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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire.

PRAYER

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

Let us pray.

Almighty God, You know all about us. You know when we sit down and when we rise up. Forgive our past blindness to the grandeur and glory of Your unfolding providence. Thank You for the gift of a freedom to choose and give us the courage to change our minds when it is needed.

Bring our hearts under Your control as You infuse within us a deeper love for You. We pray for our world—the lands we know but also those other lands that stand within our minds as nothing more than names. May we never forget that You have children in every land. Use our Senators today to bring life and not death—peace and not war. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHN E. SUNUNU 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.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant Journal clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 26, 2004.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. SUNUNU thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will resume consideration of S. 1805, the gun liability bill. A unanimous consent agreement worked out by the managers last night means we will definitely make significant progress on a number of issues throughout the day, and we will complete action on the bill on Tuesday. Senators should be aware the agreement covers amendments to be offered today and on Tuesday, but we do expect additional amendments to be offered and voted on tomorrow and during Monday's session of the Senate. Those Senators who are not covered by the agreement should work with Senators CRAIG and REED of Rhode Island to work through their amendments before Tuesday morning.

The first vote of the day should occur between 10:30 a.m. and 11:30 a.m. Members will be notified of rollcall votes throughout the day and possibly into the evening.

I wish to use a few moments of leadership time to comment on the bill. We will proceed right on the bill. It is going to be a fast-paced day. An agreement was worked out last night. I think we have a good game plan. We will finish the bill on Tuesday and we will start right in.

The bill, S. 1805, has broad bipartisan support. We will be considering a lot of amendments. We will debate those amendments, and we have the time agreements to see that they are considered fairly. This bill is bipartisan, with 10 Senators from the Democratic side of the aisle supporting it. The bill also has 45 Republican cosponsors. I know we can move quickly and process these amendments and move toward final passage of this important legislation.

There is a common misconception that the gun industry is a large and powerful industry, and it is simply not. In fact, the firearms trade is a relatively small industry. In 1999, the industry collectively made less than $200 million in total profits—just $200 million. To put that in perspective, Home Depot, a company with which we are all familiar, netted $4.3 billion in 2003. That one company made more than 20 times the profit of the entire firearms business.

In 2003, Wal-Mart, a highly competitive retail chain, profited a hefty $9 billion. And if we look at a chain such as Starbucks, even Starbucks sees bigger profits than the American firearms manufacturers.

I mention that because the issue is not of size or relative size. The real issue is that the gun manufacturing industry employs people with productive jobs, well-intentioned, well-meaning, good jobs. These are valuable jobs, and most of these jobs actually are in rural communities. Those are the communities that, in many ways, need jobs the most in this day and time.

Often, these gun manufacturers are the largest employer in these small communities and, as a consequence, these ruinous lawsuits do not just threaten the manufacturers; they end up threatening the whole town, the whole community itself.

Still, we have the antigun crusaders who insist that the firearms business, one of the most regulated industries in America today, must be brought to heel. Why? They believe the gun manufacturers themselves should be responsible for the criminal actions of other

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

people. They believe it is OK to allow lawsuits to achieve some sort of political end.

Clearly, I do not agree and a majority of people in this body do not agree. Indeed, most Americans certainly do not agree. Most Americans think this is just blatantly unfair.

Our Constitution protects the right to keep and bear arms. Indeed, 33 States have passed laws to preempt frivolous gun lawsuits—33 States. Still today, we have the antigun crusaders who are, in effect, aided and abetted by the special interest trial lawyers charging ahead.

Since 1997, more than 30 cities and counties have sued firearm companies in an attempt to force them to change the way they make guns and the way they sell guns. In California, then-Gov. Gray Davis signed legislation explicitly authorizing lawsuits against gun manufacturers.

Because the firearms business is relatively small, one big verdict, one substantial verdict could bankrupt the entire industry. In California, that is a real possibility.

Never mind that every trial court that has heard these municipality lawsuits has thrown them out in whole or in part. Appellate courts in three States have overturned lower court verdicts and allowed the suits to go forward. Thus, it is critical we act now.

If the gun industry is forced into bankruptcy, the right to keep and bear arms will be a right in name only. Lawsuits have already pushed two companies into bankruptcy. Even if some gun manufacturers are able to hold on, the prices for firearms will be so high that owning a gun, such as a hunting rifle, will be a privilege only the wealthy can afford.

There is one other important and little known aspect of the issue. America relies on private gun manufacturers to equip our soldiers and law enforcement officers with sidearms. The guns our police officers use, the guns that our soldiers carry, are made in the United States by American workers.

We are all agreed, no one wants guns in the hands of criminals. There are thousands of laws and regulations to stop illegal gun sales, but we do not want these frivolous, unnecessary lawsuits to strip police officers and soldiers of their sidearms. Do we really want unfair litigation to cripple our national security? The answer clearly is no, and thus we will act and we will act over the course of today, tomorrow, Monday, and complete this action on Tuesday.

The bill before us is narrowly tailored. It is focused. It is fair. It is equitable. It ensures that private parties are held responsible for their actions and that is why this bill comes to this floor with broad bipartisan support. That is why passing this bill is the right thing to do.

I yield the floor.

RESERVATION OF LEADER TIME

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

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT—MOTION TO PROCEED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to consideration of S. 1805, which the clerk will report.

The assistant journal clerk read as follows:

A bill (S. 1805) to prohibit civil liability actions from being brought or continuing against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their product by others.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

Mr. CRAIG. Mr. President, we are now on S. 1805. Last night, Senator REED and I worked into the evening with our colleagues and leadership on both sides to craft a unanimous consent that now governs us through late next Tuesday. It establishes a variety of amendments that will be voted on over the course of today. Some will be offered and set aside to be voted on on Tuesday. On Tuesday, other key amendments will be voted on and then final passage.

I am sure there are some Members on both sides who might have amendments that were not listed to be considered for votes today and/or Tuesday. What I would ask them to do is come to the Chamber and talk to Senator REED and myself to see if we might work those out certainly. We are happy to take a look at them. There may be an opportunity late Tuesday and possibly Friday to offer additional amendments. The unanimous consent request does not preclude any Member from doing that.

I said very early on yesterday that we wanted an open, robust debate on this issue. Clearly, 75 Members of this Senate, in a very bipartisan way, said let's get on with it, with the cloture vote yesterday. We spent the day then fashioning an agreement that brings us to where we are this morning. I believe it is possible Senator DASCHLE will be in the Chamber in a few moments to offer a perfecting amendment, then Senator BOXER will have an amendment on gunlocks.

I believe the agreement that is in front of us gives us something that oftentimes is very hard to achieve in the Senate, and that is a procedure and a final passage locked into an agreement. While Senator REED and I worked late into the evening, as I mentioned, to allow that to happen, and all sides gave a little in it, what I think we have in front of us is just that, an agreement that allows a variety of Senators, who have been prominent in this debate on both sides of the issue, to offer their amendments and to have a vote.

The timelines are very limited. We are not going to filibuster in any of this. It is clear that when there are 20-, 30- and 60-minute time limits to be shared equally, it does shape and limit the debate in a way that many of us would like to see.

Certainly on Tuesday, key votes are going to be the McCain-Reed gun show loophole and Senator FEINSTEIN's gun ban, or assault weapon ban as it is argued. Those clearly will be the dominant issues on one side. Senator BEN NIGHTHORSE CAMPBELL, conceal/carry will be another one voted on on that day, and possibly debate. I will debate that along with Senator CAMPBELL today. It is on the list to accomplish today. Possibly we will also have another amendment to be voted on on Tuesday which deals with Washington, DC, and some of the gun laws that free and law-abiding citizens have to cope with in this city.

That is the character of what we have been able to put together. Senator REED, the manager on the other side, is now in the Chamber. I yield the floor for any comments he would wish to make. Timewise, we hope Senator DASCHLE can make it to the Chamber to offer his amendment, but if he cannot, at this moment I see no reason Senator BOXER could not proceed with her amendment.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

Mr. REED. Mr. President, the Senator from Idaho has indicated we worked late last evening to craft a unanimous consent that will allow several important amendments to be debated today, and continuing on through Tuesday. It represents a recognition that there are serious issues to discuss. Now we are at the stage of not only discussing those issues but also taking amendments up and voting on them. I know Senator DASCHLE will be here in a moment.

Mr. REID. Will the Senator yield?

Mr. REED. I would be happy to yield to the Democratic whip.

Mr. REID. We have explained to the majority that we would, in fact, ask consent that Senator BOXER be allowed to offer her amendment. Senator DASCHLE is occupied at the present time. If necessary, I could offer it on his behalf, but I think it would be better if he offered it himself. So we ask unanimous consent that Senator BOXER be allowed to go forward with her amendment.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mr. REED. Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from California.

AMENDMENT NO. 2620

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

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant journal clerk read as follows:

The Senator from California [Mrs. BOXER] proposes an amendment numbered 2620.

Mrs. BOXER. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To amend chapter 44 of title 18, United States Code, to require the provision of a child safety device in connection with the transfer of a handgun and to provide safety standards for child safety devices)

On page 11, after line 19, add the following:

SEC. 5. REQUIREMENT OF CHILD HANDGUN SAFETY DEVICES.

(a) SHORT TITLE.—This section may be cited as the ''Child Safety Device Act of 2004''.

(b) DEFINITIONS.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

''(36) The term 'locking device' means a device or locking mechanism that is approved by a licensed firearms manufacturer for use on the handgun with which the device or locking mechanism is sold, delivered, or transferred and that—

''(A) if installed on a firearm and secured by means of a key or a mechanically, electronically, or electromechanically operated combination lock, is designed to prevent the firearm from being discharged without first deactivating or removing the device by means of a key or mechanically, electronically, or electromechanically operated combination lock;

''(B) if incorporated into the design of a firearm, is designed to prevent discharge of the firearm by any person who does not have access to the key or other device designed to unlock the mechanism and thereby allow discharge of the firearm; or

''(C) is a safe, gun safe, gun case, lock box, or other device that is designed to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.''.

(c) UNLAWFUL ACTS.—

(1) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

''(z) LOCKING DEVICES.—

''(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than a licensed importer, licensed manufacturer, or licensed dealer, unless the transferee is provided with a locking device for that handgun.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

''(A) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a firearm;

''(B) transfer to, or possession by, a law enforcement officer employed by an entity referred to in subparagraph (A) of a firearm for law enforcement purposes (whether on or off duty); or

''(C) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under State law of a firearm for purposes of law enforcement (whether on or off duty).''.

(2) EFFECTIVE DATE.—Section 922(z) of title 18, United States Code, as added by this subsection, shall take effect on the date which is 180 days after the date of enactment of this Act.

(d) CIVIL PENALTIES.—Section 924 of title 18, United States Code, is amended—

(1) in subsection (a)(1), by striking ''or (f)'' and inserting ''(f), or (p)''; and

(2) by adding at the end the following:

''(p) PENALTIES RELATING TO LOCKING DEVICES.—

''(1) IN GENERAL.—

''(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensee, the Attorney General shall, after notice and opportunity for hearing—

''(i) suspend or revoke any license issued to the licensee under this chapter;

''(ii) subject the licensee to a civil penalty of not more than $15,000; or

''(iii) impose the penalties described in clauses (i) and (ii).

''(B) REVIEW.—An action by the Attorney General under this paragraph may be reviewed only as provided under section 923(f).

''(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) does not preclude any administrative remedy that is otherwise available to the Attorney General.''.

(e) AMENDMENT TO CONSUMER PRODUCT SAFETY ACT.—The Consumer Product Safety Act (15 U.S.C. 2051 et seq.), is amended by adding at the end the following:

''SEC. 39. CHILD HANDGUN SAFETY DEVICES.

''(a) ESTABLISHMENT OF STANDARD.—

''(1) RULEMAKING REQUIRED.—

''(A) INITIATION OF RULEMAKING.—Notwithstanding section 3(a)(1)(E), the Commission shall initiate a rulemaking proceeding under section 553 of title 5, United States Code, not later than 90 days after the date of enactment of the Child Safety Device Act of 2004 to establish a consumer product safety standard for locking devices. The Commission may extend this 90-day period for good cause.

''(B) FINAL RULE.—Notwithstanding any other provision of law, the Commission shall promulgate a final consumer product safety standard under this paragraph not later than 12 months after the date on which the Commission initiated the rulemaking proceeding under subparagraph (A). The Commission may extend this 12-month period for good cause.

''(C) EFFECTIVE DATE.—The consumer product safety standard promulgated under this paragraph shall take effect on the date which is 6 months after the date on which the final standard is promulgated.

''(D) STANDARD REQUIREMENTS.—The standard promulgated under this paragraph shall require locking devices that—

''(i) are sufficiently difficult for children to de-activate or remove; and

''(ii) prevent the discharge of the handgun unless the locking device has been de-activated or removed.

''(2) INAPPLICABLE PROVISIONS.—

''(A) PROVISIONS OF THIS ACT.—Sections 7, 9, and 30(d) shall not apply to the rulemaking proceeding described under paragraph (1). Section 11 shall not apply to any consumer product safety standard promulgated under paragraph (1).

''(B) CHAPTER 5 OF TITLE 5.—Chapter 5 of title 5, United States Code, except for section 553 of that title, shall not apply to this section.

''(C) CHAPTER 6 OF TITLE 5.—Chapter 6 of title 5, United States Code, shall not apply to this section.

''(b) ENFORCEMENT.—Notwithstanding subsection (a)(2)(A), the consumer product safety standard promulgated by the Commission pursuant to subsection (a) shall be enforced under this Act as if it were a consumer product safety standard described under section 7(a).

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

''(1) CHILD.—The term 'child' means an individual who has not attained the age of 13 years.

''(2) LOCKING DEVICE.—The term 'locking device' has the meaning given that term in clauses (i) and (iii) of section 921(a)(36) of title 18, United States Code.''.

(f) CONFORMING AMENDMENT.—Section 1 of the Consumer Product Safety Act is amended by adding at the end of the table of contents the following:

''Sec. 39. Child handgun safety devices.''.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Consumer Product Safety Commission $2,000,000 for each of the fiscal years 2005 through 2007 to carry out the provisions of section 39 of the Consumer Product Safety Act, as added by subsection (e).

(2) AVAILABILITY OF FUNDS.—Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

Mrs. BOXER. Mr. President, I thank my colleagues on both sides of the aisle who worked late into the night to put forward a list of amendments this body would consider. I am very proud my amendment made the list. It is an amendment this Senate has supported before. It is an amendment that will protect our children from violence, and what could be more important to us as we gather here every day than to protect our children?

My measure would do two things. First, it would require that every handgun sold in this country come with a child safety device. The amendment is very broad on what that could be, so it really isn't a micromanaging type of amendment. This device could be a lock using a key or a combination, a device that locks electronically, it could be a lockbox, or technology that is built into the gun itself. Many of the folks working on this type of technology are very enthusiastic about it.

There is no question in my mind, there is no question in the minds of the police in my State who just had a press conference on this issue, if we were to agree to this and it were to become the law of the land, the number of children involved in accidental shootings would go way down. So that is the first thing we do. We require some type of a lock when you buy a handgun.

Second, my amendment would make sure child safety devices are effective and that they are not shoddy or of poor quality. One of the worst things we could do is pass a bill that requires these devices and then the device doesn't work. That would be a terrible thing for our families. So the bill requires the Consumer Product Safety Commission to establish standards for the design of these locks and these boxes and a standard for their performance. We want to make sure, when parents use a child safety device, that they are confident it will work as intended.

In 1999 the Senate passed an amendment by a vote of 78 to 20 to require that all handguns in this country be sold with a child safety device. The majority of our colleagues very strongly

supported this in quite a bipartisan way. I believe we should again agree that we need to protect our children from accidental gun shootings.

My home State of California recently enacted an excellent child safety device bill. It requires that all licensed dealers and manufacturers equip the guns they sell with State-certified child safety devices. This is a very important bill for my State and I am proud of my State for doing it. But it is clear that the States along California's border do not have this requirement. Not one of those States has child safety device laws. That means even if California—and we do—has a good law, anyone can purchase a gun without a safety lock from a border State and return to California with it. Therefore, the progress we hope to make in California will be set back because we don't have a uniform and standard law.

The other important feature of our bill that impacts Californians is that while there is a State-certified standard for gunlocks in my State, those standards have not been set by the Consumer Product Safety Commission, and everyone agrees that the Consumer Product Safety Commission is the premier organization in the country that sets the gold standard. Again, I think it is very important that we have this type of standard because, as many colleagues point out, the manufacturers of these devices deserve some guidance. California may have one set of standards, we could have another set of standards in New York, or in the Midwest, and we are going to have a potpourri of standards floating around rather than what I call the gold standard of the Consumer Product Safety Commission.

The other important point for my people of California—again, they have the safety lock law—is that the amendment allows for a Federal cause of action for violations of this child safety requirement. So if in fact there is a serious problem with a child safety lock, and the State for some reason doesn't get its act together, doesn't put the case together, and so on, there will be a Federal cause of action. It is kind of a double protection for the children.

I would like to talk about the need for this amendment for a moment. I have a chart that shows the statistics. In the United States of America, in our great country, the greatest country in the world, a child or a youth is killed by an accidental shooting every 48 hours—every 48 hours. Where do these statistics come from? The FBI. For every child killed by a gun, four are wounded. Where does that come from? The Archives of Pediatric and Adolescent Medicine, December—I am assuming that is 2000—volume 55, No. 12.

What does this mean, when you multiply it out? Thousands of children are injured or killed by guns every year in this country. According to the CDC, the rate of firearm deaths of children under the age of 14 is nearly 12 times higher in the United States than in 25 other industrialized countries combined.

Let me repeat that. The rate of firearm deaths of children under the age of 14 is 12 times higher in the United States than in 25 other industrialized nations combined.

Colleagues stand up and say: Guns don't kill people; people kill people. If you want to, say: Guns don't kill children; children kill children. Yes, children kill children because they pick up a gun and they fire it at a friend. They fire it at a brother. They don't understand the consequences of this. More than 22 million children live in homes with guns. I want you to envision this—22 million children live in homes with guns. More than 3.3 million of those children live in homes where the guns are always or sometimes kept loaded and unlocked.

Too many children are playing with real guns found in their parents' bedroom or a friend's home, and too many children are killed in this country because they are doing what children do: They are exploring; they are being curious. I don't know how many times I have heard stories with tearful parents saying: I kept that gun away from my child. It was far away from my child. It was in the highest, darkest corner of the deepest, tallest closet in my house. I never thought my baby could climb up and find that gun.

