

''(c) TAX ON INVERSION GAINS MAY NOT BE OFFSET.—If subsection (b) applies—

''(1) IN GENERAL.—The taxable income of an acquired entity (or any expanded affiliated group which includes such entity) for any taxable year which includes any portion of the applicable period shall in no event be

less than the inversion gain of the entity for the taxable year.

''(2) CREDITS NOT ALLOWED AGAINST TAX ON INVERSION GAIN.—Credits shall be allowed against the tax imposed by this chapter on an acquired entity for any taxable year described in paragraph (1) only to the extent such tax exceeds the product of—

''(A) the amount of the inversion gain for the taxable year, and

''(B) the highest rate of tax specified in section 11(b)(1).

For purposes of determining the credit allowed by section 901 inversion gain shall be treated as from sources within the United States.

''(3) SPECIAL RULES FOR PARTNERSHIPS.—In the case of an acquired entity which is a partnership—

''(A) the limitations of this subsection shall apply at the partner rather than the partnership level,

''(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

''(i) the partner's distributive share of inversion gain of the partnership for such taxable year, plus

''(ii) income or gain required to be recognized for the taxable year by the partner under section 367(a), 741, or 1001, or under any other provision of chapter 1, by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the foreign incorporated entity, and

''(C) the highest rate of tax specified in the rate schedule applicable to the partner under chapter 1 shall be substituted for the rate of tax under paragraph (2)(B).

''(4) INVERSION GAIN.—For purposes of this section, the term 'inversion gain' means any income or gain required to be recognized under section 304, 311(b), 367, 1001, or 1248, or under any other provision of chapter 1, by reason of the transfer during the applicable period of stock or other properties by an acquired entity—

''(A) as part of the acquisition described in subsection (a)(2)(A) to which subsection (b) applies, or

''(B) after such acquisition to a foreign related person.

The Secretary may provide that income or gain from the sale of inventories or other transactions in the ordinary course of a trade or business shall not be treated as inversion gain under subparagraph (B) to the extent the Secretary determines such treatment would not be inconsistent with the purposes of this section.

''(5) COORDINATION WITH SECTION 172 AND MINIMUM TAX.—Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of this section.

''(6) STATUTE OF LIMITATIONS.—

''(A) IN GENERAL.—The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any pre-inversion year shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(A) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(B) PRE-INVERSION YEAR.—For purposes of subparagraph (A), the term 'pre-inversion year' means any taxable year if—

''(i) any portion of the applicable period is included in such taxable year, and

''(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(A) is completed.

''(d) SPECIAL RULES APPLICABLE TO ACQUIRED ENTITIES TO WHICH SUBSECTION (B) APPLIES.—

''(1) INCREASES IN ACCURACY-RELATED PENALTIES.—In the case of any underpayment of tax of an acquired entity to which subsection (b) applies—

''(A) section 6662(a) shall be applied with respect to such underpayment by substituting '30 percent' for '20 percent', and

''(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(h) shall be to 50 percent rather than 40 percent.

''(2) MODIFICATIONS OF LIMITATION ON INTEREST DEDUCTION.—In the case of an acquired entity to which subsection (b) applies, section 163(j) shall be applied—

''(A) without regard to paragraph (2)(A)(ii) thereof, and

''(B) by substituting '25 percent' for '50 percent' each place it appears in paragraph (2)(B) thereof.

''(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) RULES FOR APPLICATION OF SUBSECTION (a)(2).—In applying subsection (a)(2) for purposes of subsections (a) and (b), the following rules shall apply:

''(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (a)(2)(B)—

''(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

''(ii) stock of such entity which is sold in a public offering or private placement related to the acquisition described in subsection (a)(2)(A).

''(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(2)(B) are met with respect to such domestic corporation or partnership, such actions shall be treated as pursuant to a plan.

''(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

''(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(2) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

''(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary—

''(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

''(ii) to treat stock as not stock.

''(2) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

''(3) FOREIGN INCORPORATED ENTITY.—The term 'foreign incorporated entity' means any entity which is, or but for subsection (a)(1) would be, treated as a foreign corporation for purposes of this title.

''(4) FOREIGN RELATED PERSON.—The term 'foreign related person' means, with respect to any acquired entity, a foreign person which—

''(A) bears a relationship to such entity described in section 267(b) or 707(b), or

''(B) is under the same common control (within the meaning of section 482) as such entity.

''(5) SUBSEQUENT ACQUISITIONS BY UNRELATED DOMESTIC CORPORATIONS.—

''(A) IN GENERAL.—Subject to such conditions, limitations, and exceptions as the Secretary may prescribe, if, after an acquisition described in subsection (a)(2)(A) to which subsection (b) applies, a domestic corporation stock of which is traded on an established securities market acquires directly or indirectly any properties of one or more acquired entities in a transaction with respect to which the requirements of subparagraph (B) are met, this section shall cease to apply to any such acquired entity with respect to which such requirements are met.

''(B) REQUIREMENTS.—The requirements of the subparagraph are met with respect to a transaction involving any acquisition described in subparagraph (A) if—

''(i) before such transaction the domestic corporation did not have a relationship described in section 267(b) or 707(b), and was not under common control (within the meaning of section 482), with the acquired entity, or any member of an expanded affiliated group including such entity, and

''(ii) after such transaction, such acquired entity—

''(I) is a member of the same expanded affiliated group which includes the domestic corporation or has such a relationship or is under such common control with any member of such group, and

''(II) is not a member of, and does not have such a relationship and is not under such common control with any member of, the expanded affiliated group which before such acquisition included such entity.

''(f) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

''(1) the use of related persons, pass-thru or other noncorporate entities, or other intermediaries, or

''(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.''.

(b) INFORMATION REPORTING.—The Secretary of the Treasury shall exercise the Secretary's authority under the Internal Revenue Code of 1986 to require entities involved in transactions to which section 7874 of such Code (as added by subsection (a)) applies to report to the Secretary, shareholders, partners, and such other persons as the Secretary may prescribe such information as is necessary to ensure the proper tax treatment of such transactions.

(c) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is amended by adding at the end the following new item:

''Sec. 7874. Rules relating to inverted corporate entities.''.

(d) TRANSITION RULE FOR CERTAIN REGULATED INVESTMENT COMPANIES AND UNIT INVESTMENT TRUSTS.—Notwithstanding section 7874 of the Internal Revenue Code of 1986 (as added by subsection (a)), a regulated investment company, or other pooled fund or trust specified by the Secretary of the Treasury, may elect to recognize gain by reason of section 367(a) of such Code with respect to a transaction under which a foreign incorporated entity is treated as an inverted domestic corporation under section 7874(a) of

such Code by reason of an acquisition completed after March 20, 2002, and before January 1, 2004.

SEC. 5652. IMPOSITION OF MARK-TO-MARKET TAX ON INDIVIDUALS WHO EXPATRIATE.

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

"SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

''(a) GENERAL RULES.—For purposes of this subtitle—

''(1) MARK TO MARKET.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

''(2) RECOGNITION OF GAIN OR LOSS.—In the case of any sale under paragraph (1)—

''(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

''(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

''(3) EXCLUSION FOR CERTAIN GAIN.—

''(A) IN GENERAL.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by $600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

''(B) COST-OF-LIVING ADJUSTMENT.—

''(i) IN GENERAL.—In the case of an expatriation date occurring in any calendar year after 2004, the $600,000 amount under subparagraph (A) shall be increased by an amount equal to—

''(I) such dollar amount, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2003' for 'calendar year 1992' in subparagraph (B) thereof.

''(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of $1,000, such amount shall be rounded to the next lower multiple of $1,000.

''(4) ELECTION TO CONTINUE TO BE TAXED AS UNITED STATES CITIZEN.—

''(A) IN GENERAL.—If a covered expatriate elects the application of this paragraph—

''(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

''(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

''(B) REQUIREMENTS.—Subparagraph (A) shall not apply to an individual unless the individual—

''(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

''(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

''(iii) complies with such other requirements as the Secretary may prescribe.

''(C) ELECTION.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

''(b) ELECTION TO DEFER TAX.—

''(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

''(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

''(3) TERMINATION OF POSTPONEMENT.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

''(4) SECURITY.—

''(A) IN GENERAL.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

''(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

''(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

''(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

''(5) WAIVER OF CERTAIN RIGHTS.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

''(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

''(7) INTEREST.—For purposes of section 6601—

''(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

''(B) section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

''(c) COVERED EXPATRIATE.—For purposes of this section—

''(1) IN GENERAL.—Except as provided in paragraph (2), the term 'covered expatriate' means an expatriate.

''(2) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—

''(A) the individual—

''(i) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

''(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

''(B)(i) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½, and

''(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

''(d) EXEMPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

''(1) EXEMPT PROPERTY.—This section shall not apply to the following:

''(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

''(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

''(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

''(A) IN GENERAL.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

''(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

''(ii) an amount equal to the present value of the expatriate's nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

''(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

''(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan's behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

''(D) APPLICABLE PLANS.—This paragraph shall apply to—

''(i) any qualified retirement plan (as defined in section 4974(c)),

''(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

''(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

''(e) DEFINITIONS.—For purposes of this section—

''(1) EXPATRIATE.—The term 'expatriate' means—

''(A) any United States citizen who relinquishes citizenship, and

''(B) any long-term resident of the United States who—

''(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

''(ii) commences to be treated as a resident of a foreign country under the provisions of

a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

''(2) EXPATRIATION DATE.—The term 'expatriation date' means—

''(A) the date an individual relinquishes United States citizenship, or

''(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

''(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

''(A) the date the individual renounces such individual's United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

''(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

''(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

''(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

''(4) LONG-TERM RESIDENT.—The term 'long-term resident' has the meaning given to such term by section 877(e)(2).

''(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES' INTERESTS IN TRUST.—

''(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

''(A) the individual shall not be treated as having sold such interest,

''(B) such interest shall be treated as a separate share in the trust, and

''(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

''(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

''(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual's share in the trust.

''(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

''(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

''(i) paragraph (1) and subsection (a) shall not apply, and

''(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

''(B) AMOUNT OF TAX.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

''(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

''(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases under subparagraph (C)(ii) after the 30th day preceding the distribution.

''(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(ii)—

''(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

''(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

''(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

''(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

''(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

''(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary's interest in a trust is the amount of gain which would be allocable to such beneficiary's vested and nonvested interests in the trust if the beneficiary held directly all assets allocable to such interests.

''(E) TAX DEDUCTED AND WITHHELD.—

''(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

''(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

''(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

''(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

''(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

''(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

''(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

''(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

''(i) QUALIFIED TRUST.—The term 'qualified trust' means a trust which is described in section 7701(a)(30)(E).

''(ii) VESTED INTEREST.—The term 'vested interest' means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

''(iii) NONVESTED INTEREST.—The term 'nonvested interest' means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

''(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

''(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

''(3) DETERMINATION OF BENEFICIARIES' INTEREST IN TRUST.—

''(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary's interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

''(B) OTHER DETERMINATIONS.—For purposes of this section—

''(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

''(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

''(I) the methodology used to determine that taxpayer's trust interest under this section, and

''(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

''(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

''(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

''(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

''(h) IMPOSITION OF TENTATIVE TAX.—

''(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

''(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

''(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

''(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

''(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

''(1) IMPOSITION OF LIEN.—

''(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

''(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate's income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

''(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

''(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

''(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

''(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

''(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''.

(b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

''(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

''(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

''(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

''(A) the gift, bequest, devise, or inheritance is—

''(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

''(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

''(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.''.