Well, they do. They do. Children are smart. They are tenacious. They are energetic. One study found that when a gun was in the home, 75 to 80 percent of first and second graders knew where their parents kept that gun. Seventy-five to eighty percent of first and second graders knew where their parents kept that gun.

In this country, we do so much to protect our children. We worry about them, as we should; it is our responsibility. We make sure that in a car they are put in a child seat facing in the right direction so they don't have a tendency to get hurt in an accident. We have airbags to protect them. We protect them from shoddy toys, such as Play-Doh that they could eat and could hurt them. We set standards. We set standards for Teddy bears, for toys. We care about our children.

I wrote the afterschool law we have here with Senator ENSIGN. We love our children, every one of us—our own children, our children's children. We are here to protect the children. That is part of our job.

So let me reiterate, one study found that when a gun was in the home, 75 percent to 80 percent of first and second graders knew where the parents kept that gun. So even if that gun is in a closet, at the top of a closet, under towels or blankets, kids are tenacious and they find the guns. But if they found a lockbox and they couldn't open it, they would be protected. If they grab that gun and it had a child safety device on it and they tried to shoot, it wouldn't go off. If the gun had technology built in it so that only when the parents held it it would fire, they would be protected.

It seems to me in this day and age when we are losing a child or a youth to an accidental shooting every 48 hours, we ought to be absolutely united in doing something about it.

I want to show you the face of a beautiful young man, Kenzo, a Californian, 15 years old, with his mom. His friend, Michael, while playing with a gun, shot Kenzo Bix, and he is gone forever. If that gun had had a child safety device on it, it wouldn't have happened.

I will give you some other stories.

Just this January in Indio, CA, a 17-year-old boy named Jason Weed died after his 14-year-old brother accidentally shot him in the head. The other boy was showing him the gun in the home when it accidentally went off, lodging a bullet in the small boy's head. If that gun had had a safety device, and if the amendment we already passed here—the Kohl-Hatch-Boxer amendment that passed here the last time—had been adopted in the other body, if it had been signed into law, Kenzo would be alive; and this child I just talked about, Jason Weed, would be alive.

Then there is a story from Florida. There are so many stories, and we just picked a few.

A 3-year-old, Colton Hinke, and his 2-year old sister Kaile were playing in her parents' bedroom when Colton found an unlocked, loaded handgun in the drawer. A neighbor heard the shot and rushed to the scene and found Kaile on her back, her face pale, her lips blue, and a small hole in her chest. She was in shock, and she was rushed to the hospital, but it was too late.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mrs. BOXER. Mr. President, I was told I had 30 minutes.

The ACTING PRESIDENT pro tempore. I believe under the order 30 minutes were equally divided. The Senator's 15 minutes have expired.

Mrs. BOXER. May I ask for one additional minute from each side so I can conclude?

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mrs. BOXER. Thank you so very much.

There is another incident where a 1-year-old girl was critically injured by her 3-year-old brother. This little girl survived.

I could go on, but I don't have the time at this point.

Let's pass this measure. I know Senators DEWINE and KOHL have an amendment to change my bill in a very small way. I don't have a problem with that. I will be supporting that. I just know the overriding concern of mine, and I really do think most people in this body who voted for this the last time, is let us protect our kids. Let us do it in a smart way. It is the right thing to do for the families of America.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, we have someone who will speak in opposition to the Boxer amendment. There is a second-degree amendment on its way. It is not yet ready. It is coming; sometimes I don't know from where. I ask unanimous consent that the amendment be temporarily set aside. In keeping with the unanimous consent agreement that was entered last night, at some subsequent time there will be the opportunity to offer the amendment Senators KOHL and DEWINE are going to offer as a second-degree amendment to Boxer.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The Senator from Idaho.

Mr. CRAIG. Mr. President, we expect a second-degree amendment to be here to modify and perfect the Boxer amendment.

I want to speak about the Boxer amendment because I in no way discredit—I guess the best way to say it—fail to recognize the same kind of concerns Senator BOXER has expressed. She is correct. The Senate has expressed its will on this issue in the past. But let me bring you up to date about what the gun industry is doing now. Clearly, the gun industry is responding very quickly to new technologies and what is available to make sure firearms are safe, if you will, from the curiosity of a child and a child who might misuse it. Tragically enough, when children find a firearm, there is great curiosity.

There are organizations out there that have worked awfully hard to educate firearms owners and parents about the reality of a gun placed in a home in an unsafe environment, or not locked behind a door, or in a situation where a child can't gain access to it. That is simply critical in the responsible ownership and handling of a gun.

Ninety percent of new guns in the United States are already sold with a safe storage device. The Senator from California is right, the devices vary, but so do guns and so do the conformation and structure of guns. It will be very difficult to suggest that one size fits all.

The industry, with its engineers and its technology and its computers, is devising trigger locks and safety devices that fit the particular firearm. This is done through a voluntary program with the firearms industry. Tremendous numbers of gunshops today—responsible, federally registered gunshops—are providing free of charge a trigger lock or a safety device as the weapon is sold. Many States and locales, such as Texas, have distributed safety devices free of charge, either in cooperation with the firearms industry or on their own initiative.

Trigger locks are mechanical devices. Like all mechanical devices they can fail if they are not well designed, and if their owners are not instructed on how to use them properly. The Consumer Product Safety Commission recently tested 32 types of gunlocks and found 30 could be opened without a key. That is why, clearly, uniformity is necessary. The Senator spoke to that uniformity. But quality gun manufacturers in this country are already providing safety devices which are critical and necessary.

What I am trying to suggest is these devices are not a panacea that reduces all accidents. Clearly, if we can get most handguns in America in safe and responsible hands and in homes with safety devices or locked in a safe or locked in a device where a child cannot gain access, that is going to reduce the kinds of tragic accidents that occur when a small child in a curious way finds the gun that may not have been placed in a safe place by a parent.

Gunlocks are designed to address what I believe is a narrow range of threats. At the same time, when a child's life is lost, how tragic it is, and all of us understand that. Of course, then it makes tremendous news and the world wonders why this is happening. The reason it happens is because in many instances there was a parent who was less than responsible, who really didn't lock that gun up.

At the same time, let's also recognize the phenomenal complication involved. Sometimes guns are placed in locations in homes for security and for safety, and easy access is critically important if that gun is to be used for the purpose of personal and property safety depending on the area in which a family lives or an individual lives.

At the same time, that does not deny the responsibility that is important. Gunlocks address that narrow range of threats. Clearly, they will deter the casual curiosity of a small child far more readily than it will deter what I say is the committed thief or the person bent on murder and mayhem. Some suggest a gunlock means a thief in the house will not steal the gun. Wrong. That simply is not the case. It simply means the thief will take the gun, take it out, knock the gunlock off, have it cut off, take it away so they can have access to a stolen firearm. That is the reality of thieves stealing guns.

This narrow range we are talking about and that we want to make sure stays is to deter that casual curiosity of the small child. The firearms industry is already trying to develop standards to improve these devices. The industry has sought the creation of an industry standard for gun safety locks through the American National Standards Institute. The ANSI review process is well underway. In other words, because the gun industry is a responsible industry, they are well out in front of us already on legislation. No, there aren't absolute mandatory requirements across the Nation. But recognizing the reality and the tragedy that occurs on occasion, we want to make sure, and the industry certainly wants to make sure, that they are well out in front of it.

In a few moments we will have a second-degree perfecting amendment to deal with this issue. I will reserve the remainder of my time until that amendment is here.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. MURKOWSKI). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Under the terms of the order, Senator KOHL has 15 minutes when he offers his second-degree amendment. We have been advised he will not use that entire amount of time, so at this time I ask consent that Senator BOXER be allowed to use 4 minutes of the time under the control of Senators KOHL and DEWINE.

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

The Senator from California.

Mrs. BOXER. I take this time to respond to the point made that the gun manufacturers are taking care of the child safety locks and that we do not need to have this law.

The experts in this whole field have turned out to be the National SAFE KIDS Campaign. This is a bipartisan organization that has one mission only and that is to protect our children. When they saw these statistics that are still occurring today, they said enough is enough. A child or youth is killed by a firearm every 3 hours. This has not changed.

In 1997, the gun manufacturers said they would work on this themselves, that they did not need a law. Research assessing the compliance with this agreement found most manufacturers were not providing locks and those that did offered low-quality devices where the locks just fell off and did not work.

The SAFE KIDS Campaign is urging us to include a provision to issue safe standards for gunlocks. This is very important.

My colleague says this is taken care of. It is not taken care of. We still have children dying. We still have our constituents calling with the tragic cases. I read some of the cases, but not all of them, case after case, kids finding out where there is a gun, grabbing it and trying to act out a fantasy, not understanding this is a lethal weapon that can kill or maim a brother, a neighbor, a friend.

We did not tell the makers of aspirin, we know you are good manufacturers. They are good manufacturers. We do not tell them, please make a childproof cap. They have to make a childproof cap. There are good manufacturers out there. I applaud them. But if you look at our bill and the way it works, we are not mandating a particular one-size-fits-all solution. We are very careful to

say we know there are many different handguns—this only applies to handguns; in my State we have one that applies to rifles and long guns, but this is just a handgun—we say you can have in your array of products a box that locks. You can have the technology built in the gun. You can have a combination lock.

I appreciate my friend does not like to put regulations on gun manufacturers and dealers. I understand that. And I understand he believes they are the best of the best of the best. But the problem is, our kids are dying in the home. They are smart. They find out where the guns are. I cannot understand why this is not something we would all support. The last time it came to the Senate, we had a huge vote. I am hoping we will have a similar vote.

Look to the people. We are in charge of a lot of issues. The National SAFE KIDS Campaign is about one issue, the safety of kids. They are bipartisan. They are begging us to make this the law of the land. The Senate did it once before. The Senate should do it again.

Children living in the South have an unintentional shooting death rate that is 7 times that of children living in the Northeast. That is a fact the National SAFE KIDS Campaign has shown. All we need to do is see the rate our kids are dying and compare it to 25 other countries to see our kids are at a great disadvantage. We can do something today. I hope we will.

I yield my time.

Mr. DASCHLE. Madam President, I ask unanimous consent the Boxer amendment be set aside temporarily.

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

AMENDMENT NO. 2621

Mr. DASCHLE. And then I ask consent that I be recognized to offer an amendment, and I send my amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 2621.

Mr. DASCHLE. Madam 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 as follows:

(Purpose: To clarify the definition of qualified civil liability action, and for other purposes)

On page 7, line 19, strike ''including'' and all that follows through page 8, line 19, and insert ''including, but not limited to—

''(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record which such person is required to keep pursuant to State or Federal law, or aided, abetted or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

''(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing or having reasonable cause to believe that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code;''.

On page 9, lines 1 and 2, strike ''or in a manner that is reasonably foreseeable'' and insert '', or when used in a manner that is reasonably foreseeable, except that such reasonably foreseeable use shall not include any criminal or unlawful misuse of a qualified product, other than possessory offenses.''.

On page 9, strike lines 12 through 21, and insert the following:

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (v) of subparagraph (A) are intended to be construed to not be in conflict, and no provision of this Act shall be construed to create a Federal private cause of action or remedy.

On page 10, strike lines 13 through 18, and insert the following:

(C) a person engaged in the business of selling ammunition (as defined under section 921(a)(17)(A) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level, who is in compliance with all applicable Federal, State, and local laws.

On page 11, line 7, strike the semicolon and insert ''; and''.

On page 11, strike lines 8 through 15, and insert the following:

(B) 2 or more members of which are manufacturers or sellers of a qualified product, and that is involved in promoting the business interests of its members, including organizing, advising, or representing its members with respect to their business, legislative, or legal activities in relation to the manufacture, importation, or sale of a qualified product.

On page 11, strike lines 16 through 19, and insert the following:

(9) UNLAWFUL MISUSE.—The term ''unlawful misuse'' means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

Mr. DASCHLE. I acknowledge, again, as I did yesterday, the partnership that I have had especially with Senator CRAIG, Senator BAUCUS, and others in the Senate. I express my gratitude to Senator CRAIG and my appreciation for his efforts at accommodating many of the concerns we have had as we address this bill.

I intend to support this bill, in part because of the acknowledgement of the need to address some of these concerns, as we do with this amendment.

The amendment we are offering right now strikes a balance between the need for the safety of Americans and the rights of gun manufacturers and dealers. That balance is critical. We recognize the vast majority of gun owners and manufacturers and sellers are honest and decent people who obey the law and ought to be recognized for their honesty and the contributions they make to our economy.

The firearm industry is an important source of jobs, not only in those States where those jobs actually are dedicated to the manufacture of firearms but to all other States where not only the manufacture but the sale and distribution of those products are so much a part of our economic base.

But we should not invalidate the legitimate claims from being heard in court when those claims have a basis in fact—cases involving kids, cases involving defective products, cases involving gun dealers or manufacturers who broke the law.

So our concern was, as originally drafted, the legislation adversely impacted many of these cases. That is why I went to Senator CRAIG and Senator BAUCUS and others and expressed the hope that we could address some of these issues and concerns in a way that would accommodate a solution. And that is what I believe this amendment does.

We have worked in a bipartisan manner. I would hope this legislation could certainly be supported in a bipartisan manner. It goes a long way to balancing what are the rights of victims as well as the needs of the gun industry.

Our amendment makes several key changes in the legislation that was originally offered. It ensures the cases in which Federal or State laws have been broken can move forward. There was some lack of clarity with regard to that particular need. It restores the basic product liability standards so, in particular, if a child is injured by a defective gun, the victim's loved ones can still hold accountable those responsible. It includes a provision to remove immunity from dealers who sell to straw purchasers; that is, purchasers who have no interest in buying the gun for themselves but passing on the gun, selling the gun to somebody who should not have it. Finally, it ensures that only trade associations connected to the business of manufacturing and selling firearms would be covered.

I think all of these changes—and many more; there are eight specific changes—do a great deal to enhance the bill, to make it a better, stronger bill and, at the same time, address the concerns that many of us have had. It strives to preserve the long-term vitality of an important American industry, one that is very important to people in the West and Midwest, in particular, but all over the country. It protects the rights and safety of the American public.

So I am very appreciative of the effort that has gone into this amendment. This took a lot of time, a lot of negotiation. Obviously, the subtleties in some of the language has more than a subtle impact ultimately on how legislation is interpreted and how laws are ultimately enforced. We think this amendment takes us a long way in addressing the needs of both our manufacturers as well as those who are concerned for safety on the streets and in our neighborhoods today.

Madam President, I might just take a moment, if I could, prior to relinquishing the floor, to talk about another matter. I appreciate the accommodation of my colleagues in so doing.

AMERICA'S UNFULFILLED TREATY OBLIGATIONS TO NATIVE AMERICANS

Madam President, all week long, tribal leaders from Indian nations throughout America have been in Washington for the winter conference of the National Congress of American Indians.

They include leaders from the Great Sioux Nation of South Dakota, and many others. Democratic Senators just met with many of these leaders; and some are in the gallery now, listening to these words. I am honored by their presence.

South Dakotans are very proud of our State's tribal heritage. Some of the greatest leaders South Dakota has ever produced were Native Americans. They include Crazy Horse, the legendary warrior-leader; a man of extraordinary nobility, the great Lakota spiritual leader, Sitting Bull.

Sitting Bull helped lead his people in defense of their lands. When it became clear that defeat was inevitable, he helped lead his people's efforts to secure a fair and just peace.

In negotiating the treaty under which the Lakota ceded their lands, Sitting Bull asked representatives of this Government: ''Let us put our minds together and see what life we can make for our children.''

More than a century later, the tribal leaders who have come to Washington this week are asking us to do the same thing: ''Let us put our minds together and see what life we can make for our children.''

Last July, the U.S. Commission on Civil Rights released a report that has already become a landmark. It is entitled ''A Quiet Crisis.'' It documents the harsh realities of life in Indian country today. I ask unanimous consent that the executive summary of the report be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. DASCHLE. We cannot undo the damage caused by more than a century of neglect and broken promises in 1 year or even one decade. But we must make honoring our trust obligations under those treaties we signed a real priority now. And we must take steps this year to address two of the most urgent obligations of Native Americans.

The first of these obligations is the need to find a just and fair settlement of the Indian trust dispute. Partly because so many American Indians live on remote reservations, not many Americans understand what the Indian trust fund dispute is about. It stretches back to the 1880s, when the U.S. Government broke up large tracts of Indian land into small parcels, which it then allotted to individual Indians and tribes.

The Government, acting as a ''trustee,'' took control of the Indian lands and established individual accounts for the land owners. The Government was supposed to manage the lands for account holders. It would negotiate sales or leases of land, and any revenues generated from oil drilling, mining, grazing, timber harvesting—or any other use of the land—was to be distributed to the account holders and their heirs. But that is not what happened.

The Indian trust fund has been so badly mismanaged for so long by administrations of both political parties that today no one knows how much money the trust fund should contain. Estimates of how much is owed to individual account holders range from a low of $10 billion to more than $100 billion.

The people who are being hurt by this mismanagement are some of the poorest people in America. Many live in houses that are little more than shacks, with no heat, no electricity, and no phones. Many of them are elderly. They have been waiting their whole lives for money that belongs to them—money that our Government is holding and refuses to account for.

Ten years ago, Congress passed legislation requiring the Department of the Interior to make a full and accurate historical accounting of all trust assets and obligations. Seven years ago, a banker named Elouise Cobell, a member of the Blackfeet Indian Nation, sued the Department to force it to comply with our order.

Last fall, a Federal judge finally agreed. It seemed that was going to be the beginning of the end of the trust fund dispute, and it was now finally within reach.

Then, shockingly, the administration and leadership in Congress on the other side, behind closed doors, added language to the 2004 Interior appropriations conference report ordering the Interior Department actually to ignore and defy the judge's ruling. Clearly unconstitutional, it violates the separation of powers and due process protections.

It has become increasingly clear that this administration's interest is in limiting the Government's financial exposure rather than seeking a just settlement of the trust dispute. Despite its obligations to consult with the tribes, the Interior Department is now trying to push through its own plan to reorganize the Indian trust.

Tribal leaders have not been consulted. Deep skepticism and opposition in Indian country continues to exist.

Earlier this month, the administration sent Congress its budget for next year. It now makes deep cuts in every program affecting Indians, except one. There is a 50-percent increase for the Department's trust reorganization plan.

The BIA, the Bureau of Indian Affairs, divides America into 13 regions. Yesterday, congressional and tribal leaders held a ''summit'' on trust reform. At that summit, the tribal representatives to BIA in all 13 regions pleaded with Congress to slow the Department's unilateral reorganization of the trust.