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

''(48) TERMINATION OF UNITED STATES CITIZENSHIP.—

''(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(3).

''(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.''.

(d) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

''(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation).''.

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(l) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

''(19) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General's delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).''.

(B) SAFEGUARDS.—

(i) TECHNICAL AMENDMENTS.—Paragraph (4) of section 6103(p) of the Internal Revenue Code of 1986, as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961), is amended by striking ''or (17)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''or (18)''.

(ii) CONFORMING AMENDMENTS.—Section 6103(p)(4) (relating to safeguards), as amended by clause (i), is amended by striking ''or (18)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''(18), or (19)''.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(B) TECHNICAL AMENDMENTS.—The amendments made by paragraph (2)(B)(i) shall take effect as if included in the amendments made by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961).

(e) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

''(g) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after February 2, 2004.''.

(2) Section 2107 is amended by adding at the end the following new subsection:

''(f) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.''.

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

''(F) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.''.

(4)(A) Paragraph (1) of section 6039G(d) is amended by inserting ''or 877A'' after ''section 877''.

(B) The second sentence of section 6039G(e) is amended by inserting ''or who relinquishes United States citizenship (within the meaning of section 877A(e)(3))'' after ''877(a))''.

(C) Section 6039G(f) is amended by inserting ''or 877A(e)(2)(B)'' after ''877(e)(1)''.

(f) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

''Sec. 877A. Tax responsibilities of expatriation.''.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after February 2, 2004.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after February 2, 2004, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

SEC. 5653. EXCISE TAX ON STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS.

(a) IN GENERAL.—Subtitle D is amended by adding at the end the following new chapter:

''CHAPTER 48—STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS

''Sec. 5000A. Stock compensation of insiders in inverted corporations entities.

''SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS.

''(a) IMPOSITION OF TAX.—In the case of an individual who is a disqualified individual with respect to any inverted corporation, there is hereby imposed on such person a tax equal to 20 percent of the value (determined under subsection (b)) of the specified stock compensation held (directly or indirectly) by or for the benefit of such individual or a member of such individual's family (as defined in section 267) at any time during the 12-month period beginning on the date which is 6 months before the inversion date.

''(b) VALUE.—For purposes of subsection (a)—

''(1) IN GENERAL.—The value of specified stock compensation shall be—

''(A) in the case of a stock option (or other similar right) or any stock appreciation right, the fair value of such option or right, and

''(B) in any other case, the fair market value of such compensation.

''(2) DATE FOR DETERMINING VALUE.—The determination of value shall be made—

''(A) in the case of specified stock compensation held on the inversion date, on such date,

''(B) in the case of such compensation which is canceled during the 6 months before the inversion date, on the day before such cancellation, and

''(C) in the case of such compensation which is granted after the inversion date, on the date such compensation is granted.

''(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN RECOGNIZED.—Subsection (a) shall apply to any disqualified individual with respect to an inverted corporation only if gain (if any) on any stock in such corporation is recognized in whole or part by any shareholder by reason of the acquisition referred to in section 7874(a)(2)(A) (determined by substituting 'July 10, 2002' for 'March 20, 2002') with respect to such corporation.

''(d) EXCEPTION WHERE GAIN RECOGNIZED ON COMPENSATION.—Subsection (a) shall not apply to—

''(1) any stock option which is exercised on the inversion date or during the 6-month period before such date and to the stock acquired in such exercise, if income is recognized under section 83 on or before the inversion date with respect to the stock acquired pursuant to such exercise, and

''(2) any specified stock compensation which is exercised, sold, exchanged, distributed, cashed out, or otherwise paid during such period in a transaction in which gain or loss is recognized in full.

''(e) DEFINITIONS.—For purposes of this section—

''(1) DISQUALIFIED INDIVIDUAL.—The term 'disqualified individual' means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the inversion date—

''(A) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation, or

''(B) would be subject to such requirements if such corporation were an issuer of equity securities referred to in such section.

''(2) INVERTED CORPORATION; INVERSION DATE.—

''(A) INVERTED CORPORATION.—The term 'inverted corporation' means any corporation to which subsection (a) or (b) of section 7874 applies determined—

''(i) by substituting 'July 10, 2002' for 'March 20, 2002' in section 7874(a)(2)(A), and

''(ii) without regard to subsection (b)(1)(A).

Such term includes any predecessor or successor of such a corporation.

''(B) INVERSION DATE.—The term 'inversion date' means, with respect to a corporation, the date on which the corporation first becomes an inverted corporation.

''(3) SPECIFIED STOCK COMPENSATION.—

''(A) IN GENERAL.—The term 'specified stock compensation' means payment (or right to payment) granted by the inverted corporation (or by any member of the expanded affiliated group which includes such corporation) to any person in connection with the performance of services by a disqualified individual for such corporation or member if the value of such payment or right is based on (or determined by reference to) the value (or change in value) of stock in such corporation (or any such member).

''(B) EXCEPTIONS.—Such term shall not include—

''(i) any option to which part II of subchapter D of chapter 1 applies, or

''(ii) any payment or right to payment from a plan referred to in section 280G(b)(6).

''(4) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)(3)); except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

''(f) SPECIAL RULES.—For purposes of this section—

''(1) CANCELLATION OF RESTRICTION.—The cancellation of a restriction which by its terms will never lapse shall be treated as a grant.

''(2) PAYMENT OR REIMBURSEMENT OF TAX BY CORPORATION TREATED AS SPECIFIED STOCK COMPENSATION.—Any payment of the tax imposed by this section directly or indirectly by the inverted corporation or by any member of the expanded affiliated group which includes such corporation—

''(A) shall be treated as specified stock compensation, and

''(B) shall not be allowed as a deduction under any provision of chapter 1.

''(3) CERTAIN RESTRICTIONS IGNORED.—Whether there is specified stock compensation, and the value thereof, shall be determined without regard to any restriction other than a restriction which by its terms will never lapse.

''(4) PROPERTY TRANSFERS.—Any transfer of property shall be treated as a payment and any right to a transfer of property shall be treated as a right to a payment.

''(5) OTHER ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''.

(b) DENIAL OF DEDUCTION.—

(1) IN GENERAL.—Paragraph (6) of section 275(a) is amended by inserting ''48,'' after ''46,''.

(2) $1,000,000 LIMIT ON DEDUCTIBLE COMPENSATION REDUCED BY PAYMENT OF EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—Paragraph (4) of section 162(m) is amended by adding at the end the following new subparagraph:

''(G) COORDINATION WITH EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—The dollar limitation contained in paragraph (1) with respect to any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 5000A directly or indirectly by the inverted corporation (as defined in such section) or by any member of the expanded affiliated group (as defined in such section) which includes such corporation.''.

(c) CONFORMING AMENDMENTS.—

(1) The last sentence of section 3121(v)(2)(A) is amended by inserting before the period ''or to any specified stock compensation (as defined in section 5000A) on which tax is imposed by section 5000A''.

(2) The table of chapters for subtitle D is amended by adding at the end the following new item:

''Chapter 48. Stock compensation of insiders in inverted corporations.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 11, 2002; except that periods before such date shall not be taken into account in applying the periods in subsections (a) and (e)(1) of section 5000A of the Internal Revenue Code of 1986, as added by this section.

SEC. 5654. REINSURANCE OF UNITED STATES RISKS IN FOREIGN JURISDICTIONS.

(a) IN GENERAL.—Section 845(a) (relating to allocation in case of reinsurance agreement involving tax avoidance or evasion) is amended by striking ''source and character'' and inserting ''amount, source, or character''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any risk reinsured after April 11, 2002.

PART V—PROVISION TO REPLENISH THE GENERAL FUND

SEC. 5661. MODIFICATION TO CORPORATE ESTIMATED TAX REQUIREMENTS.

The amount of any required installment of corporate estimated income tax which is otherwise due under section 6655 of the Internal Revenue Code of 1986 after June 30, 2009, and before October 1, 2009, shall be 119 percent of such amount.

TITLE VI—TRANSPORTATION DISCRETIONARY SPENDING GUARANTEE AND BUDGET OFFSETS

SEC. 6101. SENSE OF THE SENATE ON OVERALL FEDERAL BUDGET.

It is the sense of the Senate that—

(1) comprehensive statutory budget enforcement measures, the jurisdiction of which lies with the Senate Budget Committee and Senate Governmental Affairs Committee, should—

(A) be enacted this year; and

(B) address all areas of the Federal budget, including discretionary spending, direct spending, and revenues; and

(2) special allocations for transportation or any other categories of spending should be considered in that context and be consistent with the rest of the Federal budget.

SEC. 6102. DISCRETIONARY SPENDING CATEGORIES.

(a) DEFINITIONS.—

(1) HIGHWAY CATEGORY.—Section 250(c)(4)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(4)(B)) is amended—

(A) by striking ''Transportation Equity Act for the 21st Century'' and inserting ''Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004''; and

(B) by adding at the end the following:

''(v) 69–8158–0–7–401 (Motor Carrier Safety Grants).

''(vi) 69–8159–0–7–401 (Motor Carrier Safety Operations and Programs).''.

(2) MASS TRANSIT CATEGORY.—Section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(4)) is amended by striking subparagraph (C) and inserting the following:

''(C) MASS TRANSIT CATEGORY.—The term 'mass transit category' means the following budget accounts, or portions of the accounts, that are subject to the obligation limitations on contract authority provided in the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 or for which appropriations are provided in accordance with authorizations contained in that Act:

''(i) 69–1120–0–1–401 (Administrative Expenses).

''(ii) 69–1134–0–1–401 (Capital Investment Grants).

''(iii) 69–8191–0–7–401 (Discretionary Grants).

''(iv) 69–1129–0–1–401 (Formula Grants).

''(v) 69–8303–0–7–401 (Formula Grants and Research).

''(vi) 69–1127–0–1–401 (Interstate Transfer Grants—Transit).

''(vii) 69–1125–0–1–401 (Job Access and Reverse Commute).

''(viii) 69–1122–0–1–401 (Miscellaneous Expired Accounts).

''(ix) 69–1139–0–1–401 (Major Capital Investment Grants).

''(x) 69–1121–0–1–401 (Research, Training and Human Resources).

''(xi) 69–8350–0–7–401 (Trust Fund Share of Expenses).

''(xii) 69–1137–0–1–401 (Transit Planning and Research).

''(xiii) 69–1136–0–1–401 (University Transportation Research).

''(xiv) 69–1128–0–1–401 (Washington Metropolitan Area Transit Authority).''.

(b) HIGHWAY FUNDING REVENUE ALIGNMENT.—Section 251(b)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(1)(B)) is amended—

(1) in clause (i)—

(A) by inserting ''for each of fiscal years 2006 through 2009'' after ''submits the budget'';

(B) by inserting ''the obligation limitation and outlay limit for'' after ''adjustments to''; and

(C) by striking ''provided in clause (ii)(I)(cc).'' and inserting the following: ''follows:

''(I) OMB shall take the actual level of highway receipts for the year before the current year and subtract the sum of the estimated level of highway receipts in clause (iii), plus any amount previously calculated under clauses (i)(II) and (ii) for that year.

''(II) OMB shall take the current estimate of highway receipts for the current year and subtract the estimated level of highway receipts in clause (iii) for that year.

''(III) OMB shall—

''(aa) take the sum of the amounts calculated under subclauses (I) and (II) and add that amount to the obligation limitation set forth in section 6103 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 for the highway category for the budget year, and calculate the outlay change resulting from that change in obligations relative to that amount for the budget year and each outyear using current estimates; and

''(bb) after making the calculation under item (aa), adjust the obligation limitation set forth in section 6103 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 for the budget year by adding the amount calculated under subclauses (I) and (II).'';

(2) by striking clause (ii) and inserting the following:

''(ii) When the President submits the supplementary budget estimates for each of fiscal years 2006 through 2009 under section 1106 of title 31, United States Code, OMB's Mid-Session Review shall include adjustments to the obligation limitation and outlay limit for the highway category for the budget year and each outyear as follows:

''(I) OMB shall take the most recent estimate of highway receipts for the current year (based on OMB's Mid-Session Review) and subtract the estimated level of highway receipts in clause (iii) plus any amount previously calculated and included in the President's Budget under clause (i)(II) for that year.

''(II) OMB shall—

''(aa) take the amount calculated under subclause (I) and add that amount to the amount of obligations set forth in section 6103 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 for the highway category for the budget year, and calculate the outlay change resulting from that change in obligations relative to that amount for the budget year and each outyear using current estimates; and

''(bb) after making the calculation under item (aa), adjust the amount of obligations set forth in section 6103 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 for the budget year by adding the amount calculated under subclause (I).''; and

(3) by adding at the end the following:

''(iii) The estimated level of highway receipts for the purpose of this subparagraph are—

''(I) for fiscal year 2004, $29,945,938,902;

''(II) for fiscal year 2005, $36,294,778,392;

''(III) for fiscal year 2006, $37,766,517,123;

''(IV) for fiscal year 2007, $38,795,061,111;

''(V) for fiscal year 2008, $39,832,795,606; and

''(VI) for fiscal year 2009, $40,964,722,457.

''(iv) In this subparagraph, the term ''highway receipts'' means the governmental receipts and interest credited to the highway account of the Highway Trust Fund.''.

(c) CONTINUATION OF SEPARATE SPENDING CATEGORIES.—For the purpose of section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(c)), the discretionary spending limits for the highway category and the mass transit category shall be—

(1) for fiscal year 2004—

(A) $28,876,732,956 for the highway category; and

(B) $6,262,000,000 for the mass transit category;

(2) for fiscal year 2005—

(A) $31,991,246,160 for the highway category; and

(B) $6,903,000,000 for the mass transit category;

(3) for fiscal year 2006—

(A) $35,598,640,776 for the highway category; and

(B) $7,974,000,000 for the mass transit category;

(4) for fiscal year 2007—

(A) $37,871,760,938 for the highway category; and

(B) $8,658,000,000 for the mass transit category;

(5) for fiscal year 2008—

(A) $38,722,907,474 for the highway category; and

(B) $9,222,000,000 for the mass transit category; and

(6) for fiscal year 2009—

(A) $40,537,563,667 for the highway category; and

(B) $9,897,000,000 for the mass transit category.

(d) ADDITIONAL ADJUSTMENTS.—Section 251(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(1)) is amended—

(1) in subparagraph (C)—

(A) in clause (i), by striking ''fiscal years 2000, 2001, 2002, or 2003,'' and inserting ''each of fiscal years 2006, 2007, 2008, and 2009,''; and

(B) in clause (ii), by striking ''2002 and 2003'' and inserting ''2008 and 2009''; and

(2) in subparagraph (D)—

(A) in clause (i)—

(i) by striking ''1999'' and inserting ''2005'';

(ii) by striking ''2000 through 2003'' and inserting ''2006 through 2009''; and

(iii) by striking ''section 8103 of the Transportation Equity Act for the 21st Century'' and inserting ''section 6102 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004''; and

(B) in clause (ii), by striking ''2000, 2001, 2002, or 2003'' and inserting ''2006, 2007, 2008, and 2009''.

SEC. 6103. LEVEL OF OBLIGATION LIMITATIONS.

(a) HIGHWAY CATEGORY.—For the purpose of section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)), the level of obligation limitations for the highway category is—

(1) for fiscal year 2004, $34,651,000,000;

(2) for fiscal year 2005, $38,927,000,000;

(3) for fiscal year 2006, $40,186,000,000;

(4) for fiscal year 2007, $40,229,000,000;

(5) for fiscal year 2008, $40,563,000,000; and

(6) for fiscal year 2009, $45,622,000,000.

(b) MASS TRANSIT CATEGORY.—For the purpose of section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)), the level of obligation limitations for the mass transit category is—

(1) for fiscal year 2004, $7,265,877;

(2) for fiscal year 2005, $8,650,000;

(3) for fiscal year 2006, $9,085,123;

(4) for fiscal year 2007, $9,600,000;

(5) for fiscal year 2008, $10,490,000; and

(6) for fiscal year 2009, $11,430,000.

For the purpose of this subsection, the term ''obligation limitations'' means the sum of budget authority and obligation limitations.

SA 2286. Mr. WARNER (for himself, Mrs. CLINTON, Mr. DEWINE, and Mrs. MURRAY) proposed an amendment to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; as follows:

Beginning on page 118, strike line 20 and all that follows through page 129, line 18, and insert the following:

''(3) PRIMARY SAFETY BELT LAW.—The term 'primary safety belt law' means a law that authorizes a law enforcement officer to issue a citation for the failure of the operator of, or any passenger in, a motor vehicle to wear a safety belt as required by State law, based solely on that failure and without regard to whether there is any other violation of law.

''(4) SAFETY PROJECT UNDER ANY OTHER SECTION.—

''(A) IN GENERAL.—The term 'safety project under any other section' means a project carried out for the purpose of safety under any other section of this title.

''(B) INCLUSION.—The term 'safety project under any other section' includes a project to—

''(i) promote the awareness of the public and educate the public concerning highway safety matters; or

''(ii) enforce highway safety laws.

''(5) STATE HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term 'State highway safety improvement program' means projects or strategies included in the State strategic highway safety plan carried out as part of the State transportation improvement program under section 135(f).

''(6) STATE STRATEGIC HIGHWAY SAFETY PLAN.—The term 'State strategic highway safety plan' means a plan developed by the State transportation department that—

''(A) is developed after consultation with—

''(i) a highway safety representative of the Governor of the State;

''(ii) regional transportation planning organizations and metropolitan planning organizations, if any;

''(iii) representatives of major modes of transportation;

''(iv) State and local traffic enforcement officials;

''(v) persons responsible for administering section 130 at the State level;

''(vi) representatives conducting Operation Lifesaver;

''(vii) representatives conducting a motor carrier safety program under section 31104 or 31107 of title 49;

''(viii) motor vehicle administration agencies; and

''(ix) other major State and local safety stakeholders;

''(B) analyzes and makes effective use of State, regional, or local crash data;

''(C) addresses engineering, management, operation, education, enforcement, and emergency services elements of highway safety as key factors in evaluating highway projects;

''(D) considers safety needs of, and high-fatality segments of, public roads;

''(E) considers the results of State, regional, or local transportation and highway safety planning processes;

''(F) describes a program of projects or strategies to reduce or eliminate safety hazards;

''(G) is approved by the Governor of the State or a responsible State agency; and

''(H) is consistent with the requirements of section 135(f).

''(b) PROGRAM.—

''(1) IN GENERAL.—The Secretary shall carry out a highway safety improvement program.

''(2) PURPOSE.—The purpose of the highway safety improvement program shall be to

achieve a significant reduction in traffic fatalities and serious injuries on public roads.

''(c) ELIGIBILITY.—

''(1) IN GENERAL.—To obligate funds apportioned under section 104(b)(5) to carry out this section, a State shall have in effect a State highway safety improvement program under which the State—

''(A) develops and implements a State strategic highway safety plan that identifies and analyzes highway safety problems and opportunities as provided in paragraph (2);

''(B) produces a program of projects or strategies to reduce identified safety problems;

''(C) evaluates the plan on a regular basis to ensure the accuracy of the data and priority of proposed improvements; and

''(D) submits to the Secretary an annual report that—

''(i) describes, in a clearly understandable fashion, not less than 5 percent of locations determined by the State, using criteria established in accordance with paragraph (2)(B)(ii), as exhibiting the most severe safety needs; and

''(ii) contains an assessment of—

''(I) potential remedies to hazardous locations identified;

''(II) estimated costs associated with those remedies; and

''(III) impediments to implementation other than cost associated with those remedies.

''(2) IDENTIFICATION AND ANALYSIS OF HIGHWAY SAFETY PROBLEMS AND OPPORTUNITIES.—As part of the State strategic highway safety plan, a State shall—

''(A) have in place a crash data system with the ability to perform safety problem identification and countermeasure analysis;

''(B) based on the analysis required by subparagraph (A)—

''(i) identify hazardous locations, sections, and elements (including roadside obstacles, railway-highway crossing needs, and unmarked or poorly marked roads) that constitute a danger to motorists, bicyclists, pedestrians, and other highway users; and

''(ii) using such criteria as the State determines to be appropriate, establish the relative severity of those locations, in terms of accidents, injuries, deaths, traffic volume levels, and other relevant data;

''(C) adopt strategic and performance-based goals that—

''(i) address traffic safety, including behavioral and infrastructure problems and opportunities on all public roads;

''(ii) focus resources on areas of greatest need; and

''(iii) are coordinated with other State highway safety programs;

''(D) advance the capabilities of the State for traffic records data collection, analysis, and integration with other sources of safety data (such as road inventories) in a manner that—

''(i) complements the State highway safety program under chapter 4 and the commercial vehicle safety plan under section 31102 of title 49;

''(ii) includes all public roads;

''(iii) identifies hazardous locations, sections, and elements on public roads that constitute a danger to motorists, bicyclists, pedestrians, and other highway users; and

''(iv) includes a means of identifying the relative severity of hazardous locations described in clause (iii) in terms of accidents, injuries, deaths, and traffic volume levels;

''(E)(i) determine priorities for the correction of hazardous road locations, sections, and elements (including railway-highway crossing improvements), as identified through crash data analysis;

''(ii) identify opportunities for preventing the development of such hazardous conditions; and

''(iii) establish and implement a schedule of highway safety improvement projects for hazard correction and hazard prevention; and

''(F)(i) establish an evaluation process to analyze and assess results achieved by highway safety improvement projects carried out in accordance with procedures and criteria established by this section; and

''(ii) use the information obtained under clause (i) in setting priorities for highway safety improvement projects.

''(d) ELIGIBLE PROJECTS.—

''(1) IN GENERAL.—A State may obligate funds apportioned to the State under section 104(b)(5) to carry out—

''(A) any highway safety improvement project on any public road or publicly owned bicycle or pedestrian pathway or trail; or

''(B) as provided in subsection (e), for other safety projects.

''(2) USE OF OTHER FUNDING FOR SAFETY.—

''(A) EFFECT OF SECTION.—Nothing in this section prohibits the use of funds made available under other provisions of this title for highway safety improvement projects.

''(B) USE OF OTHER FUNDS.—States are encouraged to address the full scope of their safety needs and opportunities by using funds made available under other provisions of this title (except a provision that specifically prohibits that use).

''(e) FLEXIBLE FUNDING FOR STATES WITH A STRATEGIC HIGHWAY SAFETY PLAN.—

''(1) IN GENERAL.—To further the implementation of a State strategic highway safety plan, a State may use up to 25 percent of the amount of funds made available under this section for a fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan.

''(2) OTHER TRANSPORTATION AND HIGHWAY SAFETY PLANS.—Nothing in this subsection requires a State to revise any State process, plan, or program in effect on the date of enactment of this section.