No trust reorganization plan can succeed without the involvement, support, and leadership of the tribes. It is time for Congress to take a more active role in trust reform. Three things are essential.

First, we need a new round of comprehensive public hearings. This week, Senator BEN NIGTHORSE CAMPBELL announced that the Indian Affairs Committee would hold hearings. I thank him.

Second, congressional meddling in the Cobell litigation must end. The ''midnight rider'' putting court orders on hold must not be extended; courts must be allowed to do their job. Last year Senators MCCAIN, JOHNSON, INOUYE and I introduced a bill, the American Indian Trust Fund Management Reform Act Amendments, requiring the Interior Department to conduct an historical accounting for all trust assets.

Third and finally, the Federal Government should start budgeting for an eventual solution. Money in those accounts belongs to Indians, and the Government cannot continue to hold it. Last year, In introduced the Indian Payment Trust Equity Act. It would create a $10 billion fund to begin making payments to trust holders who have received an objective accounting of their trust assets.

Somehow, the Federal Government must put its money where its mouth is and begin making trust holders whole. The complexity of the challenge cannot be used as an excuse to continue denying account holders what is rightfully theirs.

Another injustice that must end is the chronic underfunding of the Indian Health Service. The report last summer by the Civil Rights Commission, and another by the Centers for Disease Control, show that Native Americans live sicker and die younger than other Americans as a result of inadequate health care. The Indian Health Service budget accounts for one-half of 1 percent of 1 percent of the Department of Health and Human Services budget. The health system with the sickest people and the greatest needs get the smallest increases.

Last week, I held health care ''town hall meetings'' on Pine Ridge and Rosebud reservations in South Dakota. We expected 200; we got 700. I heard horrific, heartbreaking stories. People talked about losing parents, children, and spouses because health care wasn't available. Some people had waited months to see an IHS doctor. Finally, they couldn't take the pain any longer. They went to a non-IHS hospital, and they ended up with hospital bill they couldn't pay, so they lost their good credit rating as well as their good name.

It is unacceptable that the Federal Government spends twice as much on health care for Federal prisoners as it does for Indian children and families.

It is immoral that sick people are turned away every day from IHS hospitals and clinics in this country unless

they are in immediate danger of losing life or limb.

''Life or limb'' is not a figure of speech. It is an actual standard for care, and it is a national disgrace.

Last March, I offered an amendment to the budget resolution to provide $2.9 billion in order to fully fund one part of the IHS budget. Unfortunately, every Republican Senator voted against it. They offered an amendment with $292 million, one-tenth of the amount we proposed. It was inadequate, but we accepted it, only to find when we went to conference, the Republicans killed their own amendment in conference. We tried repeatedly last year to increase funding by $2.9 billion, and we will do so again this year.

More than a century ago, our Government signed treaties with the Indian nations promising to provide them and their descendants three things forever: health care, education, and housing. The Federal Government must now keep its promise and provide these benefits which the Indian people have already paid for in full with their lands.

Tribal leaders are in Washington this week asking once again that we live up to our ideals.

Let us put our minds together and see what life we can make for our children.

I yield the floor.

EXHIBIT 1

EXECUTIVE SUMMARY

The federal government has a long-established special relationship with Native Americans characterized by their status as governmentally independent entities, dependent on the United States for support and protection. In exchange for land and in compensation for forced removal from their original homelands, the government promised through laws, treaties, and pledges to support and protect Native Americans. However, funding for programs associated with those promises has fallen short, and Native peoples continue to suffer the consequences of a discriminatory history. Federal efforts to raise Native American living conditions to the standards of others have long been in motion, but Native Americans still suffer higher rates of poverty, poor educational achievement, substandard housing, and higher rates of disease and illness. Native Americans continue to rank at or near the bottom of nearly every social, health, and economic indicator.

Small in numbers and relatively poor, Native Americans often have had a difficult time ensuring fair and equal treatment on their own. Unfortunately, relying on the goodwill of the nation to honor its obligation to Native Americans clearly has not resulted in desired outcomes. Its small size and geographic apartness from the rest of American society induces some to designate the Native American population the ''invisible minority.'' To many, the government's promises to Native Americans go largely unfulfilled. Thus, the U.S. Commission on Civil Rights, through this report, gives voice to a quiet crisis.

Over the last 10 years, federal funding for Native American programs has increased significantly. However, this has not been nearly enough to compensate for a decline in spending power, which had been evident for decades before that, nor to overcome a long and sad history of neglect and discrimination. Thus, there persists a large deficit in funding Native American programs that needs to be paid to eliminate the backlog of unmet Native American needs, an essential predicate to raising their standards of living to that of other Americans. Native Americans living on tribal lands do not have access to the same services and programs available to other Americans, even though the government has a binding trust obligation to provide them.

In preparing this report, the Commission reviewed the budgets of the six federal agencies with the largest expenditures on Native American programs and conducted an extensive literature review.

DEPARTMENT OF THE INTERIOR

The Bureau of Indian Affairs (BIA), within DOI, bears the primary responsibility for providing the 562 federally recognized Native American tribes with federal services. The Congressional Research Service found that between 1975 and 2000, funding for BIA and the Office of the Special Trustee declined by $6 million yearly when adjusted for inflation.

BIA's mismanagement of Individual Indian Money trust accounts has denied Native Americans financial resources that could be applied toward basic needs that BIA programs fail to provide. Insufficient program funding resulted in $7.4 billion in unmet needs among Native Americans in 2000. Of this amount, a shortfall in tribal priority allocations (TPA), which provides such basic services as child welfare and adult vocational training, alone totaled $2.8 billion that year. Over the last few decades, Congress has minimally increased TPA funding. Unmet needs are also evident in school construction. In December 2002, the deferred maintenance backlog of BIA schools was estimated at $507 million and increasing at an annual rate of $56.5 million due to inflation and natural aging and deterioration of school buildings. BIA and its programs play a pivotal role in the lives of Native Americans, but mismanagement and lack of funding have undercut the agency's ability to improve living conditions in Native communities.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Native Americans have a lower life expectancy than any other racial/ethnic group and higher rates of many diseases, including diabetes, tuberculosis, and alcoholism. Yet, health facilities are frequently inaccessible and medically obsolete, and preventive care and specialty services are not readily available. Most Native Americans do not have private health insurance and thus rely exclusively on the Indian Health Service (IHS) for health care. The federal government spends less per capita on Native American health care than on any other group for which it has this responsibility, including Medicaid recipients, prisoners, veterans, and military personnel. Annually, IHS spends 60 percent less on its beneficiaries than the average per person health care expenditure nationwide.

The IHS, although the largest source of federal spending for Native Americans, constitutes only 0.5 percent of the entire HHS budget. Moreover, it makes up a smaller proportion of HHS' discretionary budget today than five years ago. By most accounts, IHS has done well to work within its resource limitations. However, the agency currently operates with an estimated 59 percent of the amount necessary to stem the crisis. If funded sufficiently, IHS could provide more money to needs such as contract care, urban health programs, health facility construction and renovation, and sanitation services.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The availability of safe, sanitary housing in Indian Country is significantly less than the need. Over-crowding and its effects are a persistent problem. Furthermore, existing housing structures are substandard: approximately 40 percent of on-reservation housing is considered inadequate, and one in five reservation homes lacks complete plumbing. Native Americans also have less access to home-ownership resources, due to limited access to credit, land ownership restrictions, geographic isolation, and harsh environmental conditions that make construction difficult and expensive.

While HUD has made efforts to improve housing, lack of funding has hindered progress. Funding for Native American programs at HUD increased only slightly over the years (8.8 percent), significantly less than the agency as a whole (62 percent). After controlling for inflation, HUD's Native American programs actually lost spending power. The tribal housing loan guarantee program lost nearly 70 percent of its purchasing power over the last four years, and the Native American Housing Block Grant has lost funding for three years in a row. Given the unique housing challenges Native Americans face, greater and immediate federal financial support is needed.

Housing needs on reservations and tribal lands cannot be met with the same interventions that HUD uses to meet rental housing or homeownership goals in the suburbs or inner cities. Innovation and a more comprehensive approach are needed, and the government's trust responsibility to provide housing to Native Americans must be fully factored into these efforts.

DEPARTMENT OF JUSTICE

All three components of law enforcement—policing, justice, and corrections—are substandard in Indian Country compared with the rest of the nation. Native Americans are twice as likely as any other racial/ethnic group to be the victims of crime. Yet, per capita spending on law enforcement in Native American communities is roughly 60 percent of the national average. Correctional facilities in Indian Country are also more overcrowded than even the most crowded state and federal prisons. In addition, Native Americans have long held that tribal court systems have not been funded sufficiently or consistently, and hence, are not equal to other court systems.

Law enforcement professionals concede that the dire situation in Indian Country is understated. While DOJ should be commended for its stated intention to meet its obligations to Native Americans, promising projects have suffered from inconsistent or discontinued funding. Native American law enforcement funding increased almost 85 percent between 1998 and 2003, but the amount allocated was so small to begin with that its proportion to the department's total budget hardly changed. Native American programs make up roughly 1 percent of the agency's total budget. A downward trend in funding has begun that, if continued, will severely compromise public safety in Native communities.

Additionally, many Native Americans have lost faith in the justice system, in part due to perceived bias. Many attribute disproportionately high incarceration rates to unfair treatment by the criminal justice system, including racial profiling, disparities in prosecution, and lack of access to legal representation. Solving these problems is vital to restoring public safety and justice in Indian Country.

DEPARTMENT OF EDUCATION

As a group, Native American students are not afforded educational opportunities equal to other American students. They routinely face deteriorating school facilities, underpaid teachers, weak curricula, discriminatory treatment, outdated learning tools, and

cultural isolation. As a result, achievement gaps persist with Native American students scoring lower than any other racial/ethnic group in basic levels of reading, math, and history. Native American students are also more likely to drop out. The lack of educational opportunities in Native communities extends to postsecondary and vocational programs. Special Programs for Indian Adults has not been funded since 1995, and vocational rehabilitation programs are too poorly funded to meet the abundant need. Although 14 applications for such programs were submitted in 2001, only five tribal organizations received funding. Tribal colleges and universities receive 60 percent less federal funding per student than other public community colleges.

The federal government has sole responsibility for providing education to these students—an obligation it is failing to meet. Funding for DOEd's Office of Indian Education (OIE) has remained a relatively small portion of the department's total discretionary budget (ranging from 0.2 to 0.3 percent) between 1998 and 2003. OIE funding has undergone several reductions over the last few decades and, in may years, its budget has failed to account for inflation. At no time during the period under review in this report have all OIE subprograms been funded.

DEPARTMENT OF AGRICULTURE

The USDA is largely responsible for rural development and farm and business supplements in rural communities. Native Americans rely on such programs to foster conditions that encourage and sustain economic investments. However, insufficient funding has limited the success of development programs and perpetuated unstable economies. Poor economic conditions have resulted in food shortages and hunger. Native Americans are more than twice as likely as the general population to face hunger and food insecurity at any given time. The inaccessibility of food and economic development programs compromises their usefulness. By its failure to make programs accessible to Native Americans, the federal government has denied them the opportunity to receive benefits routinely available to other citizens.

USDA's set-aside for the Rural Community Advancement Program fluctuated between 2000 and 2003. The 2004 budget proposes to reduce funding by more than 18.2 percent from 2003. The Food Distribution Program on Indian Reservations (FDPIR) lost funding when accounting for inflation (2.8 percent) between 1999 and 2003, reducing available food resources. FDPIR alone is not meeting the food assistance needs of Native Americans since many participants are also enrolled in other food assistance programs. The continuously high rates of hunger and poverty in Native communities are the strongest evidence that existing funds are not enough.

CONCLUSION

In short, the Commission finds evidence of a crisis in the persistence and growth of unmet needs. The conditions in Indian Country could be greatly relieved if the federal government honored its commitment to funding, paid greater attention to building basic infrastructure in Indian Country, and promoted self-determination among tribes.

The Commission further finds that the federal government fails to keep accurate and comprehensive records of its expenditures on Native American programs. There is no uniform reporting requirement for Native American program fundings, and because agencies self-report their expenditures, available information varies across agencies, rendering monitoring of federal spending difficult.

While some agencies are more proficient at managing funds and addressing the needs of Native Americans than others, the government's failure is systemic. The Commission identified several areas of jurisdictional overlap, inadequate collaboration, and a lack of articulation among agencies. The result is inefficiency, service delay, and wasted resources. Fragmented funding and lack of coordination not only complicate the application and distribution processes, but also dilute the benefit potential of the funds.

In this study, the Commission has provided new information and analyses in the hope of stimulating resolve and action to address unmet needs in Indian Country. Converting data and analyses into effective government action plans requires commitment and determination to honor the promises of laws and treaties. Toward that end, the Commission offers 11 recommendations, which if fully implemented will yield (1) a thorough and precise calculation of unmet needs in Indian Country; (2) increased efficiency and effectiveness in the delivery of services through goal setting, strategic planning, implementation, coordination, and measurement of outcomes; (3) perennial adequate funding; and (4) advancement of Indian nations toward the goal of independence and self-goverance.

Failure to act will signify that this country's agreements with Native people, and other legal rights to which they are entitled, are little more than empty promises. Focused federal attention and resolve to remedy the quiet crises occurring in Indian Country, embodied in these recommendations and the results that flow from them, would signal a decisive moment in this nation's history. That moment would constitute America's rededication to live up to its trust responsibility for its Native people. Only through sustained systemic commitment and action will this federal responsibility be realized.

RECOMMENDATIONS

1. The Native American crisis should be addressed with the urgency it demands. The administration should establish a bipartisan, action-oriented initiative at the highest level of accountability in the government, with representatives including elected officials, members of Congress, officials from each Federal agency that funds programs in Indian Country, tribes, and Native American advocacy organizations. The action group should be charged with analyzing the current system, developing solutions, and implementing positive change.

2. All agencies that distribute funds for Native American programs should be required to regularly assess unmet needs, including gaps in service delivery, for both urban and rural Native individuals. Agencies should establish benchmarks for the elevation of Native American living conditions to those of other Americans. Agencies should document Native American participation in programs and catalog initiatives.

3. Agencies should replicate IHS' Federal Disparity Index assessment for tracking disparities in services and needs. Tribal organizations and Native American advocacy groups should be consulted when agencies develop measures. The results of such examinations should be used to prepare budget estimates, prioritize spending, and assess the status of programs. Congress should require and review unmet needs analyses annually as a component of each agency's budget justification.

4. All Federal agencies that administer Native American programs should be required to set aside money for infrastructure building that will benefit all. Such a fund should be jointly managed by the BIA, representatives from each contributing agency, and a coalition of tribal leaders. The contributing agencies should develop memoranda of understanding and other formal coordination mechanisms that outline precisely how the money will be spent.

5. Federal agencies should avoid implementing across-the-board budget cuts when the effect on already underfunded Native American programs is so severe. Agencies must prepare budgets that account for the proportionality of Native American funding.

6. Native American programs should be situated within the Federal agencies that have the requisite expertise, but agencies should continually improve processes for redistributing funds to other agencies or tribal governments. Funds for a common purpose should be consolidated within a single agency so there is less overlap and clearer accountability.

7. To the extent possible, programs for Native Americans should be managed and controlled by Native Americans. Distribution of funds to tribes should be closely monitored by the source agencies to ensure that funds are used as directed in a manner developed in consultation with Native Americans and tribal governments.

8. Federal appropriations must compensate for costs that are unique to tribes, such as those required to build necessary infrastructure, those associated with geographic remoteness, and those required for training and technical assistance. The unique needs of non-reservation and urban Native Americans must also be assessed, and adequate funding must be provided for programs to serve these individuals.

9. Congress should request an analysis of spending patterns of every Federal agency that supports Native American programs, either by the U.S. General Accounting Office or the Congressional Research Service. In addition, an independent external contractor should audit fund management of all Federal agencies distributing Native American appropriations.

10. Each agency should have one central office responsible for oversight and management of Indian funds, and which prepares budgets and analyses that can be compared and aggregated across agencies.

11. The Office of Management and Budget should develop governmentwide, uniform standards for tracking and reporting spending on Native American programs. Agencies should be required to include justifications for each Native American project in annual budget requests, as well as justifications for the discontinuation of such programs. They should also be required to maintain comprehensive spending logs for Indian programs, including actual grant disbursements, numbers of beneficiaries, and unfunded programs.

[Disturbance in the galleries.]

The PRESIDING OFFICER. Expressions of approval or disapproval are not in order.

The Senator from Idaho.

Mr. CRAIG. Madam President, we are on the Daschle amendment which I support. The minority leader has expressed the value of that amendment to the underlying bill, S. 1805. I will be very brief about it. We can have a vote on it and immediately move back to the Boxer amendment.

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

Mr. CRAIG. I am happy to.

Mr. REID. I am wondering if there is a need for a recorded vote.

Mr. CRAIG. I do not see that need.

Mr. REID. I think we can do this by voice because it is my understanding that the Kohl second degree is also going to be done by voice vote, so that would eliminate the need for two votes. We could go directly to the Boxer amendment, as amended.

Mr. CRAIG. Madam President, when Senator DASCHLE and I began to visit about the issue of liability to gun manufacturers and responsible licensed gun dealers, we wanted to make sure it was as narrow as I expressed yesterday that it would be. Senator DASCHLE came up with some ideas that would strike the ''knowing and willing'' in the preceding sentences, potentially increasing the likelihood that this exception in the general immunity afforded under the law would be applicable in any given case.

That is what we did. They are two very distinct provisions. I discussed them last night. I will not go into them today for the record. But we handed that work over to the Congressional Research Service. What they have said is this: Applying these changes to the scenarios at issue—and those relate both to manufacturers and gun sales—it appears the amendment could have the effect of making it more likely that this exception to immunity would be applicable in certain facts, as established.

In other words, we truly have clarified the immunity provision. It is every bit as narrow as we said it was, that all current Federal laws pertaining to the mismanagement, mishandling, the criminal actions that are in violation of a Federal firearm license or that are in violation of a manufacturers responsibility are adhered to.

I believe the amendment is a good one. It perfects and improves S. 1805. I encourage its passage.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to amendment No. 2621.

The amendment (No. 2621) was agreed to.

Mr. REID. I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

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

Mr. REID. Madam President, under the terms of the order that is now before the Senate, Senator DEWINE and Senator KOHL were to offer an amendment. Senator DEWINE is not offering the amendment. I ask unanimous consent that Senator KOHL be allowed to offer a second-degree amendment to the Boxer amendment.

Mr. CRAIG. I do not object to that request, Madam President.

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

The Senator from Wisconsin.