''(f) REPORTS.—

''(1) IN GENERAL.—A State shall submit to the Secretary a report that—

''(A) describes progress being made to implement highway safety improvement projects under this section;

''(B) assesses the effectiveness of those improvements; and

''(C) describes the extent to which the improvements funded under this section contribute to the goals of—

''(i) reducing the number of fatalities on roadways;

''(ii) reducing the number of roadway-related injuries;

''(iii) reducing the occurrences of roadway-related crashes;

''(iv) mitigating the consequences of roadway-related crashes; and

''(v) reducing the occurrences of roadway-railroad grade crossing crashes.

''(2) CONTENTS; SCHEDULE.—The Secretary shall establish the content and schedule for a report under paragraph (1).

''(3) TRANSPARENCY.—The Secretary shall make reports under paragraph (1) available to the public through—

''(A) the Internet site of the Department; and

''(B) such other means as the Secretary determines to be appropriate.

''(4) DISCOVERY AND ADMISSION INTO EVIDENCE OF CERTAIN REPORTS, SURVEYS, AND INFORMATION.—Notwithstanding any other provision of law, no report, survey, schedule, list, or other data compiled or collected for any purpose directly relating to paragraph (1) or subsection (c)(1)(D), or published by the Secretary in accordance with paragraph (3), shall be—

''(A) subject to discovery or admitted into evidence in any Federal or State judicial proceeding; or

''(B) considered for any other purpose in any action for damages arising from an occurrence at a location identified or addressed in the report, survey, schedule, list, or other collection of data.

''(g) FEDERAL SHARE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS.—Except as provided in sections 120 and 130, the Federal share of the cost of a highway safety improvement project carried out with funds made available under this section shall be 90 percent.

''(h) FUNDS FOR BICYCLE AND PEDESTRIAN SAFETY.—A State shall allocate for bicycle and pedestrian improvements in the State a percentage of the funds remaining after implementation of sections 130(e) and 150, in an amount that is equal to or greater than the percentage of all fatal crashes in the States involving bicyclists and pedestrians.

''(i) ROADWAY SAFETY IMPROVEMENTS FOR OLDER DRIVERS AND PEDESTRIANS.—For each of fiscal years 2004 through 2009, $25,000,000 is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for projects in all States to improve traffic signs and pavement markings in a manner consistent with the recommendations included in the publication of the Federal Highway Administration entitled 'Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians (FHWA-RD-01-103)' and dated October 2001.

''(j) USE OF FUNDS.—

''(1) PROJECTS UNDER SECTION 402.—For fiscal year 2005 and each fiscal year thereafter, 10 percent of the funds made available to a State under this section shall be obligated for projects under section 402, unless by October 1 of the fiscal year, the State—

''(A) has in effect a primary safety belt law; or

''(B) demonstrates that the safety belt use rate in the State is at least 90 percent.

''(2) WITHHOLDING.—

''(A) IN GENERAL.—For fiscal year 2007, the Secretary shall withhold 2 percent, and for each fiscal year thereafter, the Secretary shall withhold 4 percent, of the funds apportioned to a State under paragraphs (1), (3), and (4) of section 104(b) and section 144 if, by October 1 of that fiscal year, the State does not—

''(i) have in effect a primary safety belt law; or

''(ii) demonstrate that the safety belt use rate in the State is at least 90 percent.

''(B) RESTORATION.—If, by the date that is 3 years after the date on which funds are withheld from a State under subparagraph (A), the State has in effect a primary safety belt law or has demonstrated that the safety belt use rate in the State is at least 90 percent, the apportionment of the State shall be increased by the amount withheld.

''(C) LAPSE.—If, by the date that is 3 years after the date on which funds are withheld from a State under subparagraph (A), the State does not have in effect a primary safety belt law or has not demonstrated that the safety belt use rate in the State is at least 90 percent, the amount withheld shall lapse.''.

SA 2287. Mr. FEINGOLD (for himself and Mr. CORZINE) submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 1104, after line 25, insert the following:

TITLE ___ WARTIME TREATMENT STUDY ACT

SEC. ___01. SHORT TITLE.

This title may be cited as the ''Wartime Treatment Study Act''.

SEC. ___02. FINDINGS.

Congress makes the following findings:

(1) During World War II, the United States successfully fought the spread of Nazism and fascism by Germany, Italy, and Japan.

(2) Nazi Germany persecuted and engaged in genocide against Jews and certain other groups. By the end of the war, 6,000,000 Jews had perished at the hands of Nazi Germany. United States Government policies, however, restricted entry to the United States to Jewish and other refugees who sought safety from Nazi persecution.

(3) While we were at war, the United States treated the Japanese American, German American, and Italian American communities as suspect.

(4) The United States Government should conduct an independent review to assess fully and acknowledge these actions. Congress has previously reviewed the United States Government's wartime treatment of Japanese Americans through the Commission on Wartime Relocation and Internment of Civilians. An independent review of the treatment of German Americans and Italian Americans and of Jewish refugees fleeing persecution and genocide has not yet been undertaken.

(5) During World War II, the United States Government branded as ''enemy aliens'' more than 600,000 Italian-born and 300,000 German-born United States resident aliens and their families and required them to carry Certificates of Identification, limited their travel, and seized their personal property. At that time, these groups were the two largest foreign-born groups in the United States.

(6) During World War II, the United States Government arrested, interned or otherwise detained thousands of European Americans, some remaining in custody for years after cessation of World War II hostilities, and repatriated, exchanged, or deported European Americans, including American-born children, to hostile, war-torn European Axis nations, many to be exchanged for Americans held in those nations.

(7) Pursuant to a policy coordinated by the United States with Latin American countries, many European Latin Americans, including German and Austrian Jews, were captured, shipped to the United States and interned. Many were later expatriated, repatriated or deported to hostile, war-torn European Axis nations during World War II, most to be exchanged for Americans and Latin Americans held in those nations.

(8) Millions of European Americans served in the armed forces and thousands sacrificed their lives in defense of the United States.

(9) The wartime policies of the United States Government were devastating to the Italian Americans and German American communities, individuals and their families. The detrimental effects are still being experienced.

(10) Prior to and during World War II, the United States restricted the entry of Jewish refugees who were fleeing persecution and sought safety in the United States. During the 1930's and 1940's, the quota system, immigration regulations, visa requirements, and the time required to process visa applications affected the number of Jewish refugees, particularly those from Germany and Austria, who could gain admittance to the United States.

(11) Time is of the essence for the establishment of commissions, because of the increasing danger of destruction and loss of relevant documents, the advanced age of potential witnesses and, most importantly, the advanced age of those affected by the United States Government's policies. Many who suffered have already passed away and will never know of this effort.

SEC. ___03. DEFINITIONS.

In this title:

(1) DURING WORLD WAR II.—The term ''during World War II'' refers to the period between September 1, 1939, through December 31, 1948.

(2) EUROPEAN AMERICANS.—

(A) IN GENERAL.—The term ''European Americans'' refers to United States citizens and permanent resident aliens of European ancestry, including Italian Americans, German Americans, Hungarian Americans, Romanian Americans, and Bulgarian Americans.

(B) ITALIAN AMERICANS.—The term ''Italian Americans'' refers to United States citizens and permanent resident aliens of Italian ancestry.

(C) GERMAN AMERICANS.—The term ''German Americans'' refers to United States citizens and permanent resident aliens of German ancestry.

(3) EUROPEAN LATIN AMERICANS.—The term ''European Latin Americans'' refers to persons of European ancestry, including Italian or German ancestry, residing in a Latin American nation during World War II.

Subtitle A—Commission on Wartime Treatment of European Americans

SEC. ___101. ESTABLISHMENT OF COMMISSION ON WARTIME TREATMENT OF EUROPEAN AMERICANS.

(a) IN GENERAL.—There is established the Commission on Wartime Treatment of European Americans (referred to in this subtitle as the ''European American Commission'').

(b) MEMBERSHIP.—The European American Commission shall be composed of 7 members, who shall be appointed not later than 90 days after the date of enactment of this Act as follows:

(1) Three members shall be appointed by the President.

(2) Two members shall be appointed by the Speaker of the House of Representatives, in consultation with the minority leader.

(3) Two members shall be appointed by the majority leader of the Senate, in consultation with the minority leader.

(c) TERMS.—The term of office for members shall be for the life of the European American Commission. A vacancy in the European American Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(d) REPRESENTATION.—The European American Commission shall include 2 members representing the interests of Italian Americans and 2 members representing the interests of German Americans.

(e) MEETINGS.—The President shall call the first meeting of the European American Commission not later than 120 days after the date of enactment of this Act.

(f) QUORUM.—Four members of the European American Commission shall constitute a quorum, but a lesser number may hold hearings.

(g) CHAIRMAN.—The European American Commission shall elect a Chairman and Vice Chairman from among its members. The term of office of each shall be for the life of the European American Commission.

(h) COMPENSATION.—

(1) IN GENERAL.—Members of the European American Commission shall serve without pay.

(2) REIMBURSEMENT OF EXPENSES.—All members of the European American Commission shall be reimbursed for reasonable travel and subsistence, and other reasonable and necessary expenses incurred by them in the performance of their duties.

SEC. ___102. DUTIES OF THE EUROPEAN AMERICAN COMMISSION.

(a) IN GENERAL.—It shall be the duty of the European American Commission to review the United States Government's wartime treatment of European Americans and European Latin Americans as provided in subsection (b).

(b) SCOPE OF REVIEW.—The European American Commission's review shall include the following:

(1) A comprehensive review of the facts and circumstances surrounding United States Government actions during World War II that violated the civil liberties of European Americans and European Latin Americans pursuant to the Alien Enemies Acts (50 U.S.C. 21–24), Presidential Proclamations 2526, 2527, 2655, 2662, Executive Orders 9066 and 9095, and any directive of the United States Government pursuant to such law, proclamations, or executive orders respecting the registration, arrest, exclusion, internment, exchange, or deportment of European Americans and European Latin Americans. This review shall include an assessment of the underlying rationale of the United States Government's decision to develop related programs and policies, the information the United States Government received or acquired suggesting the related programs and policies were necessary, the perceived benefit of enacting such programs and policies, and the immediate and long-term impact of such programs and policies on European Americans and European Latin Americans and their communities.

(2) A review of United States Government action with respect to European Americans pursuant to the Alien Enemies Acts (50 U.S.C. 21–24) and Executive Order 9066 during World War II, including registration requirements, travel and property restrictions, establishment of restricted areas, raids, arrests, internment, exclusion, policies relating to the families and property that excludees and internees were forced to abandon, internee employment by American companies (including a list of such companies and the terms and type of employment), exchange, repatriation, and deportment, and the immediate and long-term effect of such actions, particularly internment, on the lives of those affected. This review shall include a list of all temporary detention and long-term internment facilities.

(3) A brief review of the participation by European Americans in the United States Armed Forces including the participation of European Americans whose families were excluded, interned, repatriated, or exchanged.

(4) A recommendation of appropriate remedies, including how civil liberties can be better protected during war, or an actual, attempted, or threatened invasion or incursion, an assessment of the continued viability of the Alien Enemies Acts (50 U.S.C. 21–24), and public education programs related to the United States Government's wartime treatment of European Americans and European Latin Americans during World War II.

(c) FIELD HEARINGS.—The European American Commission shall hold public hearings in such cities of the United States as it deems appropriate.

(d) REPORT.—The European American Commission shall submit a written report of its findings and recommendations to Congress not later than 18 months after the date of the first meeting called pursuant to section ___101(e).