AMENDMENT NO. 2622 TO AMENDMENT NO. 2620

Mr. KOHL. Madam President, I rise as an original sponsor of the child safety lock amendment. I thank the Senator from California for offering this important measure today. The Child Safety Lock Act significantly reduces the incidence of gun-related tragedies in our country among the most vulnerable elements of our population; namely, our children.

I have a second-degree amendment I wish to offer now. I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. KOHL] proposes an amendment numbered 2622 to amendment No. 2620.

Mr. KOHL. Madam 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 as follows:

(Purpose: To amend chapter 44 of title 18, United States Code, to require the provision of a child safety lock in connection with the transfer of a handgun)

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

TITLE II—CHILD SAFETY LOCKS

SEC. 201. SHORT TITLE.

This title may be cited as the ''Child Safety Lock Act of 2004''.

SEC. 202. PURPOSES.

The purposes of this title are—

(1) to promote the safe storage and use of handguns by consumers;

(2) to prevent unauthorized persons from gaining access to or use of a handgun, including children who may not be in possession of a handgun; and

(3) to avoid hindering industry from supplying firearms to law abiding citizens for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

SEC. 203. FIREARMS SAFETY.

(a) UNLAWFUL ACTS.—

(1) MANDATORY TRANSFER OF SECURE GUN STORAGE OR SAFETY DEVICE.—Section 922 of title 18, United States Code, is amended by inserting at the end the following:

''(z) SECURE GUN STORAGE OR SAFETY DEVICE.—

''(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

''(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

''(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

''(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

''(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

''(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

''(3) LIABILITY FOR USE.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

''(B) PROSPECTIVE ACTIONS.—A qualified civil liability action may not be brought in any Federal or State court.

''(C) DEFINED TERM.—As used in this paragraph, the term 'qualified civil liability action'—

''(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

''(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

''(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

''(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.''.

(b) CIVIL PENALTIES.—Section 924 of title 18, United States Code, is amended—

(1) in subsection (a)(1), by striking ''or (f)'' and inserting ''(f), or (p)''; and

(2) by adding at the end the following:

''(p) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

''(1) IN GENERAL.—

''(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

''(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

''(ii) subject the licensee to a civil penalty in an amount equal to not more than $2,500.

''(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

''(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.''.

(c) LIABILITY; EVIDENCE.—

(1) LIABILITY.—Nothing in this title shall be construed to—

(A) create a cause of action against any Federal firearms licensee or any other person for any civil liability; or

(B) establish any standard of care.

(2) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this title shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action relating to section 922(z) of title 18, United States Code, as added by this section.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to bar a governmental action to impose a penalty under section 924(p) of title 18, United States Code, for a failure to comply with section 922(z) of that title.

SEC. 204. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 180 days after the date of enactment of this Act.

Mr. KOHL. Madam President, as I understand it, there is no need for debate on this amendment. The Senator from California has told me she has no objection to our modifications. So if it is not objectionable to the managers of the bill, I will speak briefly, and then I will yield back our time. I will not call for a rollcall vote, and I hope the Senate will accept these modifications by voice vote.

This amendment will make the Boxer amendment virtually identical to the bipartisan child safety lock amendment that passed with 78 votes in 1999. Protecting our children from accidental shooting is a concern that crosses party lines, and I am proud that today we get a chance to express that concern again in an overwhelming and bipartisan way.

Every year, children and teenagers are involved in more than 10,000 accidental shootings. Close to 800 of those shootings result in a senseless death. And those 800 deadly accidents do not account for the thousands of additional gun-related deaths of America's youth each year that result from suicide or intentional shootings. Every 6 hours, a young person between the ages of 10 and 19 commits suicide with an available firearm. In all, nearly 3,000 children and young people die every year from gun-related injuries.

To many of us, this recitation of numbers and statistics is terribly grim. But for the families, the pain associated with those avoidable deaths is unbearable. What is equally tragic is that so many of these deaths could have been prevented. The use of a child safety lock would have, at the very least, stopped hundreds of accidents each and every year.

This legislation is simple, straightforward, and effective. It mandates that a child safety lock device or a trigger lock be sold with every handgun. Most locks resemble a padlock that locks around the gun trigger and immobilizes it, preventing it from being fired. These and other locks can be purchased in virtually every gun store for less than $10. They are already used by tens of thousands of responsible gun owners to protect their firearms from unauthorized use, and they surely have saved many lives.

Support for this commonsense approach to gun safety is widespread. In 1999, the same child safety lock provision passed the Senate by an overwhelming vote of 78 to 20. It was an amendment during the juvenile justice debate. This proposal is as popular with the rest of the country and the law enforcement community as it was with the 106th Senate. Polls have shown that 73 percent of the American public, including 6 of 10 gun owners, favors the mandatory sale of child safety locks with guns. In a survey of nearly 500 of Wisconsin's police chiefs and sheriffs, 90 percent agree that child safety locks should be sold with every gun.

This legislation has the support of the current administration as well. During his campaign in 2000, President Bush indicated that if Congress passes a bill making the sale of child safety locks mandatory with every gun sale, he would sign it into law. Attorney General Ashcroft affirmed the administration support of the mandatory sale of child safety locks during his confirmation hearings before the Senate Judiciary Committee.

The bill is not a panacea. It will not prevent every single avoidable firearm-related accident, but the fact is all parents want to protect their children. This legislation will ensure that people purchase child safety locks when they buy guns. Those who buy locks are more likely to use them. That much we know is certain. Those who use the locks will be protected from liability if those guns are misused.

The Child Safety Lock Act is a modest proposal. Though imposing a minimal cost on consumers, it will prevent the deaths of many innocent children every year. The Senate spoke overwhelmingly in favor of this proposal in 1999.

Madam President, I urge my colleagues to support and vote for the amendment before us today.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, I am glad the Senator from Wisconsin has stepped forward to offer a second-degree amendment. It clarifies the nature of damages in civil immunity language. It defines the inoperable in the immunity language. It reduces the penalty violation but sets a good one—a $2,500 civil fine. Revocation may be a bit harsh, but there is a small clarification in the Rules of Evidence. It takes effect 180 days after enactment.

Of course, as I mentioned earlier in the debate—and I will discuss this later after this amendment is accepted—nearly all manufacturers today comply with this very point as guns leave the factory. So the industry is moving rapidly toward compliance.

With that, I think we are prepared to vote on the second degree.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to amendment No. 2622 to amendment No. 2620.

The amendment (No. 2622) was agreed to.

Mr. REID. Madam President, I move to reconsider the vote.

Mr. REED. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, what is the business before the Senate? Is it the Boxer amendment, as amended by the Kohl amendment?

The PRESIDING OFFICER. The Boxer amendment, as amended.

Mr. REID. What time is remaining on that?

The PRESIDING OFFICER. The Senator from Idaho has 8 minutes remaining.

Mr. CRAIG. Madam President, I will take some of those minutes to speak to the Boxer amendment, as amended. I do oppose this amendment and here are some very simple facts why.

I have already talked about the industry itself moving rapidly in a voluntary way toward compliance. Clearly, the bill has been improved by the Senator from Wisconsin, but let me suggest this to all of us because I think we understand it in rather simple terms. The home is a private place and for the first time the long arm of Government will reach into the private place and suggest to the average American how they will store an object in that private place.

I am not arguing about the care, the emotion, the concern, and the reality, not that at all. I understand that. But I do not believe that Government ought to be telling the average citizen how they store objects within their home.

We are hearing about the tragedies of children losing their life by the misuse of a firearm. I think the Senator from Wisconsin mentioned suicides. My guess is, trigger locks do nothing to suicides. The great tragedy of a suicide is that a teenager thinks it out, and if they think it out they are probably going to find the key to the trigger lock or they will know where it is as a teenager and that will not stop that tragedy. That is an emotional situation that none of us quite understand sometimes why teenagers resort to that kind of action and violence.

I will talk about the home environment and what is going on in the home environment. Since 1930, accidental deaths by firearms in the home have declined 62 percent. Firearms are now involved in only 1.5 percent of accidental fatalities nationwide within the home. Here is the tragedy: Deaths caused to children by motor vehicle accidents is 47 percent; a child falling down in the home, deaths 15 percent; poisoning, 10 percent; drowning, 4 percent; fire, 8 percent; suffocation on small objects going down the throat of a small child, 3 percent. More children suffocate by an object lodging in their throat than by finding an improperly stored handgun. Now, those are the facts, as we know them. Those facts

come from the National Safety Council, the National Center for Health Statistics.

Again, I do not dispute the emotion or the concern or the care that the Senator from California has on this issue, but I do dispute the right of the Federal Government to enter the home and tell the average citizen they have to comply with mandatory storage laws that exist with penalties. I believe that is unnecessary in a free society.

I believe safety and responsibility is always necessary, and the industry is rapidly moving in that direction. Ninety percent are in compliance with the fundamental principles of the law itself.

This is the thing that concerns me most: Most States already provide penalties for reckless endangerment under which an adult found grossly negligent in the storage of a firearm under certain circumstances can be prosecuted for a felony offense. Universal mandatory storage requirements are counterproductive. That is going at the individual, instead of allowing the long arm of the law to come into the home. Clearly, that is the way it ought to be.

We know that no one-size-fits-all requirement can possibly meet the needs of all gun owners, and that is what is being suggested. We have already seen the industry involve science and technology to try to deal with this issue, and they are trying to develop those kinds of standards that work.

I have already mentioned that the National Safety Council tested 32 types of gunlocks and found that 30 of them could be opened without a key. While the industry is rushing to get there, what we are needing, and the industry is now doing it, is standardization.

In any emergency, and now we are talking about oftentimes why a gun is in a home, a trigger lock can handicap a person who needs a gun for protection. While the industry is trying to make them applicable so they can be accessed within seconds or minutes in case the burglar is breaking into the home, the reality is that if the gun is locked away in a safe it is ineffective as a use for personal protection in an unsafe environment. Those are the kinds of concerns I think all of us have as we talk about these kinds of issues and as we tick away at the right of the private gun owner to manage what I believe is a constitutional right in this country.

I will give a little bit of history and then I will close. In 1936, British police began adding the following requirements for firearms certificates: Firearms and ammunition to which this certificate relates must at all times, when not in actual use, be stored in safe and secure places. That was 1936. What has transpired in British law until today is that if one wants to own a gun and they get a certificate to own a gun, the British police come into their home and ask where they are going to store it. They look at where it is going to be stored and if the gun owner does not have a lockbox or if they do not have a safe, they do not own a gun.

Will that ever happen in this country? I would hope not. I hope Americans would rebel about the reality of the police entering their home to tell them what to do as it relates to storing an object in the home, especially an object that we believe is a constitutional right. That is the issue at hand.

Again, I am not going to argue with the reason or the logic that the Senator from California has expressed. States are moving now, and I think in some ways responsibly, to encourage, educate, and train. The industry is moving in that direction. To establish a Federal requirement that says this is the way one is going to do it in their home—I believe in a fundamental right of privacy—this is a breach of that right and an entry into the home with the long arm of Federal law. I do not think we ought to go there.

I hope Senators will join with me in opposing this amendment as amended by the KOHL amendment. I am prepared to yield back the remainder of my time in relation to a vote on this issue.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, on this amendment all time has been used. I ask the good offices of my friend from Idaho to allow the Senator from California 1 minute to respond to the statements of the Senator from Idaho.

Mr. CRAIG. I accept that if I have an additional 1 minute to close after the Senator from California.

Mr. REID. I ask unanimous consent that the request be so modified.

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

Mr. CRAIG. Following that, I would like a moment for a quorum call.

Mr. REID. Madam President, that is fine. I would indicate that following however long the quorum takes, we would vote on the Boxer amendment as amended by KOHL. Then I would alert everyone that we would then have a period of time for up to 1 hour, that Senator CAMPBELL—at least the way I understand the order now before the Senate—would have up to an hour on his amendment. Senator KENNEDY would follow with an hour on his amendment. Then two 2 hours would, of course, have gone by. Senator FRIST has the opportunity to offer an amendment. We do not know if he will at the time.

My point being on those two amendments, the Campbell and Kennedy amendments, there will be no votes until Tuesday. But that is a significant amount of time. Following that, CANTWELL has 60 minutes. So this afternoon we should have a lot of debate with no votes in the immediate future. I would simply ask that those Senators be ready to go as soon as the vote is completed on this matter.

Mr. CRAIG. I thank the Senator for that. I yield the floor to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I appreciate my friend yielding.

I think this argument has now been joined. The argument Senator CRAIG makes against this amendment, to me, is just off point. This bill is not a mandatory storage law. This has nothing to do with a mandatory storage law. The fact is we have passed this before, 78 to 20. We are not saying you have to have storage. We are saying that when you go to buy a handgun, it has some type of device on it. We don't mandate what that device is. We say it could be one of five or six different things. There will be standards set. It is not one-size-fits-all. It is not a mandatory storage law.

I agree with my friend, if the gun manufacturers do this on their own, that is great. But as we have learned from the SAFE KIDS Campaign, not all of them are doing it. Some of them are and some of our kids are exposed.

I have two quick further points to make.

The PRESIDING OFFICER (Mr. ENSIGN). The time of the Senator has expired.

Mrs. BOXER. I ask for an additional minute and give my friend 2 additional minutes.

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

Mrs. BOXER. Let me make this point. When my friend compares an accidental shooting with a gun resulting in a death to a suicide, I would say that is quite different, because in the tragedy of suicide, although my friend is quite right, we do try on some of our bridges to build barriers, but if there is an intent, although we do our best, we often fail. But a 3-year-old or 5-year-old child picking up a gun really doesn't know someone is going to die. So it is up to us to make sure we do our best. That is all; we do our best.

My last point. There are standards for aspirin caps, cribs, Play-Doh, Teddy bears, pajamas. There ought to be a standard for a safety lock on a gun. I don't think we do violence to freedom in any way.

I wish my friend were with me on this, but if not, I hope we can repeat the vote we had last time; 78 to 20 sounds really good. I hope we can do that again.

I yield the floor.

Mr. CRAIG. Mr. President, I will be brief. I don't question the sincerity of the Senator from California. I recognize what she is attempting to do.

The industry is rushing. It is at near 90 percent compliance today. We want firearms to be as safe as possible in this country.

Let me close with this. Firearms are involved in 1.5 percent of the accidents within a home that involve a child; motor vehicles and children: 47 percent of the deaths of young children are caused by motor vehicles; falling, 15 percent; poisoning, 10 percent; drowning, 4 percent; fire, 3 percent; objects ingested and lodged in the throat in which they suffocate, 3 percent.

As tragic as all of this is, it is a very small number. We are now working aggressively to resolve that. The industry has developed standards. I don't believe these penalties are necessary. I don't believe this approach of uniformity and Federal mandate is necessary. I ask my colleagues to oppose this amendment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the majority leader has indicated it, and the minority is happy to go forward with a vote at this time.

I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 2620, as amended. The clerk will call the roll.

The senior journal clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea''.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 70, nays 27, as follows:

[Rollcall Vote No. 17 Leg.]

YEAS—70

Akaka	Dorgan	McCain
Baucus	Durbin	McConnell
Bayh	Feingold	Mikulski
Bennett	Feinstein	Murkowski
Biden	Fitzgerald	Murray
Bingaman	Frist	Nelson (FL)
Boxer	Graham (FL)	Nelson (NE)
Breaux	Grassley	Pryor
Brownback	Gregg	Reed
Byrd	Hagel	Reid
Cantwell	Harkin	Roberts
Carper	Hollings	Rockefeller
Chafee	Hutchison	Santorum
Clinton	Inouye	Sarbanes
Cochran	Jeffords	Schumer
Coleman	Kennedy	Smith
Collins	Kohl	Snowe
Conrad	Landrieu	Stabenow
Corzine	Lautenberg	Stevens
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lieberman	Wyden
Dodd	Lincoln	
Domenici	Lugar	

NAYS—27

Alexander	Crapo	Lott
Allard	Dole	Miller
Allen	Ensign	Nickles
Bond	Enzi	Sessions
Bunning	Graham (SC)	Shelby
Burns	Hatch	Specter
Chambliss	Inhofe	Sununu
Cornyn	Johnson	Talent
Craig	Kyl	Thomas

NOT VOTING—3

Campbell	Edwards	Kerry

The amendment (No. 2620), as amended, was agreed to.

Mr. CRAIG. I move to reconsider the vote.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRAIG. Mr. President, we have the Campbell concealed-carry bill. We are minutes away from being ready to offer that so I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant Journal clerk proceeded to call the roll.

Mr. LEAHY. 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. LEAHY. Mr. President, I ask my friend from Idaho, did he say the Campbell-Leahy concealed-carry bill is the next in line?

Mr. CRAIG. I believe that.

Mr. LEAHY. Then I will stay here.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. May I inquire of the managers of the bill, if there are a few minutes before you get to this, I would like to take a few minutes and speak on the underlying bill.

Mr. CRAIG. Yes. I see no reason why the Senator could not speak. How long does the Senator intend to speak?

Mr. DODD. I see my colleague from Massachusetts. Ten minutes.

Mr. KENNEDY. Mr. President, I am trying to find out how we are going to proceed. I have seen the agreement. I am just trying to understand the order. We have the concealed weapons amendment and then the cop killer bullets. I thought we had a time limit on those. I am trying to find out.

Mr. REID. Will the Senator yield?

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the order now before the Senate indicates the next amendment is the Campbell-Leahy amendment. That is 60 minutes. The time, of course, is in the usual form. Following that is the Kennedy cop killer bullets amendment. Following that is the Cantwell amendment and maybe somebody else in between. That is where we are. I do not see Senator CAMPBELL on the floor.

Mr. KENNEDY. I understand we will have an hour. It will be an hour equally divided. I will have 30 minutes. I would be glad to yield 10 minutes to the Senator from Connecticut so he can make his comments, and we can move the process along. If it is agreeable with the managers, that is certainly agreeable with me.

The PRESIDING OFFICER. The Senator from Connecticut has the floor.

Mr. REID. I would ask that Senator DODD be allowed 10 minutes from Senator KENNEDY's time on the amendment that will soon be offered.

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

Mr. DODD. I will yield for purposes of having the amendment proposed.

Mr. HATCH. Well, let me go first.

Mr. DODD. Are you going to take 30 minutes? I would like to be able to be heard.

Mr. HATCH. No.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 2623

Mr. HATCH. Mr. President, I send an amendment to the desk on behalf of Senators CAMPBELL, LEAHY, HATCH, DEWINE, SESSIONS, and CRAIG, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant Journal clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself, Mr. CAMPBELL, Mr. LEAHY, Mr. DEWINE, Mr. SESSIONS, and Mr. CRAIG, proposes an amendment numbered 2623.