SEC. ___103. POWERS OF THE EUROPEAN AMERICAN COMMISSION.

(a) IN GENERAL.—The European American Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this subtitle, hold such hearings and sit and act at such times and places, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandum, papers, and documents as the Commission or such subcommittee or member may deem advisable. The European American Commission may request the Attorney General to invoke the aid of an appropriate United States district court to require, by subpoena or otherwise, such attendance, testimony, or production.

(b) GOVERNMENT INFORMATION AND COOPERATION.—The European American Commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information that the European American Commission considers useful in the discharge of its duties. All departments, agencies, and independent instrumentalities, or other authorities of the executive branch of the Government shall cooperate with the European American Commission and furnish all information requested by the European American Commission to the extent permitted by law, including information collected as a result of Public Law 96–317 and Public Law 106–451. For purposes of the Privacy Act (5 U.S.C. 552a(b)(9)), the European American Commission shall be deemed to be a committee of jurisdiction.

SEC. ___104. ADMINISTRATIVE PROVISIONS.

The European American Commission is authorized to—

(1) appoint and fix the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such subtitle relating to classification and General Schedule pay rates, except that the compensation of any employee of the Commission may not exceed a rate equivalent to the rate payable under GS–15 of the General Schedule under section 5332 of such subtitle;

(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of such title;

(3) obtain the detail of any Federal Government employee, and such detail shall be without reimbursement or interruption or loss of civil service status or privilege;

(4) enter into agreements with the Administrator of General Services for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator;

(5) procure supplies, services, and property by contract in accordance with applicable laws and regulations and to the extent or in such amounts as are provided in appropriation Acts; and

(6) enter into contracts with Federal or State agencies, private firms, institutions, and agencies for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of the duties of the Commission, to the extent or in such amounts as are provided in appropriation Acts.

SEC. ___105. AUTHORIZATION OF APPROPRIATIONS.

From funds currently authorized to the Department of Justice, there are authorized to be appropriated not to exceed $500,000 to carry out the purposes of this subtitle.

SEC. ___106. SUNSET.

The European American Commission shall terminate 60 days after it submits its report to Congress.

Subtitle B—Commission on Wartime Treatment of Jewish Refugees

SEC. ___201. ESTABLISHMENT OF COMMISSION ON WARTIME TREATMENT OF JEWISH REFUGEES.

(a) IN GENERAL.—There is established the Commission on Wartime Treatment of Jewish Refugees (referred to in this subtitle as the ''Jewish Refugee Commission'').

(b) MEMBERSHIP.—The Jewish Refugee Commission shall be composed of 7 members, who shall be appointed not later than 90 days after the date of enactment of this Act as follows:

(1) Three members shall be appointed by the President.

(2) Two members shall be appointed by the Speaker of the House of Representatives, in consultation with the Minority Leader.

(3) Two members shall be appointed by the Majority Leader of the Senate, in consultation with the minority leader.

(c) TERMS.—The term of office for members shall be for the life of the Jewish Refugee Commission. A vacancy in the Jewish Refugee Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(d) REPRESENTATION.—The Jewish Refugee Commission shall include 2 members representing the interests of Jewish refugees.

(e) MEETINGS.—The President shall call the first meeting of the Jewish Refugee Commission not later than 120 days after the date of enactment of this Act.

(f) QUORUM.—Four members of the Jewish Refugee Commission shall constitute a quorum, but a lesser number may hold hearings.

(g) CHAIRMAN.—The Jewish Refugee Commission shall elect a Chairman and Vice Chairman from among its members. The term of office of each shall be for the life of the Jewish Refugee Commission.

(h) COMPENSATION.—

(1) IN GENERAL.—Members of the Jewish Refugee Commission shall serve without pay.

(2) REIMBURSEMENT OF EXPENSES.—All members of the Jewish Refugee Commission shall be reimbursed for reasonable travel and subsistence, and other reasonable and necessary expenses incurred by them in the performance of their duties.

SEC. ___202. DUTIES OF THE JEWISH REFUGEE COMMISSION.

(a) IN GENERAL.—It shall be the duty of the Jewish Refugee Commission to review the United States Government's refusal to allow Jewish and other refugees fleeing persecution in Europe entry to the United States as provided in subsection (b).

(b) SCOPE OF REVIEW.—The Jewish Refugee Commission's review shall cover the period between January 1, 1933, through December 31, 1945, and shall include, to the greatest extent practicable, the following:

(1) A review of the United States Government's refusal to allow Jewish and other refugees fleeing persecution and genocide entry to the United States, including a review of the underlying rationale of the United States Government's decision to refuse the Jewish and other refugees entry, the information the United States Government received or acquired suggesting such refusal was necessary, the perceived benefit of such refusal, and the impact of such refusal on the refugees.

(2) A review of Federal refugee policy relating to those fleeing persecution or genocide, including recommendations for making it easier for future victims of persecution or genocide to obtain refuge in the United States.

(c) FIELD HEARINGS.—The Jewish Refugee Commission shall hold public hearings in such cities of the United States as it deems appropriate.

(d) REPORT.—The Jewish Refugee Commission shall submit a written report of its findings and recommendations to Congress not later than 18 months after the date of the first meeting called pursuant to section ___201(e).

SEC. ___203. POWERS OF THE JEWISH REFUGEE COMMISSION.

(a) IN GENERAL.—The Jewish Refugee Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this subtitle, hold such hearings and sit and act at such times and places, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandum, papers, and documents as the Commission or such subcommittee or member may deem advisable. The Jewish Refugee Commission may request the Attorney General to invoke the aid of an appropriate United States district court to require, by subpoena or otherwise, such attendance, testimony, or production.

(b) GOVERNMENT INFORMATION AND COOPERATION.—The Jewish Refugee Commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information that the Jewish Refugee Commission considers useful in the discharge of its duties. All departments, agencies, and independent instrumentalities, or other authorities of the executive branch of the Government shall cooperate with the Jewish Refugee Commission and furnish all information requested by the Jewish Refugee Commission to the extent permitted by law, including information collected as a result of Public Law 96–317 and Public Law 106–451. For purposes of the Privacy Act (5 U.S.C. 552a(b)(9)), the Jewish Refugee Commission shall be deemed to be a committee of jurisdiction.

SEC. ___204. ADMINISTRATIVE PROVISIONS.

The Jewish Refugee Commission is authorized to—

(1) appoint and fix the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the compensation of any employee of the Commission may not exceed a rate equivalent to the rate payable under GS–15 of the General Schedule under section 5332 of such title;

(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of such title;

(3) obtain the detail of any Federal Government employee, and such detail shall be without reimbursement or interruption or loss of civil service status or privilege;

(4) enter into agreements with the Administrator of General Services for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator;

(5) procure supplies, services, and property by contract in accordance with applicable laws and regulations and to the extent or in such amounts as are provided in appropriation Acts; and

(6) enter into contracts with Federal or State agencies, private firms, institutions, and agencies for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of the duties of the Commission, to the extent or in such amounts as are provided in appropriation Acts.

SEC. ___205. AUTHORIZATION OF APPROPRIATIONS.

From funds currently authorized to the Department of Justice, there are authorized to be appropriated not to exceed $500,000 to carry out the purposes of this subtitle.

SEC. ___206. SUNSET.

The Jewish Refugee Commission shall terminate 60 days after it submits its report to Congress.

SA 2288. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 1104, after line 25, add the following:

TITLE V—BUY AMERICAN ACT IMPROVEMENTS

SEC. 5001. SHORT TITLE.

This title may be cited as the ''Buy American Improvement Act of 2003''.

SEC. 5002. REQUIREMENTS FOR WAIVERS.

(a) IN GENERAL.—Section 2 of the Buy American Act (41 U.S.C. 10a) is amended—

(1) by striking ''Notwithstanding'' and inserting the following:

''(a) IN GENERAL.—Notwithstanding''; and

(2) by adding at the end the following:

''(b) SPECIAL RULES.—The following rules shall apply in carrying out the provisions of subsection (a):

''(1) PUBLIC INTEREST WAIVER.—A determination that it is not in the public interest to enter into a contract in accordance with this Act may not be made after a notice of solicitation of offers for the contract is published in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

''(2) DOMESTIC BIDDER.—A Federal agency entering into a contract shall give preference to a company submitting an offer on the contract that manufactures in the United States the article, material, or supply for which the offer is solicited, if—

''(A) that company's offer is substantially the same as an offer made by a company that does not manufacture the article, material, or supply in the United States; or

''(B) that company is the only company that manufactures in the United States the article, material, or supply for which the offer is solicited.

''(3) USE OUTSIDE THE UNITED STATES.—

''(A) IN GENERAL.—Subsection (a) shall apply without regard to whether the articles, materials, or supplies to be acquired are for use outside the United States if the articles, materials, or supplies are not needed on an urgent basis or if they are acquired on a regular basis.

''(B) COST ANALYSIS.—In any case where the articles, materials, or supplies are to be acquired for use outside the United States and are not needed on an urgent basis, before entering into a contract an analysis shall be made of the difference in the cost for acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies in the United States (including the cost of shipping) and the cost for acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies outside the United States (including the cost of shipping).

''(4) DOMESTIC AVAILABILITY.—The head of a Federal agency may not make a determination under subsection (a) that an article, material, or supply is not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of satisfactory quality, unless the head of the agency has conducted a study and, on the basis of such study, determined that—

''(A) domestic production cannot be initiated to meet the procurement needs; and

''(B) a comparable article, material, or supply is not available from a company in the United States.

''(c) REPORTS.—

''(1) IN GENERAL.—Not later than 60 days after the end of each fiscal year, the head of each Federal agency shall submit to Congress a report on the acquisitions that were made of articles, materials, or supplies by the agency in that fiscal year from entities that manufacture the articles, materials, or supplies outside the United States.

''(2) CONTENT OF REPORT.—The report for a fiscal year under paragraph (1) shall separately indicate the following information:

''(A) The dollar value of any articles, materials, or supplies that were manufactured outside the United States.

''(B) An itemized list of all waivers granted with respect to such articles, materials, or supplies under this Act.

''(C) A summary of—

''(i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

''(ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

''(3) PUBLIC AVAILABILITY.—The head of each Federal agency submitting a report under paragraph (1) shall make the report publicly available by posting on an Internet website.''.

(b) DEFINITIONS.—Section 1 of the Buy American Act (41 U.S.C. 10c) is amended by striking subsection (c) and inserting the following:

''(c) FEDERAL AGENCY.—The term 'Federal agency' means any executive agency (as defined in section 4(1) of the Federal Procurement Policy Act (41 U.S.C. 403(1))) or any establishment in the legislative or judicial branch of the Government.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 2 of the Buy American Act (41 U.S.C. 10a) is amended by striking ''department or independent establishment'' and inserting ''Federal agency''.

(2) Section 3 of such Act (41 U.S.C. 10b) is amended—

(A) by striking ''department or independent establishment'' in subsection (a), and inserting ''Federal agency''; and

(B) by striking ''department, bureau, agency, or independent establishment'' in subsection (b) and inserting ''Federal agency''.

(3) Section 633 of the National Military Establishment Appropriations Act, 1950 (41 U.S.C. 10d) is amended by striking ''department or independent establishment'' and inserting ''Federal agency''.

SEC. 5003. GAO REPORT AND RECOMMENDATIONS.

(a) REQUIREMENT FOR REPORT.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Comptroller General of the United States shall report to Congress recommendations for determining, for purposes of applying the waiver provision of section 2(a) of the Buy American Act—

(A) unreasonable cost; and

(B) inconsistent with the public interest.

(2) REPORT TO INCLUDE RECOMMENDED DEFINITIONS.—The report shall include recommendations for a statutory definition of unreasonable cost and standards for determining inconsistency with the public interest.

(b) WAIVER PROCEDURES.—The report described in subsection (a) shall also include recommendations for establishing procedures for applying the waiver provisions of the Buy American Act that can be consistently applied.

SEC. 5004. DUAL-USE TECHNOLOGIES.

The head of a Federal agency (as defined in section 1(c) of the Buy American Act (as amended by section 5002) may not enter into a contract, nor permit a subcontract under a contract of the Federal agency, with a foreign entity that involves giving the foreign entity plans, manuals, or other information that would facilitate the manufacture of a dual-use item on the Commerce Control List unless approval for providing such plans, manuals, or information has been obtained in accordance with the provisions of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and the Export Administration Regulations (15 C.F.R. part 730 et seq.).

SA 2289. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 953, between the matter following line 11 and line 12, insert the following:

SEC. 1815. RURAL ROAD SAFETY PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1814(a)), is amended by adding at the end the following:

''§ 176. Rural road safety program

''(a) FINDINGS.—Congress finds that it is in the vital interest of the Nation that a rural road safety program be established to ensure that the safety of the traveling public is enhanced on rural two-lane highways.

''(b) ESTABLISHMENT.—The Secretary shall establish and implement a rural road safety program in accordance with this section.

''(c) APPORTIONMENTS.—

''(1) IN GENERAL.—On October 1 of each fiscal year, the Secretary shall apportion to each State to carry out this section an amount in the ratio of the percentage of the centerline mileage of two-lane roads in rural areas functionally classified as minor and major collectors and arterials in each State bears to the total centerline mileage of two-lane roads in rural areas functionally classified as minor and major collectors and arterials in all the States.

''(2) ALLOCATION OF APPORTIONED FUNDS.—Within each State, funds for the rural road safety program for each fiscal year shall be allocated among State, county, city, and other levels of government commensurate with each entity's ownership ratio of eligible two-lane road mileage of two-lane roads in rural areas functionally classified as minor and major collectors and arterials.

''(d) LOCATION OF PROJECTS.—Funds authorized to carry out this section shall be available for expenditure only for activities described in subsection (g).

''(e) OBLIGATION OF FUNDS.—Funds authorized to be appropriated to carry out this section shall be available for obligation in the same manner and the same extent as if such

funds were apportioned under section 104(b) of title 23, United States Code, except that the Secretary is authorized to waive provisions that the Secretary considers inconsistent with the purposes of this section.

''(f) COST SHARING.—The Federal share of a project under this section shall be 80 percent of the total cost for such project.

''(g) TRANSFERABILITY.—Notwithstanding any other provision of law no portion of a State's apportionment allocated for the rural road safety program may be transferred to any other apportionment of the State for such fiscal year.

''(h) USE OF FUNDS.—A State that receives an apportionment under this section may use funds—

''(1) to improve horizontal and vertical alignment;

''(2) to eliminate wheel lane rutting, increase skid resistance, and smooth roadways;

''(3) to improve sight distances;

''(4) to widen lanes and shoulders;

''(5) to install dedicated turn lanes;

''(6) to install and upgrade guardrails, traffic barriers, crash cushions, protective devices, and rumblestrips;

''(7) to install traffic and safety lights, improve signage and pavement markings; and

''(8) to implement other safety activities designated by the Secretary.

''(i) PROGRAM.—Not later than 180 days after the date of enactment of this Act, each State that receives an apportionment under this section shall conduct and systematically maintain an engineering survey of all two-lane rural roads classified as minor and major collectors and minor arterials—

''(1) to identify dangerous locations, sections, and elements, including roadside obstacles and unmarked or poorly marked roads, which may constitute a danger to motorists, bicyclists, pedestrians, impaired, and ''older'' drivers;

''(2) to assign priorities for the correction of such locations, sections, and elements; and

''(3) establish and implement a schedule of projects for improvement of such roads.

''(j) EVALUATION.—

''(1) IN GENERAL.—Each State shall establish an evaluation process approved by the Secretary to analyze and assess results achieved by safety improvement projects carried out in accordance with the procedures and criteria established by this section.

''(2) PRIORITIES.—Such evaluation process shall develop cost-benefit data for various types of corrections and treatments, which shall be used in setting priorities for safety improvement projects.

''(k) REPORTING.—

''(1) IN GENERAL.—Each State shall report to the Secretary not later than December 30 of each year, regarding the progress of implementing safety improvement projects for danger elimination and the effectiveness of such improvements.

''(2) STATE ASSESSMENT.—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 dangers and the previous and subsequent accident experience at dangerous locations.

''(3) SECRETARY'S REPORT.—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 regarding the progress of the States in implementing the rural road safety program. The report shall—

''(A) include the number of projects undertaken, their distribution by cost range, road system, means and methods used, the previous and subsequent accident experience at improved locations and a cost-benefit analysis; and

''(B) analyze and evaluate each State's 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 rural road safety program.

''(l) DEFINITION OF RURAL ROAD.—In this section, the term ''rural road'' means all roads in rural areas.

''(m) AUTHORIZATION OF APPROPRIATIONS RURAL ROAD SAFETY PROGRAM.—To carry out the rural road safety program under this section there are authorized to be appropriated $1,000,000,000 for each of fiscal years 2004 through 2009.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter I of title 23, United States Code (as amended by section 1814(c)), is amended by adding at the end the following:

''176. Rural road safety program.''.

SA 2290. Mr. LAUTENBERG submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in subtitle A of title IV, insert the following:

SEC. 4 . MULTI-STATE INTELLIGENT TRANSPORTATION SYSTEM OPERATIONS.

(a) IN GENERAL.—The Secretary of Transportation shall encourage regional operating organizations, in multistate metropolitan areas having multiple metropolitan planning organizations—

(1) to promote regional coordination and cooperation in the efficient, safe, and secure operation of regional transportation systems; and

(2) to implement these regional programs in a manner consistent with the needs of the public safety community.

(b) TRANSCOM'S INTELLIGENT TRANSPORTATION SYSTEM PROJECTS.—

(1) GRANTS.—The Secretary shall make grants to TRANSCOM for funding capital costs, annual operating costs, and maintenance costs of intelligent transportation system projects in the New Jersey—New York—Connecticut metropolitan region.

(2) PROJECT REQUIREMENTS.—A project shall not be eligible unless TRANSCOM demonstrates to the satisfaction of the Secretary that the project will assist the public safety community by—

(A) providing comprehensive transportation for responding to major regional incidents; and

(B) supporting evacuation planning for natural and manmade emergencies.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation $9,000,000 for fiscal year 2005 and each fiscal year thereafter to carry out the provisions of this section.

SA 2291. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 880, before line 7, insert the following:

SEC. 16___. FEDERAL AGENCY ETHANOL-BLENDED GASOLINE AND BIODIESEL PURCHASING REQUIREMENT.

Title III of the Energy Policy Act of 1992 is amended by striking section 306 (42 U.S.C. 13215) and inserting the following:

''SEC. 306. FEDERAL AGENCY ETHANOL-BLENDED GASOLINE AND BIODIESEL PURCHASING REQUIREMENT.

''(a) ETHANOL-BLENDED GASOLINE.—The head of each Federal agency shall ensure that, in areas in which ethanol-blended gasoline is readily available at a generally competitive price, the Federal agency purchases ethanol-blended gasoline containing at least 10 percent ethanol rather than nonethanol-blended gasoline, for use in vehicles used by the agency.

''(b) BIODIESEL.—

''(1) DEFINITION OF BIODIESEL.—In this subsection, the term 'biodiesel' has the meaning given the term in section 312(f).

''(2) REQUIREMENT.—The head of each Federal agency shall ensure that the Federal agency purchases, for use in fueling fleet vehicles that use diesel fuel used by the Federal agency at the location at which fleet vehicles of the Federal agency are centrally fueled, in areas in which the biodiesel-blended diesel fuel described in subparagraphs (A) and (B) is available at a generally competitive price—

''(A) as of the date that is 5 years after the date of enactment of this section, biodiesel-blended diesel fuel that contains at least 2 percent biodiesel, rather than nonbiodiesel-blended diesel fuel; and

''(B) as of the date that is 10 years after the date of enactment of this section, biodiesel-blended diesel fuel that contains at least 20 percent biodiesel, rather than nonbiodiesel-blended diesel fuel, for use in vehicles used by the agency.

''(3) REQUIREMENT OF FEDERAL LAW.—This subsection does not constitute a requirement of Federal law for the purposes of section 312.

''(c) EXEMPTION.—This section does not apply to fuel used in vehicles described in subparagraphs (A) through (H) of section 301(9).''.

SA 2292. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following new section:

SEC. ___. FUNDS FOR REBUILDING FISH STOCKS.

Section 105 of the Miscellaneous Appropriations and Offsets Act, 2004 (division H of the Consolidated Appropriations Act, 2004 (Public Law 108–199)) is repealed.

SA 2293. Mr. BURNS submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 48, between lines 2 and 3, insert the fol lowing;

''(i) MINIMUM APPORTIONMENT AND CRITERIA.—

''(1) MINIMUM APPORTIONMENT.—Notwithstanding any other provision of this section, the Secretary shall grant to any State that qualifies under paragraph (2) and has not received, as a result of other provisions of this

section, at least ½ of 1 percent of the total funds authorized for a fiscal year for grants under this section, such additional funds as are necessary to result in such State receiving ½ of 1 percent of the total funds authorized for grants under this section for that fiscal year. Funds for grants under this subsection shall be derived from pro-rata reduction of grant amounts that otherwise would be awarded pursuant to other subsections of this section.

''(2) CRITERIA.—To qualify for a grant under this subsection, a State—

(A) shall meet the requirements of subsection (a)(2) of this section; and

(B) shall—

''(i) meet 4 of the 7 criteria for qualifying for grants under subsection (b)(1) of this section (as that subsection was as in effect for fiscal year 2003 funding);

''(ii) for the most recent year for which data is available, have an alcohol-related fatality rate per 100 million vehicle miles traveled that is either lower than the national average for that year or lower than the rate in that State in the second most recent year for which data is available; or

''(iii) for the most recent 3 years for which data is available, have an average alcohol-related fatality rate per 100 million vehicle miles traveled that is either lower than the average of the national rate for those 3 years or lower than the average of such rate in that State for the fourth, fifth, and sixth most recent years for which data is available.

''(3) USES OF FUNDS.—Grants under this subsection may be used for—

''(A) any activity that was an eligible use of grants under this section for fiscal year 2003;

''(B) any activity otherwise eligible under this section; and

''(C) any other activity undertaken by the State for the purpose of reducing impaired driving unless disapproved by the Secretary on the basis that it bears no relation to that objective.

SA 2294. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

INDEPENDENT TRANSPORTATION NETWORK GRANT PROGRAM.

(a) IN GENERAL.—Chapter 53, as amended by this Act, is further amended by adding at the end the following:

''§ 5341. Independent transportation network grant program

''(a) GRANTS AUTHORIZED.—

''(1) IN GENERAL.—The Secretary is authorized to award grants to eligible entities to plan and implement community-based, non-profit transportation services (referred to in this section as a 'service') to provide affordable transportation for elderly individuals and individuals with visual impairments.

''(2) MAXIMUM AMOUNTS.—

''(A) PLANNING GRANTS.—The Secretary shall not award a planning grant under subsection (b) in an amount which exceeds $25,000.