The amendment is as follows:

(Purpose: To amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns)

On page 11, after line 19, add the following:

SEC. 5. LAW ENFORCEMENT OFFICERS SAFETY ACT.

(a) SHORT TITLE.—This section may be cited as the ''Steve Young Law Enforcement Officers Safety Act of 2004''.

(b) EXEMPTION OF QUALIFIED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.—

(1) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926A the following:

''§ 926B. Carrying of concealed firearms by qualified law enforcement officers

''(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

''(b) This section shall not be construed to supersede or limit the laws of any State that—

''(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

''(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

''(c) As used in this section, the term 'qualified law enforcement officer' means an employee of a governmental agency who—

''(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;

''(2) is authorized by the agency to carry a firearm;

''(3) is not the subject of any disciplinary action by the agency;

''(4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm; and

''(5) is not prohibited by Federal law from receiving a firearm.

''(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is, or was, employed as a law enforcement officer.

''(e) DEFINED TERM.—As used in this section, the term 'firearm' does not include—

''(1) any machinegun (as defined in section 5845 of title 26);

''(2) any firearm silencer (as defined in section 921); and

''(3) any destructive device (as defined in section 921).''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 44 of title 18, United States Code, is amended by inserting after the item relating to section 926A the following:

''926B. Carrying of concealed firearms by qualified law enforcement officers.''.

(c) EXEMPTION OF QUALIFIED RETIRED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.—

(1) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926B, as added by subsection (b), the following:

''§ 926C. Carrying of concealed firearms by qualified retired law enforcement officers

''(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

''(b) This section shall not be construed to supersede or limit the laws of any State that—

''(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

''(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

''(c) As used in this section, the term 'qualified retired law enforcement officer' means an individual who—

''(1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

''(2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

''(3)(A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or

''(B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

''(4) has a nonforfeitable right to benefits under the retirement plan of the agency;

''(5) during the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms; and

''(6) is not prohibited by Federal law from receiving a firearm.

''(d) The identification required by this subsection is photographic identification issued by the agency for which the individual was employed as a law enforcement officer.

''(e) DEFINED TERM.—As used in this section, the term 'firearm' does not include—

''(1) any machinegun (as defined in section 5845 of title 26);

''(2) any firearm silencer (as defined in section 921); and

''(3) a destructive device (as defined in section 921).''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 44 of title 18, United States Code, is amended by inserting after the item relating to section 926B the following:

''926C. Carrying of concealed firearms by qualified retired law enforcement officers.''.

Mr. HATCH. Mr. President, let's see if my colleague from Connecticut can agree to this. I intend to take a few minutes to define the bill. I have promised Senator DEWINE, I think he only has about 3 or 4 minutes.

Mr. DODD. If I may proceed and then finish in a few minutes.

Mr. HATCH. I will say my statement in a very few minutes. Then I ask unanimous consent that we go to the distinguished Senator from Connecticut and then——

Mr. DODD. I think I still have the floor.

The PRESIDING OFFICER. The Senator from Nevada had the floor and relinquished the floor. Now the Senator from Utah has the floor. There was a unanimous consent request that was agreed to when the Senator from Connecticut was yielded 10 minutes from Senator KENNEDY's time, but then the Senator from Utah sent up an amendment and reclaimed the floor. The Senator from Utah has the floor.

Mr. HATCH. I will be short. I ask unanimous consent that the distinguished Senator from Connecticut be recognized pursuant to Senator KENNEDY's granting of time and immediately thereafter the Senator from Ohio be recognized.

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

Mr. HATCH. Today I rise and join Senators CAMPBELL, LEAHY, REID, and others I have named on this bill to offer it as an amendment to S. 1805, the Law Enforcement Officers Safety Act of 2003, which was favorably reported out of the Judiciary Committee with strong bipartisan support last session.

This amendment, which permits qualified current and retired law enforcement officers to carry a concealed firearm in any jurisdiction, will help protect the American public, our Nation's officers, and their families. I would note this bill has the overwhelming support of the Fraternal Order of Police and other law enforcement associations which have vigorously worked in support of this measure.

This amendment allows qualified law enforcement officers and retired officers to carry, with appropriate identification, a concealed firearm that has been shipped or transported in interstate or foreign commerce regardless of State or local laws.

Importantly, this legislation does not supersede any State law that permits private persons to prohibit or restrict possession of firearms on any State or local government properties, installations, buildings, bases, or parks. Additionally, this amendment clearly defines what is meant by ''qualified law enforcement officer'' and ''qualified retired or former law enforcement officer'' to ensure those individuals permitted to carry concealed firearms are highly trained professionals.

This amendment will not only provide law enforcement officers with the legal means to protect themselves and their families when they travel interstate, it will also enhance the security of the American public, which is long overdue.

By enabling qualified active duty and retired law enforcement officers to carry firearms, even if off duty, more trained law enforcement officers will be on the street to enforce the law and to respond to any crises that may arise.

I urge my colleagues to vote in favor of this amendment because passage of this important legislation will provide that extra layer of protection to current and retired law enforcement officers, their families, and the public that we so desperately need.

Mr. President, I appreciate the cosponsors on this bill, which includes Senator REID. I ask unanimous consent that Senator REID be added as a cosponsor.

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

Mr. HATCH. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I thank the Chair. Mr. President, I thank my colleagues, Senator HATCH and Senator KENNEDY, for being very gracious in providing me a few minutes to address the underlying bill. I know we are going to debate the amendment on concealed weapons, but I wish to share with my colleagues my views on this legislation.

I cannot see any amendment that can be offered to this legislation that is going to convince this Senator that the underlying bill deserves support. I am stunned, in many ways, that we are even suggesting this legislation. I can only imagine what the reaction would be if I were to come to the Chamber and offer a similar amendment that would exclude any other industry in the country from the exposure of potential liability for wrongdoing.

In my State, I represent more gun manufacturers than any other Member of this body. I also represent probably more insurance companies and more pharmaceutical companies in the State of Connecticut than almost any other State in the country. As strongly as I support the people who work in these businesses and respect what they do, the idea that we would take an entire industry and remove it from the potential of liability is rather breathtaking to me in this day and age.

I am a great advocate of tort reform, as many of my colleagues know. I authored the securities litigation reform bill and wrote the uniform standards litigation bill. I am now working on class action reform. But the idea that we would take an entire industry and give it immunity from wrongdoing, I think, is rather stunning to this Member.

I wish to share with my colleagues some general thoughts. I know there are amendments going to be offered on assault weapons and a variety of other proposals, but I want to put my colleagues on notice. I do not think we can offer any amendment to this bill that will outweigh the harm done by the underlying proposal and the precedent we are setting in this body. We are taking an industry and saying: No matter what you do, no matter how much harm you may cause, you never have to worry about being held liable and accountable for your actions. In this day and age, that this body would so overwhelmingly endorse an idea such as this is breathtaking.

I wish to take a few minutes to say why it is so outrageous. I want to add, with all the matters we should be addressing with the limited time in this session, with the thousands of people losing their jobs today, we have nothing to say about outsourcing. When we have 44 million Americans without health insurance, we have nothing to say about those issues. We are drowning in budget deficits and trade deficits. We have the worst job deficit since the Great Depression. Poverty is increasing, and this Chamber has nothing to say on those issues except we are now going to take one group of manufacturers and say: Don't worry about anything, you don't have to ever be held accountable for your wrongdoing.

This legislation, in my view, is bad policy for a number of reasons. First, it will have absolutely no impact whatsoever on reducing the rate of gun violence in our Nation. In fact, this bill ignores the devastating toll firearm violence continues to have on the country.

According to the Centers for Disease Control and Prevention, there were nearly 29,000 deaths in the United States from firearms in the year 2001 alone—29,000 deaths. That is, of course, 10 times the number of lives that were tragically lost on September 11 at the World Trade Center, here in Washington, and in Pennsylvania. In fact, one year of gun violence in America nearly equals the number of Americans who died in the Korean war and almost half the Americans lost in the entire Vietnam conflict.

The numbers are staggering. These numbers exceed by a huge margin the number of firearm-related deaths on a per-capita basis in countries such as Canada, the United Kingdom, Germany, Japan, and France.

Among those individuals most affected by gun violence are children. It is not just an incident such as the Columbine High School massacre in 1999 or inner-city neighborhood shootings that should make us realize that children are among the most vulnerable to gun violence. Children are also killed or injured by firearms because their parents did not store their guns properly, and the kids used them for horseplay.

It is no coincidence then that firearms are the second leading death among young Americans ages 19 and under. Approximately 2,700 children under the age of 19 are killed each year as a result of gun violence or improper use of guns.

The rate of firearm deaths of children under the age of 14 is already 12 times higher in the United States than in 25 other industrialized nations combined. Let me repeat that. The firearm death rates of children under the age of 14 is 12 times higher in the United States than in 25 other industrialized nations combined.

We are about to exclude an entire industry from even being brought to the bar to question whether or not they might be liable. One study noted the firearm injury epidemic among children is nearly 10 times larger than the polio epidemic in the first half of the 20th century.

The human cost of gun-related deaths and injuries is tragic in itself, but the economic loss is also significant. According to a study published in 2000, the average costs of treating gunshot wounds were $22,000 for each unintentional shooting and $18,400 for each gun assault injuries. These costs would undoubtedly be much higher today.

Total societal cost of firearms is estimated to be between $100 billion and $126 billion per year. Who pays these expenses? By and large the American taxpayers do.

My colleagues speak against unfunded mandates, and yet this bill, if enacted, burdens the Nation's cities and counties with billions and billions of dollars in medical care, emergency services, police protections, courts, prisons, and school security. It is shameful that while tens of thousands of people are dying each year due to firearms, and while the American taxpayers pay tens of billions of dollars to cope with the effect of gun violence, the United States Senate is doing absolutely nothing to make our streets and homes safer. In fact, we are doing quite the opposite by our actions today.

Second, the legislation will give this industry special legal protections that no other industry in the United States has. Neither cigarette companies nor asbestos companies nor polluters have such sweeping immunity as we are about to give this industry. In fact, gun manufacturers and sellers are already exempt from Federal Consumer Product Safety Commission regulation, despite the fact firearms are among the most dangerous and deadly products in society. We have more regulations on toy guns than we do on the ones that fire real bullets.

Imagine that, a toy gun that you buy from Mattel, the Consumer Product Safety Commission issues literally pages of regulations on what must be included in the production of that toy gun. There is not a single word in the Consumer Product Safety Commission about the production of a gun that may kill 29,000 people each year in this country. The National Rifle Association made sure of this exemption 30 years ago, just as highly addictive tobacco products are not subject to regulation by the Food and Drug Administration.

I have supported tort reform in specific areas where I believe it is appropriate. My colleagues know that. At the same time, I recognize that litigation has been a powerful tool in holding parties accountable for their negligence and providing them with incentive to improve the safety of their products.

It has been employed on behalf of other potentially dangerous products, such as cars, lawnmowers, household products, and medicines, to protect the health of the American people. The fact that guns are already specifically exempt from the oversight of the Consumer Product Safety Commission is reason enough, in my view, why we cannot afford to grant the firearm industry legal immunity.

If this legislation is enacted, and I know it will be given the number of cosponsors and how this bill is sweeping through the Congress, would it remove any incentive under current products liability law for gun manufacturers to make their firearms safer? Studies have shown that the technology is both readily available and very inexpensive to install in order to help avoid future gun-related tragedies.

For example, a load indicator could be included to tell the user that the gun is still loaded. That is never going to happen now, I promise. A magazine disconnect safety could be installed by the manufacturers to prevent guns from firing if the magazine is removed. Even child proofing the gun with safety locks can be done relatively easily. However this bill is enacted into law, gun manufacturers will lose a huge incentive to include such reasonable safety devices in their products.

I know I am going to hear shortly, well, we just adopted a gun safety lock amendment. We did that a few years ago as well. What happened to it? It got dumped. That is what happened. Do not have any illusion about these amendments being adopted. My colleagues have been around long enough to know what is going to happen. When this bill leaves the Senate and goes down the hall to the other Chamber all of these nice provisions that are included will be dropped, just as they have been in the past.

Third, this legislation would close the courthouse door on our Nation's mayors, gun victims, and law enforcement officers who are seeking to hold the gun industry accountable for their negligent conduct. Just last week, Los Angeles Police Chief William Bratton and over 80 other prominent law enforcement leaders from 26 States sent a letter to the Senate opposing the legislation.

The chiefs warned that passage of the immunity legislation would result in more illegal gun running and deter efforts to develop child-resistant guns. In the words of Chief Bratton:

The passage of this bill would deliver a devastating blow to justice. The NRA and Congress need to understand that special interest groups cannot come before public safety. Gun stores and manufacturers must be held to the same standards of safety as any other industry. And if they fail to act responsibly, they must pay the price.

Evidence has been uncovered which reveals that the gun industry has been engaged in irresponsible behavior for many years. Senator REED and others have already mentioned one such industry actor: Bull's Eye Shooter Supply in Tacoma, WA. This gun store claims that it ''lost'' the gun used by the Washington, DC snipers John Muhammed and Lee Boyd Malvo as well as more than 200 other guns. Many of these firearms were later traced to other crimes.

In fact, Bull's Eye Shooter Supply had no record of the gun ever being sold and did not report it until after the Bureau of Alcohol, Tobacco, and Firearms recovered the weapon and traced it back to the store.

Even after the rifle was linked to the sniper shootings and the newspapers reported on the disappearance of the guns from Bull's Eye, the rifle's manufacturer, Bushmaster Firearms, declared that it still considered Bull's Eye a ''good customer'' and was happy to keep selling to the shop. The judge in this case has since ruled twice that the suit brought by the families of the DC-area sniper victims against both Bushmaster Firearms and Bull's Eye Shooter Supply should proceed to trial, and a preliminary appeal of these rulings has been rejected.

Nevertheless, this case as well as other important pending and future lawsuits against negligent gun dealers and manufacturers would be banned under the Senate bill, according to the opinion of two of the Nation's most prominent attorneys, David Boies and Lloyd Cutler.

There are many other instances of the gun industry not taking steps to prevent guns from reaching the illegal market. According to Federal data from 2000, 1.2 percent of dealers account for 57 percent of all guns recovered in criminal investigations.

Undercover sting operations in Illinois, Michigan, and Indiana have found that such dealers routinely permit gun sales to ''straw purchasers,'' that is, individuals with clean records who buy guns for criminals, juveniles, or other individuals barred by law from purchasing them. Again, if the Senate bill is enacted, police officers shot by a gun bought by a straw purchaser would no longer get his day in court.

Gun shows are also an important source of guns for criminals. I am pleased to join my colleagues Senators MCCAIN and REED in co-sponsoring legislation to close the gun show loophole in the Brady Act. Studies have shown that unlicensed dealers often sell large quantities of guns at these shows without having to run criminal background checks or keeping records.

Many of my colleagues might recall that a gun show was the source of the firearm purchased Eric Harris and Dylan Klebold before they went on their murderous rampage at Columbine High School. But again, the Senate bill will not hold such negligent gun sellers responsible for the injuries and deaths their firearms cause.

Supporters of this legislation contend that there is a gun litigation crisis in America, and that many of the cases being brought against the gun industry are frivolous. Nothing could be further from the truth. In fact, there are no massive backlogs of claims against gun dealers and manufacturers burdening the court system, as with the asbestos litigation. Only 33 municipalities and one State, New York, have filed suits against gun makers. Not one of these cases has been dismissed as being frivolous.

In fact, 18 cities and counties have won favorable rulings on the legal merits of their cases. These courts have recognized that such cases are based upon well-established legal principles as negligence, product liability, and public nuisance. Important information on the gun industry's wrongful actions, which has long been cloaked in secrecy for many years, is being revealed during the discovery process. These cases, however, will be precluded, and the information gleaned from them will be lost, if the gun industry is granted the immunity it seeks.

This legislation is the wrong way for the Senate to proceed on gun violence. Rather than giving special immunity to those manufacturers and dealers who wrongfully make and sell guns to criminals, the Senate should be working to protect our police officers and the people they protect.

Rather than placing more guns on the streets, the Senate should be considering more responsible guns legislation, such as making the ban on assault weapons permanent and closing the gun show loophole. I am hopeful that the Senate will have a full and comprehensive debate on these important issues in the coming days.

Rather than encouraging reasonable and safe gun use, the Senate is destroying any incentive for gun manufacturers to improve the safety of their deadly wares.

The Senate wisely defeated a cloture motion on the motion to proceed to the medical malpractice bill. It should now tell the gun industry that they need to be held accountable for their deeds as is the case for every other industry in America so I urge my colleagues to oppose this legislation.

I have great respect for my colleagues, but there is no amendment that is going to be adopted in this Chamber that is going to make this ugly legislation any better. I do not care how much lipstick is put on this one, this is an unattractive bill by any measure, and I am going to vote against it no matter what. What we are doing is outrageous. As the Senator who represents more of these manufacturers than any other Member in this body, I can say this is flat out wrong and we ought to be ashamed of ourselves for taking an entire industry and not holding it potentially liable for the harm that it causes to people across this country. Thirty thousand people die every year, almost 3,000 kids, and we are about to say to the manufacturer of the products that kill them to take a walk and that you never have to show up again in court. That is incredible to me that we are about to do that.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Idaho.

Mr. CRAIG. Mr. President, before I turn the time over to the Senator from Ohio, let me only say to the Senator from Connecticut, go back and read section 4 of the bill.

He is a very eloquent Senator, but at the same time this is a very narrow provision. It says if that manufacturer in a State or if a licensed gun dealer violates the law, they are in trouble. You bet we make it to the courthouse. We make it in front of the judge and the judge hears the arguments.

Let me also refer to one of the Senator's concerned constituents, the president of Local 376 of the UAW, who has lost over 600 jobs in the Savage Arms Factory because they have had to spend millions of dollars defending themselves on frivolous lawsuits. So that is a problem.

Mr. DODD. If my colleague will yield.

Mr. CRAIG. I will not yield. To a question, I will respond.

Mr. DODD. The Senator raised my name. I did not talk about the Senator from Idaho. The Senator used my name. May I respond?

Mr. CRAIG. No.

The PRESIDING OFFICER. The Senator from Idaho has the floor.

Mr. CRAIG. I have the floor. I would be happy to provide the letter to the Senator. I referred to the Senator as an eloquent spokesman and I ask the Senator to read section 4 of the bill.

I now yield 10 minutes to the Senator from Ohio who is a cosponsor of this legislation.

Mr. KENNEDY. I would be happy to yield another minute to the Senator from Connecticut so he may respond.