''(B) IMPLEMENTATION GRANTS.—The Secretary shall not award an implementation grant under subsection (c) in an amount which exceeds $500,000.

''(3) ELIGIBLE ENTITIES.—States, units of local government, and non-profit organizations are eligible for grants under this section.

''(b) PLANNING GRANTS.—

''(1) APPLICATION.—

''(A) IN GENERAL.—Each eligible entity desiring a planning grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

''(B) SELECTION CRITERIA.—The Secretary, in consultation with the Federal Transit Administrator, shall authorize ITN*America* to periodically convene a diverse panel of experts who are familiar with the ITN business model, which shall select successful grantees based on—

''(i) the economic sustainability of the proposed service;

''(ii) community participation in the development of the service; and

''(iii) need for transportation services within the geographic area of the service.

''(2) USE OF FUNDS.—Planning grants awarded under this section shall be used to—

''(A) assess the transportation needs of elderly individuals and individuals with visual impairments within the geographic area of the service;

''(B) identify the resources available within the community to meet the needs described in subparagraph (A); and

''(C) develop a detailed business plan for the implementation of a service.

''(c) IMPLEMENTATION GRANTS.—

''(1) APPLICATION.—

''(A) IN GENERAL.—Each planning grant recipient shall submit an application for an implementation grant to the Secretary that contains a detailed business plan for the implementation of a service.

''(B) SELECTION CRITERIA.—The Secretary, in consultation with the Federal Transit Administrator, shall authorize ITN*America* to periodically convene a diverse panel of experts who are familiar with the ITN business model, which shall select successful grantees based on—

''(i) the economic sustainability of the proposed service;

''(ii) community participation in the development of the service; and

''(iii) need for transportation services within the geographic area of the service.

''(2) USE OF FUNDS.—Implementation grants awarded under this section may be used to—

''(A) recruit transportation volunteers;

''(B) acquire and repair used automobiles; and

''(C) provide transportation services for elderly individuals and individuals with visual impairments within the geographic area of the service.

''(d) MATCHING REQUIREMENT.—Not more than 50 percent of the amount expended on any activity funded through a planning grant or implementation grant under this section may be derived from government funds.

''(e) ITN*America*.—

''(1) ADMINISTRATIVE AND TECHNICAL SUPPORT.—The Secretary shall award a grant to ITN*America* to provide administrative and technical support to the other grantees under this section.

''(2) ANNUAL CONFERENCE.—ITN*America* shall convene a conference during each of the fiscal years 2007, 2008, and 2009 to provide an opportunity for service directors to share ideas and strategies.

''(3) REPORTING REQUIREMENTS.—Not later than 60 days after the end of each fiscal year for which it received financial assistance under this subsection, ITN*America* shall submit a report to the Secretary regarding any activities funded under this subsection.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) PLANNING GRANTS.—There are authorized to be appropriated to the Secretary for planning grants under subsection (b)—

''(A) $2,500,000 for fiscal year 2005;

''(B) $1,350,000 for fiscal year 2006;

''(C) $1,100,000 for fiscal year 2007;

''(D) $1,000,000 for fiscal year 2008; and

''(E) $800,000 for fiscal year 2009.

''(2) IMPLEMENTATION GRANTS.—There are authorized to be appropriated to the Secretary for implementation grants under subsection (c)—

''(A) $1,000,000 for fiscal year 2005;

''(B) $2,350,000 for fiscal year 2006;

''(C) $2,800,000 for fiscal year 2007;

''(D) $3,200,000 for fiscal year 2008; and

''(E) $3,600,000 for fiscal year 2009.

''(3) ADMINISTRATIVE AND TECHNICAL SUPPORT.—There are authorized to be appropriated to the Secretary for the administrative and technical support grant under subsection (e)—

''(A) $1,500,000 for fiscal year 2005;

''(B) $1,300,000 for fiscal year 2006;

''(C) $1,100,000 for fiscal year 2007;

''(D) $700,000 for fiscal year 2008; and

''(E) $600,000 for fiscal year 2009.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 53 is amended by adding at the end the following:

''5341. Independent transportation network grant program.''.

SA 2295. Mr. BURNS submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 28, line 11, strike ''and''.

On page 28, line 15, strike ''(3).'' and insert ''(3); and''.

On page 28, between lines 15 and 16, insert the following;

(7) by inserting after subsection (d), as redesignated, the following:

''(e) MINIMUM APPORTIONMENT AND CRITERIA.—

''(1) MINIMUM APPORTIONMENT.—Notwithstanding any other provision of this section, the Secretary shall grant to any State that qualifies under paragraph (2) and has not received, as a result of other provisions of this section, at least ½ of 1 percent of the total funds authorized for a fiscal year for grants under this section, such additional funds as are necessary to result in such State receiving ½ of 1 percent of the total funds authorized for grants under this section for that fiscal year. Funds for grants under this subsection shall be derived from pro-rata reduction of grant amounts that otherwise would be awarded pursuant to other subsections of this section.

''(2) CRITERIA.—To qualify for a grant under this subsection, a State—

''(A) shall meet the requirements of subsection (a)(2) of this section; and

''(B) shall—

''(i) meet 3 of the 6 criteria for qualifying for grants under this section (as this section was in effect for fiscal year 2003 funding); or

''(ii) for the most recent year for which data is available, have a seat belt utilization rate that is either higher than the national average for that year or higher than the utilization rate in that State in the second most recent year for which data is available.

''(3) USES OF FUNDS.—Grants under this subsection may be used for—

''(A) any activity that was an eligible use of grants under this section for fiscal year 2003;

''(B) any activity otherwise eligible under this section, other than activities that are made eligible only for those States that

meet the criteria set forth in subparagraph (b)(2)(A) of this section; and

''(C) any other activity undertaken by the State for the purpose of increasing seat belt utilization unless disapproved by the Secretary on the basis that it bears no relation to that objective.''.

SA 2296. Mr. FITZGERALD submitted an amendment intended to be proposed by him to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 705, between lines 12 and 13, insert the following:

SEC. ___. STATE-BY-STATE COMPARISON OF HIGHWAY CONSTRUCTION COSTS.

(a) COLLECTION OF DATA.—

(1) IN GENERAL.—The Administrator of the Federal Highway Administration (referred to in this section as the ''Administrator'') shall collect from States any bid price data that is necessary to make State-by-State comparisons of highway construction costs.

(2) DATA REQUIRED.—In determining which data to collect and the procedures for collecting data, the Administrator shall take into account the data collection deficiencies identified in the report prepared by the General Accounting Office numbered GAO–04–113R.

(b) REPORT.—

(1) IN GENERAL.—The Administrator shall submit to Congress an annual report on the bid price data collected under subsection (a).

(2) INCLUSIONS.—The report shall include—

(A) State-by-State comparisons of highway construction costs for the previous fiscal year (including the cost to construct a 1-mile road segment of a standard design, as determined by the Administrator); and

(B) a description of the competitive bidding procedures used in each State.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

Ms. SNOWE. Mr. President, I wish to announce that the Committee on Small Business and Entrepreneurship will hold a hearing entitled ''The President's FY2005 Budget Request for the SBA.'' The hearing will be held on Thursday, February 12, 2004, at 9:30 a.m. in 428A Russell Senate Office Building.

For further information please contact Wes Coulam 224–5175.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on February 10, 2004, at 9:30 a.m., in open session to receive testimony on the defense authorization request for fiscal year 2005 and the Future Years Defense Program.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, February 10, 2004, at 10 a.m. to conduct a hearing on the ''Proposals for Improving the Regulatory Regime of Government Sponsored Enterprises.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, February 10 at 10 a.m. to consider the President's proposed fiscal year 2005 budget for the Department of Energy.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Tuesday, February 10, 2004, at 10 a.m., to consider the nomination of Samuel W. Bodman, to be Deputy Secretary of the Treasury, U.S. Department of Treasury.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. INHOFE. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Tuesday, February 10, 2004, for a hearing on the Administration's proposed Fiscal Year 2005 Department of Veterans Affairs budget. The hearing will take place in room 418 of the Russell Senate Office Building at 3 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SPECIAL COMMITTEE ON AGING

Mr. INHOFE. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet Tuesday, February 10, 2004 from 10 a.m.–12 p.m. in Dirksen 628 for the purpose of conducting a hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

JOINT ECONOMIC COMMITTEE

Mr. INHOFE. Mr. President, I ask unanimous consent that the Joint Economic Committee be authorized to conduct a hearing in room 628 of the Dirksen Senate Office Building, Tuesday, February 10, 2004, from 1:30 p.m. to 5:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. JEFFORDS. Mr. President, I ask unanimous consent that Diana Harrington of my staff be granted the privilege of the floor during the pendency of S. 1072.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEASURE READ THE FIRST TIME—S. 2061

Mr. FRIST. I understand S. 2061, introduced by Senator GREGG and others, is at the desk. I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2061) to improve women's access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the delivery of obstetrical and gynecological services.

Mr. FRIST. I now ask for its second reading and object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will be read for the second time on the next legislative day.

MEASURE READ THE FIRST TIME—S. 2062

Mr. FRIST. I understand S. 2062, introduced by Senator GRASSLEY and others, is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2062) to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

Mr. FRIST. I now ask for its second reading and object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will be read the second time on the next legislative day.

CORRECTING TECHNICAL ERRORS IN THE ENROLLMENT OF S. 610

Mr. FRIST. I ask unanimous consent that the Senate proceed to the consideration of H. Con. Res. 354, which is at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 354) to correct technical errors in the enrollment of the bill S. 610.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. I ask unanimous consent that the concurrent resolution be agreed to, the motion to reconsider be laid on the table, and any statements relating to the concurrent resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 354) was agreed to.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to 10 U.S.C.

4355(a)(2), appoints the Senator from Alabama, Mr. SESSIONS, from the Armed Services Committee, to the Board of Visitors of the U.S. Military Academy.

The Chair, on behalf of the majority leader, pursuant to Public Law 108–136, Title XV, Section 1501(b)(1)(C), appoints the following individual to serve on the Veteran's Disability Benefits Commission: Vice Admiral Dennis Vincent McGinn.

The Chair, on behalf of the majority leader, pursuant to Public Law 105–277, Section 710, 2(A)(ii), appoints the following individual to serve as a member of the Parents Advisory Council on Youth Drug Abuse: David C. Guth of Tennessee.

ORDERS FOR WEDNESDAY, FEBRUARY 11, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Wednesday, February 11. I further ask unanimous consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business for up to 60 minutes, with the first 30 minutes under the control of the minority leader or his designee and the final 30 minutes under the control of the majority leader or his designee, provided that following morning business, the Senate resume consideration of S. 1072, the highway bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Tomorrow, following morning business, the Senate will resume consideration of S. 1072, the highway bill. It is my expectation that following final remarks of several Senators, the chairman will move to table the Warner amendment on seatbelts. Therefore, Senators should expect the first vote tomorrow to occur prior to noon.

For the remainder of the day tomorrow, the Senate will continue to debate on the highway bill. It is my hope the bill's managers will be able to work through additional amendments during tomorrow's session. Senators should expect rollcall votes throughout the day tomorrow.

As a reminder, cloture was filed on the substitute which was offered earlier today. While it was not my preference to file cloture, it became obvious that we would be unable to move forward without forcing a cloture vote. A cloture vote on the substitute amendment will occur on Thursday.

I also remind all Senators that under cloture rules all first-degree amendments must be filed by 1 p.m. tomorrow.