Mr. CRAIG. I have the floor and I have already yielded.

The PRESIDING OFFICER. The manager of the bill cannot yield the floor to another Senator. The Senator has the right——

Mr. CRAIG. I allocated him time.

The PRESIDING OFFICER. The Senator can allocate time. Other Senators have the right to compete for recognition, but the Senator cannot automatically give him the right for recognition.

Several Senators addressed the Chair.

Mr. CRAIG. Mr. President, I yield 1 minute to the Senator from Connecticut from my time. I do not want

him to feel I have impugned his good name in any sense.

The PRESIDING OFFICER. The Senator can yield and he can compete for recognition.

The Senator from Connecticut.

Mr. DODD. Mr. President, I will take less than a minute to say something about losing jobs. I have lost 45,000 manufacturing jobs in my State over the last few months. It has nothing to do with this. It has to do with the fact that this administration has decided that manufacturing jobs are producing hamburgers at McDonald's, and believe that outsourcing is a great thing for the country. That is where my jobs are going, not because of litigation.

There have been 33 lawsuits by counties or communities and one by a State brought against the gun manufacturers. None of them have ever gone anywhere. What are we doing? Tell me there is some great problem out here in litigation with my companies losing lawsuits all across the country.

We are a nation of 280 million people. Thirty-three lawsuits by counties, one by a State. The manufacturers never lost one. Why are we changing the law? Why, when 30,000 people die every year, 3,000 kids, why are we changing the law? There is no justification in fact or in law to be doing this.

The PRESIDING OFFICER. The Senator from Idaho has the floor.

Mr. CRAIG. Mr. President, it is my understanding that I can now yield a block of time.

The PRESIDING OFFICER. That is correct.

Mr. CRAIG. I yield 10 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, parliamentary inquiry: Is there a unanimous consent agreement on time?

The PRESIDING OFFICER. To the Senator's question, the time is allocated to both sides. Senator KENNEDY is controlling the time for the minority and Senator CRAIG is controlling the time for the majority. There are 18 minutes 59 seconds remaining under the control of Senator KENNEDY.

Mr. BIDEN. Mr. President, ask the indulgence of my colleague from Ohio, who I guess has the floor now, would he yield me 30 seconds?

Mr. DEWINE. Certainly.

Mr. BIDEN. Mr. President, I associate myself with the remarks of my friend from Connecticut. This is about the raw exercise of political power. I do not know how many times in my 31 years I have ever heard a Senator stand up on the floor when he represents the greatest number of constituents affected by a bill, who are major players in his State, and say he disagrees with their position. We are missing an awful lot of that.

I acknowledge that this man has some political courage. We all would do a lot better if there were a lot more of it to go around.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I thank my colleague from Idaho and my colleague from Colorado for agreeing to change the name of this amendment from the Law Enforcement Officers Safety Act to the Steve Young Law Enforcement Officers Safety Act.

This name has particular meaning to me. I believe the renaming of this provision is a fitting tribute to a man who dedicated his life to keeping our community safe and free from crime.

Steve Young was a dear friend of mine from the State of Ohio. He was also a well-known and well-respected figure in the law enforcement community. Steve was elected by his peers to serve as the national president of the Fraternal Order of Police and held this post until his death from cancer on January 9, 2003. Steve was just 49 years of age at his death.

Steve grew up in Upper Sandusky, OH, and was a graduate of Upper Sandusky High School. He joined the Marion City Police Department in 1976 and spent his entire law enforcement career as an active-duty officer there. It was in Marion that Steve first became a member of the FOP, joining FOP lodge No. 24. He later went on to serve as president of this lodge in the year 2000. He received the prestigious lifetime honor of president emeritus.

Leadership in the law enforcement community came naturally to Steve, as his hard work and dedication earned him the respect and admiration of his peers. Steve went on to become active in the Ohio State lodge of the FOP and served first as vice president and then as president, representing Ohio's 24,000 law enforcement officers. Through the Ohio State lodge, Steve helped to create the Ohio Labor Council. This council created a model for improved labor-management negotiation in police forces, a model that has now been adopted in at least 14 other States.

Steve's leadership in the Ohio law enforcement community and really his expertise in labor issues earned him a national reputation.

In 2001, after serving for 4 years as national vice president, Steve was unanimously elected to serve as the national president of the FOP. In this capacity, Steve represented over 300,000 law enforcement officers and worked to protect their interests, the interests of our Nation's finest. This was a job I know Steve loved and one he did with great dignity and pride.

While Steve Young had an incredibly successful career with multiple accomplishments, I would also like to take a few moments to discuss my personal connection with Steve. I had the privilege of knowing not just Steve Young the police officer but also Steve Young the man. Steve was, as I said, a dear friend of mine for many years. He was someone in whom I had a great deal of trust, and was fortunate to be able to call on him as a trusted adviser. I can't tell Members of the Senate and you, Mr. President, how often I would call him for advice, whether it was when I was Lieutenant Governor of Ohio or later when I was a Senator.

I had the opportunity to work with Steve for many, many years. I relied heavily on his advice and his counsel. I consulted with him regularly on criminal justice matters, and his keen insights have helped shape nearly every piece of crime legislation with which I have been involved.

Steve made a lasting impression on law enforcement, both in Ohio and across our Nation. From pension plans to crime fighting technology, Steve's foresight and his vision have helped bring law enforcement into this century.

One of the last times I saw Steve he was in Washington for a Judiciary Committee hearing. I am fortunate that I had a chance to spend a few moments with him that day. It is that meeting that reminded me of Steve's humility. He was a humble man. He had no airs about him. He was quiet and self-effacing. He didn't put on a show or try to impress people with his position or his power within the national FOP.

But you know, at the same time, his affable nature did not hide the fact that Steve Young was also a very strong man: brave, courageous, fearless, and tough as nails. After all, he was a policeman, and exactly the kind of policeman I would have wanted by my side when I was a county prosecutor many years ago, the kind of policeman I would have wanted helping me if I were a victim of crime, the kind of policeman I would have wanted protecting my children or grandchildren or any member of my family. That was Steve Young—a model for all law enforcement.

He was a humble, dedicated man who devoted his career to working for the good of his fellow officers, for the good of Ohio, for the good of this Nation. Steve's commitment to our communities was evident in everything he did. Criminals were caught because of him and crimes were prevented. He was a protector. He was a leader. He was a good and decent, hard-working man for whom I have the greatest respect and admiration.

It is fitting that this amendment now is named after Steve Young.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Who yields time? The Senator from Idaho.

Mr. CRAIG. Mr. President, I yield 5 minutes to the Senator from Vermont.

The PRESIDING OFFICER. Senator LEAHY is recognized for 5 minutes.

Mr. LEAHY. Mr. President, I thank the managing Senator.

I listened to what the distinguished Senator from Ohio said about Steve Young. I thought it was eloquent, well put, and I wish to join in those comments. I consider myself very fortunate to have known Steve. I thought how important it was that we change the

short title of this amendment to ''The Steve Young Law Enforcement Officers Safety Act.'' I remember even talking with Steve a number of times after he was ill and could no longer travel. Through all of that time, he, in typical fashion, spoke about others and not about himself.

I began my public career in law enforcement. To this day, the only thing in my personal Senate office that has my name on it is the plaque the police gave me when I left that career in law enforcement to become a Senator. It is a plaque on the door to my office with my name and above it is the badge I carried as a law enforcement official.

One thing I knew during my time in law enforcement, the law enforcement officers are never off duty. They are dedicated public servants, trained to uphold the law and keep the peace. To enable law enforcement officers nationwide to be prepared to answer a call to duty no matter where, when, or in what form it comes, I am proud to join Senators CAMPBELL, HATCH, and HARRY REID to offer the Law Enforcement Officers Safety Act, S. 253, as it was reported out of the Senate Judiciary Committee, as an amendment to the Protection of Lawful Commerce in Arms Act. People understand our amendment would permit off-duty and retired law enforcement officers to carry a firearm provided they have demonstrated their ability, provided they follow some very strict requirements, and be prepared to assist in dangerous situations.

This passed the Judiciary Committee by a vote of 18 to 1. It had 68 cosponsors, both Republicans and Democrats, and was strongly supported by the Fraternal Order of Police, the National Association of Police Organizations, the Federal Law Enforcement Officers Association, the International Brotherhood of Police Officers, and the Law Enforcement Alliance of America.

I worked with LT Steve Young on this. It was one of the things he and I talked about before he died. He was dedicated to it. He knew the importance of having law enforcement officers across the Nation armed and prepared, whenever and wherever a risk to our public safety arose. The current national president, MAJ Chuck Canterbury, worked with me and others to make this legislation law.

We know where community policing and the outstanding work of so many law enforcement officers have helped a great deal in our crime control efforts. But during the last few years, the downward trend in violent crime ended and violent crime rates have turned upward.

We also know that more than 740,000 sworn law enforcement officers are currently serving in the United States. Since the first recorded police death in 1792, there have been more than 17,000 law enforcement officers killed in the line of duty—17,000. In the last decade, over 1,700 officers died in the line of duty—170 every year.

I think of a very sad funeral I went to in Vermont last summer. The trooper's family was left behind—young children, his widow. Roughly 5 percent of officers who die are killed when taking law enforcement action in an off-duty capacity, and more than 62,000 law enforcement officers are assaulted annually.

Convicted criminals often have long and exacting memories. I still have people come up to me and tell me they remember that I put them in prison. This happens to a lot of law enforcement officials. That law enforcement officer, the one who arrested the person who went to prison, is a target in uniform and out, active, retired, off-duty or on-duty.

So what we tried to do by bringing together Republicans and Democrats, Liberals, moderates, conservatives, is to put together an amendment designed to establish national measures of uniformity and consistency to permit trained and certified—and I underline that certified—on- and off-duty law enforcement officers to carry concealed firearms in situations so they may respond to crimes immediately across State and other jurisdictional lines as well as to protect themselves and their families from vindictive criminals.

Mr. President, I thank my friend from Idaho for yielding time. I think this is an important matter. I yield the floor.

Mr. CRAIG. Mr. President, may I ask how much time our side has remaining?

The PRESIDING OFFICER. Eleven minutes. Senator KENNEDY has 18 minutes 59 seconds.

Mr. CRAIG. Does the Senator from Massachusetts wish to speak at this time?

Mr. KENNEDY. I thank the Senator. I saw the Senator from Alabama. I had planned to be here as well, but I would be glad to follow the Senator from Alabama.

Mr. CRAIG. I thank the Senator for that consideration. If he doesn't mind, I would defer our allocation of 10 minutes of time to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Senator CRAIG and Senator KENNEDY for the opportunity to speak. I am pleased to hear the ranking member of the Judiciary Committee, Senator LEAHY, speak in favor of this amendment. It does indeed have 67 cosponsors. It is designed to allow qualified law enforcement officers to carry a concealed weapon while they are off duty.

Back at my home in Alabama, when I drive into the neighborhood, I know that a police officer lives at the corner. It gives me some comfort and my wife comfort. We have discussed it. When we pass that police car parked there, I know if something happened in that neighborhood and somebody needed help, he would respond. I also hope when he is traveling around off duty that he would be allowed to carry his weapon. We pay him to do it when he is on active duty. We pay him to carry that weapon and to be ready to respond.

It is one of the greatest bargains Americans have for safety and security—that law officers would voluntarily, on their own time, be willing to carry a gun and oftentimes step forward at their own risk to help those in danger.

I think it is a very good piece of legislation.

If officers who have been trained for 30 years in carrying weapons retire, we ought to be glad they are willing to carry them as they travel. We should be glad that active-duty police officers who have weapons are able to carry them as long as they have proper identification and the proper training. It would certainly be a tremendous cost-free-effort project to improve safety throughout America.

Qualified law enforcement officers are the only ones who can carry a firearm. They are defined as an employee of a government agency who is authorized by law to engage in or supervise the prevention, detection, and investigation or prosecution of, or the incarceration of any person for any violation of law. They have statutory powers. The officer must be authorized to carry a firearm and meet the standards established by the agency which requires the employee to regularly qualify in the use of a firearm. A qualified law officer is defined as an individual who has retired in good standing. A qualified retired law enforcement officer is one who has retired in good standing from service in a government agency for an aggregate of 5 years or more. The officer must have fit the above definition while active, must have a nonforfeitable right to the benefits under a retirement plan during the most recent 12-month period, and have met at his or her own expense the State standard for training and qualification to carry a firearm. Both active and retired law officers will be required to carry photographic identification by the agency for which they were or are employed as a law officer before they can qualify under this effort.

Why do police officers need it? First of all, they are often at risk themselves.

People forget that there is a war on crime and that many of the criminals are seriously deadly individuals who hold grudges against those who have arrested them. As a former prosecutor for well over 15 years, I have many close friends who are police officers and prosecutors. I know everyone has in the back of their minds the possibility that some dangerous criminal they apprehended, arrested, or prosecuted could utilize force against them.

This, first and foremost, provides the officers with a sense of comfort and

personal security. But more than that, it is a free, available asset to America to protect citizens.

We have terrorists out there. If we had a terrorist attack in a shopping mall, or on the streets, or in some building, or an attack going on in our community, wouldn't we be pleased that a law officer with a gun was there who would plug this guy if need be to save innocent lives? Wouldn't that be good for America? I think so.

It is a frustrating thing, however, for law officers as they move from jurisdiction to jurisdiction. This country has a host of different gun laws. Gun dealers, gun possessors, and gun manufacturers are subject to the most intense Federal, State, and local regulations. An officer who goes about his duties and goes from one town to the next could find himself going through Boston, MA, and end up in a slammer for doing nothing but being prepared to defend a Boston citizen from a mugging or assault or a terrorist attack; or coming to Washington, DC; they could end up in jail. They have some of the toughest laws here—maybe even tougher than Boston. They could end up in jail for doing nothing but being prepared to defend people in this community who may be under attack.

I think this makes good sense. I think it makes good sense for Federal legal action because you can't do it piecemeal. Every community has a different rule and a different law. Under the interstate commerce clause, I think we have a constitutional right and power to enact this legislation.

The question is: Is it good policy? Is it something we should do? I think it is good policy, especially in light of all the proliferating rules around this country, all the requirements in every county in Alabama, or Massachusetts, every city regulation in Philadelphia where they sue gun dealers—the mayor sues gun dealers, and they get the attorneys general in these States to gang up on them and sue them. They are doing nothing but manufacturing a firearm consistent with what the Federal and State laws are in America. But because somebody used it illegally, they want to sue them and put them out of business because they do not like guns. They are not able to do it completely; they are not able to pass legislation in their States or in the Federal Government to deal with this problem. So they want to use the power of lawsuits to do it.

That is why I support the underlying bill. I think it is good public policy because all it does is make clear what existing law is, has been, and should continue to be—that a manufacturer of a legal product who manufacturers it according to the laws and the distributors of that product who distribute it according to the complex laws all over this country should not be responsible if there is an intervening criminal act by a person who gets his hand on that weapon.

What are lawsuits for? Lawsuits historically have been when something fails to perform—if a weapon blows up, knocks out your eye, shoots off at an angle and hits something it is not supposed to, you should be able to sue the manufacturer. But if the gun is legal, if it is prepared according to the law and sold, and if some criminal gets it and commits a crime with it, why should the manufacturer be responsible for that? It goes against all of our understanding of what appropriate rule of liability in America is.

We are losing those distinctions. We want to politicize the law. We have Members who, because they cannot win a political vote, want to have some lawsuit—some favorable jurisdiction, whether it is in Philadelphia, or Boston, and they find a judge who is hostile to gun ownership end up getting the case. They say there are only 30 lawsuits of this kind, but if you keep filing these lawsuits, pretty soon you may find 12 people who agree with you, or a judge who agrees with you. The next thing you know, you have a big verdict.

The question is: Is it justified? Should a company have to defend itself from this kind of a political attack? If they are irresponsible, yes. If they violated the law, yes. They should be sued. If the gun is defective, yes. They should be sued.

But again, I think there is no more strongly felt issue among law enforcement officers in America than their willingness to carry a gun and the risk they undertake in doing it because they may even forget they are crossing the State line into another city and end up being prosecuted for being prepared to defend the citizens of that community. They do not like that. It is troubling to them. Many talk to me about it personally.

I am glad we have overwhelming support in this body to pass this amendment. I thank the Senator from Idaho for it. I support it and I believe we will pass it.

I yield the floor and reserve the remainder of the time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 18 minutes 50 seconds.

Mr. KENNEDY. I ask the Chair to notify me when 15 minutes are up.

I hope we are not going to hear in the Senate more about States rights and the importance of local communities making local judgments; they are in touch with the local people; they know best what is in the interests of the protection of a local community; or that a State knows more than a Federal Government about how to protect its citizens.

Those arguments are out the window with the proposed amendment to the underlying legislation. The amendment we are talking about gives active-duty and retired police officers the right to carry any firearm on duty or off duty, notwithstanding any State or local gun safety laws, even if the officers' own department rules prohibit the carrying of such concealed firearms.

I know this is hoping too much, that our friends on the other side of the aisle will restrain themselves from making the argument we always hear in the Senate from the other side, pointing over here that the Federal Government always knows best.

There is a lot of knowledge at the local and State level. Let's respect that. That is thrown right out the window with this amendment. This amendment is overriding gun safety laws that are decided by the people in local communities, overriding State laws, overriding them pointblank no matter what the State has said. We are talking about concealable weapons that will be able to be carried by police officers or retired officers, as well.

It is opposed by the International Association of Chiefs of Police, the Police Executive Research Forum, and the U.S. Conference of Mayors.

Let me explain why. This amendment is a serious step in the wrong direction. It will undermine the safety of our communities and the safety of police officers by broadly overriding the State and local gun safety laws. It will also nullify the ability of police departments to enforce rules and policies on when and how their own officers can carry firearms. Because of the substantial danger the amendment poses to police officers and communities, it is vigorously opposed by the International Association of Chiefs of Police.

There is no precedent for what the supporters of this amendment intend to accomplish. Congress has never passed a law giving current and former State and local employees the right to carry weapons in violation of controlling State and local laws. Congress has never passed a law interfering with the ability of State and local police chiefs to regulate their own officers carrying of firearms. Do we understand what this does? Congress has never passed a law interfering with the ability of the States or local police chiefs to regulate their own police officers carrying firearms. This amendment does. This overrides it.

Today, each State has the authority to decide what kind of concealed-carry law, if any, best fits the needs of the community. Each State makes its own judgment about whether private citizens should be allowed to carry concealed weapons or whether on-duty or off-duty or retired police officers should be included or exempted in any prohibition. There is no evidence that States or local governments have failed to consider the interests and needs of law enforcement officers. No case has been made.

Consider, for example, the New Jersey law. In 1995, retired police chief John Deventer was shot and killed while heroically trying to stop a robbery. This incident prompted New Jersey to enact a law allowing retired officers to carry handguns under a number

of different conditions. In drafting this law, the New Jersey Legislature made a deliberate effort to balance the safety of police officers with the safety of the public at large by including a number of important safeguards that are not contained in this amendment.

For example, New Jersey law is limited to handguns. This amendment is not. As long as the police officer is qualified to carry one type of gun, he can carry any type of gun, any type of concealable weapon. New Jersey law is limited to handguns. This amendment is not. New Jersey law has a maximum age of 70. This amendment does not. Under New Jersey law, retired police officers must file renewal applications yearly. There is no application process here. Under New Jersey, retirees must list all their guns. No such record is required under this amendment. New Jersey gives police departments discretion to deny permits to retirees. No such discretion is provided under this amendment.

By enacting this amendment, Congress will be gutting all of the safeguards contained in the New Jersey statute as well as the judgment of other States that have considered this issue.

The sponsors of this amendment have presented no evidence that States and local governments are unable or unwilling to decide these important issues for themselves. They have offered no explanation why Congress is better suited than States, cities, and towns to decide how best to protect police officers, schoolchildren, churchgoers, and other members of their communities.

Congress should bolster, not undermine, the efforts of States and local communities to protect their citizens from gun violence. In many States, cities, and towns, special places—churches, schools, bars, government offices, hospitals—are singled out as deserving special protection from the threat of gun violence.

Michigan is a State that prohibits concealed firearms in schools, sports arenas, bars, churches, and hospitals. Georgia law allows active and retired police officers to carry firearms in publicly owned buildings but not in churches, sports arenas, or places where alcohol is sold. Kentucky prohibits carrying concealed weapons in bars and schools. South Carolina prohibits concealed firearms in churches and hospitals.

This amendment will override most such safe harbor laws at the State level. It will override laws that categorically prohibit guns in churches and in other houses of worship since only laws that permit private entities to post signs prohibiting concealed firearms on their property will remain in force. In most States, churches are not currently required to post signs in order to have a gun-free zone.

This amendment will also override laws that prohibit concealed weapons in places where alcohol is served. This amendment will override State laws and local laws that prohibit carrying concealed weapons in places where alcohol is served.

Surely it is responsible for a State to prohibit people from bringing guns into bars, to prevent the extreme danger that results when liquor and firearms are together. It is no wonder that in the House of Representatives, Chairman SENSENBRENNER has described this legislation as an affront to State sovereignty on the Constitution.

At the local level, this amendment overrides all gun safety laws without exception. In the 1990s, Boston, New York, and other cities made great strides in fighting against crime precisely because they were able to pass laws that address the factors that led to violence, including the prevalence of firearms in inner cities. As Congressman HENRY HYDE has said, the best decisions on fighting crime are made at the local level.

We saw extraordinary progress in my own State of Massachusetts. We went for 18 months without a homicide. We have strict gun laws in Massachusetts. We have very strict gun laws in the city of Boston. This legislation will override it. Not all of the progress was made just because of the laws, but it was a combination of a variety of different events a few years ago. Tragically, we have seen an increase in homicide with the deterioration of the economy in the recent months and years.

By overriding all local gun safety laws, this amendment will undermine the ability of cities to fight crime. It will indiscriminately abrogate safe harbor laws in Boston, New York City, Cincinnati, Columbus, Chicago, Kansas City, and many other towns.

Congress has no business overriding the judgment of States and local governments in deciding where concealed weapons should be prohibited. Supporters have argued this amendment is needed because of the complex patchwork of Federal, State, and local concealed-carry laws which prevents officers from protecting themselves and their families from vindictive criminals. They have distributed lists of officers or prison guards who were killed while off duty or in retirement. The stories of these slain men and women are tragic, and their killers deserve to be severely punished. But none—none—of these incidents involved officers who were killed outside their home State. They do not demonstrate a need for a Federal override of State and local gun safety laws.

To the contrary, as New Jersey's response to the tragic shooting of Chief Deventer shows, States and local governments are best equipped to implement policies, regulations, and laws that protect the safety of their own law enforcement officers, and also protect the public at large.

The supporters have also argued by authorizing officers to carry guns across State lines, in violation of whatever State and local gun safety laws would otherwise apply, they will be able to effectively respond to crimes and terrorist attacks. They apparently envisage a nationwide unregulated police force, consisting of retired officers and off-duty officers who are armed while on vacation or traveling outside their home jurisdictions.

Allowing off-duty or retired officers with concealed weapons to go into other jurisdictions will only make conditions more dangerous for police officers and civilians. As the executive director of the IACP has explained:

> One of the reasons that this legislation is especially troubling to our nation's law enforcement executives is that it could in fact threaten the safety of police officers by creating tragic situations where officers from other jurisdictions are wounded or killed by the local officers. Police departments throughout the nation train their officers to respond as a team to dangerous situations. This teamwork requires months of training to develop and provides the officers with an understanding of how their coworkers will respond when faced with different situations. Injecting an armed, unknown officer, who has received different training and is operating under different assumptions, can turn an already dangerous situation deadly.

This amendment neither promotes consistent training policies among different police jurisdictions nor limits the conditions under which officers may use their firearms. The idea that more crimes will be prevented when more concealed weapons are carried by untrained and unregulated out-of-State off-duty and retired officers is pure fiction.

It is important to note that in giving off-duty and retired police officers broad authority to nullify State and local gun safety laws, the amendment is not limited to the carrying of officers' authorized weapons. In most police departments, officers may seek authorization to carry a range of weapons. If an officer wants to carry a weapon other than his service weapon—typically, a 9 millimeter semiautomatic pistol—he must prove he is qualified before the department will authorize him to carry it. To become qualified, the officer must demonstrate he can handle that weapon safely.

Rather than limiting its provisions to authorized weapons, this amendment provides as long as an officer at some point received authorization to carry a particular kind of firearm, such as his service weapon, he can carry, concealed, any other kind of firearm while off duty or retired, even if he never received authorization from his own police department to carry that other weapon.

In the 107th Congress, I introduced an amendment in committee providing an off-duty or retired officer could carry a concealed firearm only if he had been authorized to carry that firearm by the agency he works for, or if he had been so authorized at the time of his retirement. That amendment was rejected by an evenly divided vote, 9 to 9. Thus, the legislation now before us will give off-

duty and retired officers carte blanche to carry concealed shotguns, sniper rifles, or other weapons their own police departments have not authorized them to carry. Its failure to limit this privilege to authorized police weapons—or even to handguns, as New Jersey law provides—will further undermine the safety of American communities.

Serious safety problems are also raised by the amendment's override of gun-safety laws for retired officers, a category that is defined to include anyone who has served in a law enforcement capacity for 15 years ''in the aggregate'' before retiring or resigning and taking a different job. There is no requirement that a retiree demonstrate a special need for a firearm. While the amendment provides that an officer must have technically left law enforcement in ''good standing,'' it is well known that sub-par government employees are routinely released from their positions without a formal finding of misconduct. The amendment does not draw a distinction between officers who served ably and those who did not. Officers who retire in ''good standing'' while under investigation for domestic violence, racial profiling, excessive force, or substance abuse could still qualify for broad concealed-carry authority for the remainder of their lives. As the International Association of Chiefs of Police has observed:

This legislation fails to take into account those officers who have retired under threat of disciplinary action or dismissal for emotional problems that did not rise to the level of ''mental instability.'' Officers who retire or quit just prior to a disciplinary or competency hearing may still be eligible for benefits and appear to have left the agency in good standing. Even a police officer who retires with exceptional skills today may be stricken with an illness or other problem that makes him or her unfit to carry a concealed weapon, but they will not be overseen by a police management structure that identifies such problems in current officers.

Perhaps the most troubling aspect of the amendment is its potential to undermine the effective and safe functioning of police departments throughout the country. It removes the ability of police departments to enforce rules and policies on when and how their own officers can carry firearms. Police chiefs will lose the authority to prohibit their own officers from carrying certain weapons on duty or off duty.

Section 2 of the amendment provides that regardless of ''any other provision of the law of any State or any political subdivision thereof,'' any individual who qualifies as a law enforcement officer and who carries a photo ID will be authorized to carry any firearm. In a variety of contexts, including the Federal preemption of State law, courts have interpreted the term ''law'' to include agency rules and regulations. The Supreme Court has ruled this term specifically includes contractual obligations between employers and employees, such as work rules, policies, and practices promulgated by State and local police departments.

The PRESIDING OFFICER. The Senator has consumed 15 minutes.

Mr. KENNEDY. As I discussed, there is no requirement in the amendment that active-duty officers be authorized to carry each firearm that they wish to carry concealed. In other words, once an officer qualifies to carry a service weapon, he will have the right under this amendment to carry any gun, on duty or off duty—even if doing so violates his own police department's rules.

Thus, if Congress enacts this legislation, police chiefs will be stripped of their authority to tell their own officers, for example, that they cannot bring guns into bars while off duty; that they cannot carry their service weapons on vacation; or that they cannot carry certain shotguns, rifles, or handguns on the job.

As the International Association of Chiefs of Police stated in a letter to the Judiciary Committee, ''under the provisions of [this legislation], police chiefs and local governments would lose the authority to regulate what type of firearms the officers they employ can carry even while they are on duty.''

As a result, the legislation would effectively eliminate the ability of a police department to establish rules restricting the ability of officers to carry only department-authorized firearms while on duty. The prospect of officers carrying unauthorized firearms while on duty is very troubling to the IACP for several reasons.

First, an unauthorized weapon is unlikely to meet departmental standards. This in turn means that the officer will not have received approved departmental training in its use, and will not have qualified with the weapon under departmental regulations. Carrying an unauthorized weapon thus presents a risk of injury to the officer, fellow officers, and citizens, for the weapon itself may be unsafe or otherwise unsuitable for police use, and the officer may not be sufficiently proficient with its use to avoid adverse consequences.

In addition to the risk of injury involved, the carrying of unauthorized weapons is a major source of police civil liability in the U.S. today. An officer who fires an unauthorized weapon in the line of duty risks civil liability for the officer and for the department, even though the shooting may have been otherwise legally justified. A number of civil-suit plaintiffs have contended that the mere fact that the weapon that caused the plaintiff's injury was unauthorized is, in itself, sufficient legal grounds for a finding of liability.

For these and other reasons, the IACP concluded that this amendment ''has the potential to significantly and negatively impact the safety of our communities and our officers.''

Law enforcement executives face extremely difficult challenges today. As crime rates have started to rise again and new concerns about domestic security have emerged, police chiefs are forced to do more with less. The weak economy has forced cities and states to cut back on funding for law enforcement. The administration has tried its best to eliminate federal funding for such critical programs as the COPS Universal-Hiring Program, the Byrne Grant program, and the Local Law Enforcement Block Grant program.

The last thing Congress should do now is enact legislation that expands the civil liability of police departments and nullifies the ability of police chiefs to regulate their own officers' use of firearms and to maintain discipline. By denying police chiefs the right to run their own departments, the amendment would deal a severe blow to common sense and public safety.

Each State and local government should be allowed to make its own judgment as to whether citizens and out-of-State visitors may carry concealed weapons, and whether active or retired law enforcement officers should be included in or exempted from any prohibition.

This amendment will unnecessarily damage the efforts of States and local governments to protect their citizens from gun violence. It will also expose States and local governments to unnecessary liability and nullify the ability of police chiefs to maintain discipline and control within their own departments.

The Nation will be better served if the Senate puts this misguided legislation aside and turns its attention to measures we know will reduce crime and enhance the safety of police officers and all Americans.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. A minute and a half.

Mr. KENNEDY. Mr. President, the bottom line on this—we are going to have a chance to vote on this next Tuesday—is this is an action by Congress to override State-considered legislation and local legislation on how to protect their local communities. Some States have made the judgment that they do not believe they ought to permit concealed weapons in bars and churches and other public places, such as in schools, because they do not want to have the proliferation of guns in schools, they do not want to have the proliferation of guns in bars, they do not believe concealed weapons ought to be in churches. The States and local communities have made that judgment in order to protect their local communities. But somehow we are deciding here in the Senate, on the basis of about an hour and 20 minutes of debate on this, that we are going to override the common good sense of States and local governments and say: We know best. If you are a police officer or retired officer, you can carry that concealed weapon, even though you are not trained to be able to use it or authorized to use it, into the bars, schools, and churches of this country. That makes no sense and is a contradiction of what the States and local communities do.

How much further do we have to go to kowtow to the National Rifle Association?

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Idaho.

Mr. CRAIG. Mr. President, I understand I have 1 minute.

The legislation exempts qualified active and retired law enforcement officers from State and local prohibitions on the carrying of concealed firearms. What this means is that active and retired police officers will be able to carry their firearms virtually anywhere in the U.S. without having to worry about violating any local or State gun laws.

The bill is noncontroversial and enjoys wide, bipartisan support in both the Senate and the House of Representatives. The Senate bill, S. 253, passed the Judiciary Committee in March 2003 on an 18 to 1 vote. The bill has 67 cosponsors, including Majority Leader BILL FRIST, Minority Leader TOM DASCHLE, and every other member of the Senate leadership from both sides of the aisle. Senator BEN NIGHTHORSE CAMPBELL, a former law enforcement officer, is offering the amendment along with Judiciary Committee Chairman ORRIN G. HATCH, Ranking Member PATRICK J. LEAHY, and Minority Whip HARRY REID.

The House bill, H.R. 218, has 286 cosponsors. In addition to a House majority, the bill has a majority of both the full Judiciary Committee and the subcommittee of jurisdiction. In 1999, the House passed a nearly identical measure as an amendment to another bill by an overwhelming 372 to 53 majority.

This isn't a ''firearms issue''—it is an officer safety issue. And, on 11 September 2001, it became a critical public safety and homeland security issue.

Law enforcement officers need this bill—it is the number one issue among rank-and-file officers today. Policy officers are frequently finding that they, and their families, are the targets of vindictive criminals. A police officer may not remember all the faces of all the criminals he or she has put behind bars, but every one of those criminals will. This legislation gives all police officers the means to legally protect themselves and their loved ones—even if off-duty or retired.

Public safety and homeland security would benefit immensely from this bill becoming law. Law enforcement officers are a dedicated and trained body of men and women sworn to uphold the law and keep the peace. Unlike other professions, a police officer is rarely ''off-duty.'' When there is a threat to the peace or public safety, the police officer is sworn to answer the call of duty. Officers who are traveling from one jurisdiction to another do not leave their instincts or training behind, but without their weapon, that knowledge and training is rendered virtually useless. These bills will provide the means for law enforcement officers to enforce the law and keep the peace—enabling them to put to use that training and answer the call to duty when the need arises. Without a weapon, the law enforcement officer is like a rescue diver without diving gear; all the right training and talent to lend to an emergency situation, but without the equipment needed to make that training of any use. Given the ongoing threat of terrorist activity against U.S. citizens, it just makes sense to give our first line of defense the tools they need in a first responder situation. Perhaps the strongest endorsement we can make is that thousands of violent criminals and terrorists will hate to see it pass.

This is not a States' rights issue and the bill has been carefully crafted to ensure that it conforms to the U.S. Constitution and the precepts of Federalism. Congress has the authority, under the ''full faith and credit'' clause of the Constitution, to extend full faith and credit to qualified active and retired law enforcement officers who have met the criteria to carry firearms set by one State, and make those credentials applicable and recognized in all States and territories in these United States. States and localities issue firearms to their police officers and set their own requirements for their officers in training and qualifying in the use of these weapons. This legislation maintains the States' power to set these requirements and determine whether or not an active or retired officer is qualified in the use of the firearm, and would allow only this narrow universe of persons to carry their firearms when traveling outside their jurisdiction. We believe this is similar to the States' issuance of drivers' licenses—the standards may differ slightly from State to State, but all States recognize that the drivers have been certified to operate a motor vehicle on public roadways.

All 50 States require their officers to receive many hours—the average is 48—of firearms training before they leave the academy. Before receiving their appointment, law enforcement officers must meet certain score requirements in order to qualify with their weapon, the average being about 76 percent. No officer with a score below the 70th percentile is considered qualified with his weapon.

Most States require their officers to requalify with their weapons on a regular basis. Individual agencies may require their officers to qualify more frequently, but they must meet the State's minimum, which ranges from annually to every 5 years.

How Do Retired Officers Qualify: In order to carry under this legislation, a retired law enforcement officer would have to qualify with his firearm at his own expense every 12 months and meet the qualifications as an active duty officer in his State of residence. For example, a New Jersey police officer that retires to North Carolina must qualify annually at his own expense and meet the same standards that an active duty officer in North Carolina must meet.

Many Federal law enforcement officers currently have the authority to carry their firearms. Training and qualification for Federal law enforcement officers is not so dissimilar to that of State and local law enforcement officers. There have been no issues of concern with Federal officers carrying in all jurisdiction, why would there be for State and local law enforcement officers?

There is Congressional precedent on this issue. Congress has previously acted to force States to recognize permits to carry issued by other States on the basis of employment in other instances. In June 1993, the Senate and House approved and passed a law, PL 103–55, mandating reciprocity for weapons licenses issued to armored car company crew members among States. Congress amended the act in 1998, PL 105–78, providing that the licenses must be renewed every 2 years. This precedent allows armored car guards—who do not have nearly the same level of training and qualifications as law enforcement officers—to receive a license to carry a firearm in one State and forces other States to recognize its validity.

Airline pilots can obtain the authority law enforcement officers are seeking. In addition to armored car guards, Congress passed a law exempts airline pilots who participate in the ''Federal flight deck officer'' from Federal and State law with respect to the carrying of concealed firearms. Note that this authority is not limited just to the cockpit—but also while the pilots are on the ground and off-duty.

Congress has the authority to preempt State and local prohibitions on the carrying of concealed weapons and has in the past granted a certain class of persons—based on the nature of their employment and their value in an emergency situation—the authority to carry firearms in all jurisdictions. To do the same for law enforcement just makes good sense.

On the last weekend in June, FOP members from Maryland Lodge No. 70 were packing up their campsite following a 3-day camping trip with their families in Harpers Ferry. That Sunday afternoon, after many of the officers and their families had left, a gunman opened fire on another camper, wounding him in the lower leg. Detective Timothy Utzig and Officer Andrew Albach reacted quickly, instructing their families to leave the scene, while they retrieved their firearms and confronted the man. The gunman, yelling incoherently, eventually obeyed the officers' orders to lie down on the ground. After searching him, they discovered that the man had several more live rounds for his shotgun in his possession. Detective Utzig and Officer Albach held the man until West Virginia authorities could arrive. It was discovered later that the gunman had an extensive criminal history—including a murder conviction.