ORDER FOR ADJOURNMENT

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order following the remarks of Senator JOHN WARNER.

The PRESIDING OFFICER (Mr. ALEXANDER). Without objection, it is so ordered.

Mr. FRIST. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SAFE, ACCOUNTABLE, FLEXIBLE, AND EFFICIENT TRANSPORTATION EQUITY ACT OF 2003—Continued

AMENDMENT NO. 2286 TO AMENDMENT 2285, AS MODIFIED

Mr. WARNER. Mr. President, the Senator from Virginia has at the desk an amendment which is the pending amendment, and I desire to modify it. Consequently, I ask unanimous consent to modify the pending amendment to reflect the concerns raised by the managers of the bill requesting that more time be given to States to meet the 90-percent seatbelt use rate on their own initiative, with their own plans. I now send my modified amendment to the desk.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The amendment is so modified.

The amendment (No. 2286), as modified, is as follows:

Beginning on page 118, strike line 20 and all that follows through page 129, line 18, and insert the following:

''(3) PRIMARY SAFETY BELT LAW.—The term 'primary safety belt law' means a law that authorizes a law enforcement officer to issue a citation for the failure of the operator of, or any passenger in, a motor vehicle to wear a safety belt as required by State law, based solely on that failure and without regard to whether there is any other violation of law.

''(4) SAFETY PROJECT UNDER ANY OTHER SECTION.—

''(A) IN GENERAL.—The term 'safety project under any other section' means a project carried out for the purpose of safety under any other section of this title.

''(B) INCLUSION.—The term 'safety project under any other section' includes a project to—

''(i) promote the awareness of the public and educate the public concerning highway safety matters; or

''(ii) enforce highway safety laws.

''(5) STATE HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term 'State highway safety improvement program' means projects or strategies included in the State strategic highway safety plan carried out as part of the State transportation improvement program under section 135(f).

''(6) STATE STRATEGIC HIGHWAY SAFETY PLAN.—The term 'State strategic highway safety plan' means a plan developed by the State transportation department that—

''(A) is developed after consultation with—

''(i) a highway safety representative of the Governor of the State;

''(ii) regional transportation planning organizations and metropolitan planning organizations, if any;

''(iii) representatives of major modes of transportation;

''(iv) State and local traffic enforcement officials;

''(v) persons responsible for administering section 130 at the State level;

''(vi) representatives conducting Operation Lifesaver;

''(vii) representatives conducting a motor carrier safety program under section 31104 or 31107 of title 49;

''(viii) motor vehicle administration agencies; and

''(ix) other major State and local safety stakeholders;

''(B) analyzes and makes effective use of State, regional, or local crash data;

''(C) addresses engineering, management, operation, education, enforcement, and emergency services elements of highway safety as key factors in evaluating highway projects;

''(D) considers safety needs of, and high-fatality segments of, public roads;

''(E) considers the results of State, regional, or local transportation and highway safety planning processes;

''(F) describes a program of projects or strategies to reduce or eliminate safety hazards;

''(G) is approved by the Governor of the State or a responsible State agency; and

''(H) is consistent with the requirements of section 135(f).

''(b) PROGRAM.—

''(1) IN GENERAL.—The Secretary shall carry out a highway safety improvement program.

''(2) PURPOSE.—The purpose of the highway safety improvement program shall be to achieve a significant reduction in traffic fatalities and serious injuries on public roads.

''(c) ELIGIBILITY.—

''(1) IN GENERAL.—To obligate funds apportioned under section 104(b)(5) to carry out this section, a State shall have in effect a State highway safety improvement program under which the State—

''(A) develops and implements a State strategic highway safety plan that identifies and analyzes highway safety problems and opportunities as provided in paragraph (2);

''(B) produces a program of projects or strategies to reduce identified safety problems;

''(C) evaluates the plan on a regular basis to ensure the accuracy of the data and priority of proposed improvements; and

''(D) submits to the Secretary an annual report that—

''(i) describes, in a clearly understandable fashion, not less than 5 percent of locations determined by the State, using criteria established in accordance with paragraph (2)(B)(ii), as exhibiting the most severe safety needs; and

''(ii) contains an assessment of—

''(I) potential remedies to hazardous locations identified;

''(II) estimated costs associated with those remedies; and

''(III) impediments to implementation other than cost associated with those remedies.

''(2) IDENTIFICATION AND ANALYSIS OF HIGHWAY SAFETY PROBLEMS AND OPPORTUNITIES.—As part of the State strategic highway safety plan, a State shall—

''(A) have in place a crash data system with the ability to perform safety problem identification and countermeasure analysis;

''(B) based on the analysis required by subparagraph (A)—

''(i) identify hazardous locations, sections, and elements (including roadside obstacles, railway-highway crossing needs, and unmarked or poorly marked roads) that constitute a danger to motorists, bicyclists, pedestrians, and other highway users; and

''(ii) using such criteria as the State determines to be appropriate, establish the relative severity of those locations, in terms of accidents, injuries, deaths, traffic volume levels, and other relevant data;

''(C) adopt strategic and performance-based goals that—

''(i) address traffic safety, including behavioral and infrastructure problems and opportunities on all public roads;

''(ii) focus resources on areas of greatest need; and

''(iii) are coordinated with other State highway safety programs;

''(D) advance the capabilities of the State for traffic records data collection, analysis, and integration with other sources of safety data (such as road inventories) in a manner that—

''(i) complements the State highway safety program under chapter 4 and the commercial vehicle safety plan under section 31102 of title 49;

''(ii) includes all public roads;

''(iii) identifies hazardous locations, sections, and elements on public roads that constitute a danger to motorists, bicyclists, pedestrians, and other highway users; and

''(iv) includes a means of identifying the relative severity of hazardous locations described in clause (iii) in terms of accidents, injuries, deaths, and traffic volume levels;

''(E)(i) determine priorities for the correction of hazardous road locations, sections, and elements (including railway-highway crossing improvements), as identified through crash data analysis;

''(ii) identify opportunities for preventing the development of such hazardous conditions; and

''(iii) establish and implement a schedule of highway safety improvement projects for hazard correction and hazard prevention; and

''(F)(i) establish an evaluation process to analyze and assess results achieved by highway safety improvement projects carried out in accordance with procedures and criteria established by this section; and

''(ii) use the information obtained under clause (i) in setting priorities for highway safety improvement projects.

''(d) ELIGIBLE PROJECTS.—

''(1) IN GENERAL.—A State may obligate funds apportioned to the State under section 104(b)(5) to carry out—

''(A) any highway safety improvement project on any public road or publicly owned bicycle or pedestrian pathway or trail; or

''(B) as provided in subsection (e), for other safety projects.

''(2) USE OF OTHER FUNDING FOR SAFETY.—

''(A) EFFECT OF SECTION.—Nothing in this section prohibits the use of funds made available under other provisions of this title for highway safety improvement projects.

''(B) USE OF OTHER FUNDS.—States are encouraged to address the full scope of their safety needs and opportunities by using funds made available under other provisions of this title (except a provision that specifically prohibits that use).

''(e) FLEXIBLE FUNDING FOR STATES WITH A STRATEGIC HIGHWAY SAFETY PLAN.—

''(1) IN GENERAL.—To further the implementation of a State strategic highway safety plan, a State may use up to 25 percent of the amount of funds made available under this section for a fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan.

''(2) OTHER TRANSPORTATION AND HIGHWAY SAFETY PLANS.—Nothing in this subsection requires a State to revise any State process, plan, or program in effect on the date of enactment of this section.

''(f) REPORTS.—

''(1) IN GENERAL.—A State shall submit to the Secretary a report that—

''(A) describes progress being made to implement highway safety improvement projects under this section;

''(B) assesses the effectiveness of those improvements; and

''(C) describes the extent to which the improvements funded under this section contribute to the goals of—

''(i) reducing the number of fatalities on roadways;

''(ii) reducing the number of roadway-related injuries;

''(iii) reducing the occurrences of roadway-related crashes;

''(iv) mitigating the consequences of roadway-related crashes; and

''(v) reducing the occurrences of roadway-railroad grade crossing crashes.

''(2) CONTENTS; SCHEDULE.—The Secretary shall establish the content and schedule for a report under paragraph (1).

''(3) TRANSPARENCY.—The Secretary shall make reports under paragraph (1) available to the public through—

''(A) the Internet site of the Department; and

''(B) such other means as the Secretary determines to be appropriate.

''(4) DISCOVERY AND ADMISSION INTO EVIDENCE OF CERTAIN REPORTS, SURVEYS, AND INFORMATION.—Notwithstanding any other provision of law, no report, survey, schedule, list, or other data compiled or collected for any purpose directly relating to paragraph (1) or subsection (c)(1)(D), or published by the Secretary in accordance with paragraph (3), shall be—

''(A) subject to discovery or admitted into evidence in any Federal or State judicial proceeding; or

''(B) considered for any other purpose in any action for damages arising from an occurrence at a location identified or addressed in the report, survey, schedule, list, or other collection of data.

''(g) FEDERAL SHARE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS.—Except as provided in sections 120 and 130, the Federal share of the cost of a highway safety improvement project carried out with funds made available under this section shall be 90 percent.

''(h) FUNDS FOR BICYCLE AND PEDESTRIAN SAFETY.—A State shall allocate for bicycle and pedestrian improvements in the State a percentage of the funds remaining after implementation of sections 130(e) and 150, in an amount that is equal to or greater than the percentage of all fatal crashes in the States involving bicyclists and pedestrians.

''(i) ROADWAY SAFETY IMPROVEMENTS FOR OLDER DRIVERS AND PEDESTRIANS.—For each of fiscal years 2004 through 2009, $25,000,000 is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for projects in all States to improve traffic signs and pavement markings in a manner consistent with the recommendations included in the publication of the Federal Highway Administration entitled 'Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians (FHWA-RD-01-103)' and dated October 2001.

''(j) USE OF FUNDS.—

''(1) PROJECTS UNDER SECTION 402.—For fiscal year 2006 and each fiscal year thereafter, 5 percent of the funds made available to a State under this section shall be obligated for projects under section 402, unless by October 1 of the fiscal year, the State—

''(A) has in effect a primary safety belt law; or

''(B) demonstrates that the safety belt use rate in the State is at least 90 percent.

''(2) WITHHOLDING.—

''(A) IN GENERAL.—For fiscal year 2008, the Secretary shall withhold 2 percent, and for each fiscal year thereafter, the Secretary shall withhold 4 percent, of the funds apportioned to a State under paragraphs (1), (3), and (4) of section 104(b) and section 144 if, by October 1 of that fiscal year, the State does not—

''(i) have in effect a primary safety belt law; or

''(ii) demonstrate that the safety belt use rate in the State is at least 90 percent.

''(B) RESTORATION.—If, by the date that is 3 years after the date on which funds are withheld from a State under subparagraph (A), the State has in effect a primary safety belt law or has demonstrated that the safety belt use rate in the State is at least 90 percent, the apportionment of the State shall be increased by the amount withheld.

''(C) LAPSE.—If, by the date that is 3 years after the date on which funds are withheld from a State under subparagraph (A), the State does not have in effect a primary safety belt law or has not demonstrated that the safety belt use rate in the State is at least 90 percent, the amount withheld shall lapse.''.

Mr. WARNER. Mr. President, I thank the distinguished Presiding Officer and the Senate for accommodating me.

I yield the floor.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in adjournment until 9:30 a.m. tomorrow.

Thereupon, the Senate, at 6:24 p.m., adjourned until Wednesday, February 11, 2004, at 9:30 a.m.