Sergeant Sam Harmon of the Jefferson County Sheriff's Department said, ''There's no telling how many lives those men saved Sunday afternoon. These guys are my heroes for life.''

They were certainly heroes, but they were also in violation of West Virginia

State law because they possessed firearms. These brave officers—who stopped a gunman's rampage on their day off, outside of their own jurisdiction—were not charged, but their action placed themselves in legal jeopardy, as well as physical. Had they complied with State law that Sunday, they or their families could have been victims. This is just one example of how public safety could be served if this bill were made law.

In 1991, off-duty Minneapolis Police Officer Jerry Johnson was vacationing in Phoenix, Arizona. He witnessed a man knock an elderly female to the ground, take her purse, and run. He immediately gave chase, without stopping to think that he was unarmed because he could not legally carry a firearm in Arizona. He caught the thief after a mile-long foot chase, and fought to subdue him. Had the criminal been armed, Officer Johnson would surely have been killed. Now retired, Officer Johnson had to go through a great deal of trouble in his own State of Minnesota to get a concealed carry weapon permit as it is up to each individual chief whether or not to issue. When he moved into a different jurisdiction, he had to get a judge to intercede because the chief of police in his new locality initially refused to issue him a permit.

Off-duty and retired officers are often targeted for attack by vengeful criminals. Off-duty police officer Tim Brauer was having dinner with his family in an Oklahoma City restaurant, outside his jurisdiction. While in the restroom, he was attacked by a man he had previously arrested. At the time, Oklahoma State law permitted off duty law enforcement officers to carry their firearms only within their home jurisdiction. In obeying the law and leaving his firearm at home while out with his family, he was left vulnerable to his attacker. Officer Brauer suffered severe injuries, but he lived and his family was not harmed. Oklahoma law now permits officers to carry throughout the State.

Officer Shynelle Marie Mason, a 2-year veteran with the Detroit, Michigan Police Department, was shot and killed on July 14, 2000, by a man she had previously arrested for carrying a concealed weapon. She encountered the man while off-duty; he confronted her and shot her several times in the chest. Though she was not on the clock, her death was considered a ''line of duty'' death and her name appears on the Wall of Remembrance at Judiciary Square in Washington, DC.

Retired New York State Supreme Court Police Officer William Kirchoff, a 17-year law enforcement veteran who was forced into retirement in 1989 as a direct result of an injury received when he was assaulted on the job, was the target of a contract assault/attempted murder. Tony Mattino, a career criminal with a long rap sheet for illegal possession of firearms and drugs was arrested and charged with assaulting Officer Kirchoff's 15-year-old daughter. Mattino was convicted for the assault and, prior to sentencing, threatened Officer Kirchoff. On February 21, 1998, he made good on his pledge. A pizza delivery man arrived at the officer's home. Officer Kirchoff had not placed any delivery order, and would not allow the man inside his home. He did offer the delivery man the use of his cordless phone—at which point he was attacked. the man, wielding a metal baseball bat, forced his way into the house, striking Officer Kirchoff more than 10 times. His 10 year-old-son was in the home at the time of the attack. The officer was unarmed and had no firearms on his person or property. Ultimately, Officer Kirchoff was able to drive off his attacker, who remains at large to this day. Mattino is also currently free on probation. Since the attack, Officer Kirchoff has a license to carry in New York and six other States.

Detective Donald Miller, a 10-year veteran with the New Bern Police Department in North Carolina was off-duty on December 23, 2001. He and his wife had just completed a visit to their newborn child in the hospital when the detective observed a man driving recklessly through the hospital parking lot. He confronted the man, who drew a handgun and fired—striking Miller in the head. Detective Miller, father of two, died 2 days later on Christmas Day. Though he was not on the clock, his death was considered a ''line of duty'' death and his name appears of the Wall of Remembrance at Judiciary Square in Washington, DC.

Officer Dominick J. Infantes, Jr., a 7-year veteran with the New Jersey City Police Department, was attacked by two men wielding a pipe on July 4, 2001. He died 2 days later from severe head injuries. Infantes was off-duty when he asked two men to stop setting off fireworks near playing children. He identified himself as a police officer, but the two killers did not believe him because Infantes did not have a gun. Though he was not on the clock, his death was considered a ''line of duty'' death and his name appears of the Wall of Remembrance at Judiciary Square in Washington, DC.

In 2000, off-duty Las Vegas Police Officer Dennis Devitte, a 20-year veteran was relaxing at a local sports bar when the establishment was attacked by three armed assailants. Two of the men opened fire on the crowd, hitting a man in a wheelchair. Officer Devitte did not hesitate—he pulled his tiny .25-caliber gun and, knowing he would have to get very close to make sure he hit his target, charged a man firing a .40-caliber semiautomatic. Officer Devitte got within one foot of the man, fired and killed the gunman—but not before he was shot eight times. The remaining two gunmen fled. All six civilians wounded in the assault recovered. One witness described Officer Devitte's action as ''the most courageous thing I've ever seen.'' Officer Devitte lost six units of blood, his gun hand was badly damaged and his knee had to be entirely reconstructed with bones taken from a cadaver. And yet, he was back on the job 6 months later. For his incredibly heroic actions, Officer Devitte was selected as the ''Police Officer of the Year'' by the International Association of Chiefs of Police, IACP, and Parade magazine.

On the 4th of July, 1999, off-duty Police Officer Alfredo Rodriguez of the Nassau County, NY Police Department was driving to Norwich, CT with his wife and four children when he observed a Norwich Police Officer attempt to arrest a highly intoxicated man running in and out of traffic. A second man attacked the Norwich officer from behind and attempted to take his firearm. Officer Rodriguez, although unarmed, pulled over, left his family and rushed to the aid of the officer. He was able to free the Norwich officer from a chokehold and disarm the attacker, who had successfully gotten the Norwich officer's firearm. The two officers restrained the initial suspect and battled the second until additional uniformed Norwich officers arrived. Officer Rodriguez was awarded Nassau County's Medal of Distinguished Service for his actions, which undoubtedly saved the life of Norwich Police Officer Peter Camp.

In July 1995, recently Retired Police Chief John Diventer of the Hanover, NJ, Police Department was with his family visiting his family's grave plot in Newark, when he observed several robbers attack two elderly women and steal their purses. He attempted to intervene, and was shot and killed, At the time of the chief's murder, retired police officers were not authorized to carry firearms in New Jersey. This incident prompted a change in New Jersey law, which now permits retired officers to carry throughout the State.

In closing, let me say about the amendment that is before us, concealed-carry, 67 Members of this Senate, Democrats and Republicans, believe this is a necessary and appropriate amendment to S. 1805. We believe it is. We think it is important that it be adopted, and that we extend these law-abiding, well-trained and schooled law enforcement officers and retirees this opportunity and privilege.

With that, Mr. President, my time has expired. I understand we will now lay this amendment aside, to be voted on Tuesday next, and by the order of the unanimous consent agreement we arrived at last night, Senator KENNEDY is now to have the floor to offer one of his amendments to be debated.

The PRESIDING OFFICER. The Senator is correct.

Mr. CRAIG. I yield the floor.

Mr. REID. Mr. President, I rise to join Senators CAMPBELL, HATCH and LEAHY to offer the Law Enforcement Officers Safety Act amendment.

The purpose of the amendment is simple. It would exempt present and retired law enforcement officers from State and local laws that prohibit carrying concealed firearms, as long as

the officers were bearing valid ID issued from their employing agency.

The Fraternal Order of Police, representing more than 1,000 Nevada law enforcement officers and more than 300,000 members nationwide, supports this amendment.

They support this bill because it would improve public safety. It would allow law enforcement officers to protect the public, as well as themselves.

This amendment mirrors a bill sponsored by more than two-thirds of America's Senators.

Again, our overwhelming support underscores the fact that this measure will protect our communities, as well as the brave police officers who serve us so well.

As I learned many years ago when I was on the Capitol police force, law enforcement officers are never truly ''off-duty.'' They are dedicated public servants trained to uphold the law and keep the peace.

When there is a threat to the peace or to our public safety, law enforcement officers are sworn to answer that call—and answer it they do, whether they are on duty or not.

Law enforcement officers are always protecting the innocent just as they are always under threat from the guilty.

Although a police officer might not remember the name and face of every criminal he or she has put behind bars, criminals have long memories. A law enforcement officer is a target whether in or out of uniform, whether active or retired, and whether on duty or off.

In fact, roughly 5 percent of officers who are killed in action are actually ''off duty'' at the time of their death.

This amendment is designed to protect officers and their families from vindictive criminals, and to allow thousands of equipped, trained and certified law enforcement officers to carry concealed firearms that will help them protect innocent citizens.

I urge all my colleagues to support this measure, which will make our communities safer and protect our brave police officers.

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NO. 2619

Mr. KENNEDY. Mr. President, I understand we have a half an hour; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I yield myself 15 minutes.

The PRESIDING OFFICER. Does the Senator wish to send the amendment to the desk?

Mr. KENNEDY. I believe the amendment is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 2619.

Mr. KENNEDY. 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 as follows:

(Purpose: To expand the definition of armor piercing ammunition and to require the Attorney General to promulgate standards for the uniform testing of projectiles against body armor)

On page 11, after line 19, add the following:

SEC. 5. ARMOR PIERCING AMMUNITION.

(a) EXPANSION OF DEFINITION OF ARMOR PIERCING AMMUNITION.—Section 921(a)(17)(B) of title 18, United States Code, is amended—

(1) in clause (i), by striking ''or'' at the end;

(2) in clause (ii), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(iii) a projectile that may be used in a handgun and that the Attorney General determines, pursuant to section 926(d), to be capable of penetrating body armor; or

''(iv) a projectile for a centerfire rifle, designed or marketed as having armor piercing capability, that the Attorney General determines, pursuant to section 926(d), to be more likely to penetrate body armor than standard ammunition of the same caliber.''.

(b) DETERMINATION OF THE CAPABILITY OF PROJECTILES TO PENETRATE BODY ARMOR.—Section 926 of title 18, United States Code, is amended by adding at the end the following:

''(d)(1) Not later than 1 year after the date of enactment of this subsection, the Attorney General shall promulgate standards for the uniform testing of projectiles against Body Armor Exemplar.

''(2) The standards promulgated pursuant to paragraph (1) shall take into account, among other factors, variations in performance that are related to the length of the barrel of the handgun or centerfire rifle from which the projectile is fired and the amount and kind of powder used to propel the projectile.

''(3) As used in paragraph (1), the term 'Body Armor Exemplar' means body armor that the Attorney General determines meets minimum standards for the protection of law enforcement officers.''.

Mr. KENNEDY. Mr. President, I mentioned that there had been a homicide in Massachusetts recently, over 18 months. It was juvenile homicide. I ask that the Record be so corrected.

As we all know too well, the debate about gun violence has often been aggressive and polarizing with anti-gun violence advocates on one side of the debate, pro-gun advocates on the other. There are deep divisions in the country on the issue of gun safety, and the current debate on the gun immunity bill has thus far only served to highlight those divisions.

I believe, however, that there are still some principles on which we can all agree. One principle is that we should do everything we can to protect the lives and safety of police officers who are working to protect our streets, schools, and communities.

The amendment I am offering today is intended to close the existing loopholes in the Federal law that bans cop-killer bullets. Police officers depend on body armor for their lives. Body armor has saved thousands of police officers from death or serious injury by firearm assault. Most police officers who serve large jurisdictions wear armor at all times when on duty. Nevertheless, even with body armor, too many police officers remain vulnerable to gun violence.

According to the Federal Bureau of Investigation, every year between 50 and 80 police officers are feloniously killed in the line of duty. In 2002, firearms were used in 51 of the 56 murders of police officers. In those shootings, 34 of the officers were wearing body armor at the time of their deaths. From 1992 to 2002, at least 20 police officers were killed after bullets penetrated their armor vests and entered their upper torso.

Some gun organizations have argued that cop-killer bullets are a myth. The families of these slain police officers know better. In fact, we know that armor-piercing ammunition is not a myth because it is openly and notoriously marketed and sold by gun dealers.

I direct my colleagues' attention to the Web site of Hi-Vel, Incorporated, a self-described exotic products distributor and manufacturer in Delta, UT. You can access its online catalog on the Internet right now. Hi-Vel's catalog lists an entry for armor-piercing ammunition. On that page you will find a listing for armor-piercing bullets that can penetrate metal objects. The bullets are available in packages of 10 for $9.95 each. Hi-Vel carries armor-piercing bullets for both the .223 caliber rifles such as the Bushmaster sniper rifle used in the Washington area attacks in October 2002, and the 7.62 caliber assault weapons. Over the past 10 years, these two caliber weapons were responsible for the deaths of 14 of the 20 law enforcement officers killed by ammunition that penetrated body armor.

In a recent report, the ATF identified three, .223 and the 7.62 caliber rifles, as the ones most frequently encountered by police officers. These high-capacity rifles, the ATF wrote, pose an enhanced threat to law enforcement, in part because of their ability to expel particles at velocities that are capable of penetrating the type of soft body armor typically worn by law enforcement officers.

Another rifle caliber, the 30.30 caliber, was responsible for penetrating three officers' armor and killing them in 1993, 1996, and 2002. This ammunition is also capable of puncturing light-armored vehicles, ballistic or armored glass, armored limousines, even a 600-pound safe with 600 pounds of safe armor plating.

It is outrageous and unconscionable that such ammunition continues to be sold in the United States of America. Armor-piercing ammunition for rifles and assault weapons is virtually unregulated in the United States. A Federal license is not required to sell such ammunition unless firearms are sold as well. Anyone over the age of 18 may purchase this ammunition without a background check. There is no Federal minimum age of possession. Purchases may be made over the counter, by mail order, by fax, by Internet, and there is

no Federal requirement that dealers retain sales records.

In 1999, investigators for the General Accounting Office went undercover to assess the availability of .50 caliber armor-piercing ammunition. Purchasing cop-killer bullets, it turned out, is only slightly more difficult than buying a lottery ticket or a gallon of milk. Dealers in Delaware, Pennsylvania, and West Virginia informed the investigators that the purchase of these kinds of ammunition is subject to no Federal, State, or local restrictions. Dealers in Alaska, Nebraska, and Oregon who advertised over the Internet told an undercover agent that he could buy the ammunition in a matter of minutes, even after he said he wanted the bullets shipped to Washington, DC, and needed them to pierce an armored limousine or theoretically take down a helicopter. Talk about homeland security.

In a single year, over 100,000 rounds of military surplus armor-piercing ammunition were sold to civilians in the United States. In addition, the gun manufacturer, Smith & Wesson, recently introduced a powerful new revolver, the .500 magnum, 4½ pounds, 15 inches long, that clearly has the capability of piercing body armor using ammunition allowed under the current law.

The publication, Gun Week, reviewed the new weapon with enthusiasm: ''Behold the magic, feel the power,'' it wrote.

Many of our leaders will buy the Smith & Wesson .500 Magnum for the same reason that Edmund Hillary climbed Mt. Everest: Because it is there.

Current Federal law bans certain armor-piercing ammunition for handguns. It establishes a content-based standard. It covers ammunition that is, first of all, constructed from tungsten alloys, steel, iron, brass, bronze, beryllium, copper, or depleted uranium or, secondly, larger than .22 caliber with a jacket that weighs no more than 25 percent of the total weight of the bullet.

However, there are no restrictions on ammunition that may be manufactured from other materials but can still penetrate body armor. Even more important, there are no restrictions on armor-piercing ammunition used in rifles and assault weapons. Armor-piercing ammunition has no purpose other than penetrating bulletproof vests. It is of no use for hunting or self-defense. Such armor-piercing ammunition has no place in our society—none.

Armor-piercing bullets that sidestep the Federal ban, such as that advertised on Hi-Vel's Web site, put the lives of American citizens and those sworn to defend American citizens in jeopardy every single day. We know the terrorists are now exploiting the weaknesses and loopholes in our gun laws. The terrorists training manual discovered by American soldiers in Afghanistan in 2001 advised al-Qaida operatives to buy assault weapons in the United States and use them against us.

Terrorists are bent on exploiting weaknesses in our gun laws. Just think of what a terrorist could do with a sniper rifle and only a moderate supply of armor-piercing ammunition.

My amendment amends the Federal ban on cop-killer bullets to include a performance standard and extends the ban on centerfire rifles, which include the sniper rifles and assault weapons responsible for the deaths of 17 police officers whose body armor was penetrated by this ammunition.

My amendment will not apply to ammunition that is now routinely used in hunting rifles or other centerfire rifles. To the contrary, it only covers ammunition that is designed or marketed as having armor-piercing capability. That is it—designed or marketed as having armor-piercing capability, such as armor-piercing ammunition that is now advertised on the Hi-Vel Web site.

Bullets that are designed or marketed to be armor piercing have no place in our society. Ducks, deer, and other wildlife do not wear body armor. Police officers do. We should not let another day pass without plugging the loopholes in the Federal law that bans cop-killer bullets.

This is an issue on which mainstream gun owners and gun safety advocates can agree. I urge my colleagues to vote in support of this amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. CRAPO). Who yields time? The Senator from Idaho.

Mr. CRAIG. Mr. President, we have heard over the last few minutes what might appear, at first listening, to be alarming facts, figures, and statistics, but we all know that in any good debate the devil is in the details, and in the details of the Kennedy amendment are some hidden secrets that must be brought out so we can understand them.

Let me, first and foremost, read into the RECORD a letter from the president of the Fraternal Order of Police. The Senator has talked about cop-killer bullets and protecting cops on the beat, those who wear soft body armor. This is what Chuck Canterbury, the national president of the Fraternal Order of Police, says in a letter to me that he has copied to Senator FRIST, Senator DASCHLE, and to Senator KENNEDY:

I am writing to advise you of our strong opposition to an amendment Senator Kennedy intends to offer later today——

In relation to the underlying amendment.

Senator Kennedy will certainly present his amendment as an ''officer safety issue''——

And that is exactly what we have heard over the last good number of minutes——

to get dangerous ''cop-killer'' bullets——

And he talks about how dangerous they are off the shelf.

Regardless of its presentation, the amendment's actual aim and effect would be to expand the definition of ''armor-piercing'' to include ammunition based, not on any threat to law enforcement officers, but on a manufacturer's marketing strategy.

I do believe we saw that language on the Web site that he quoted—a strategy, a rhetorical expression as it relates to an encouragement to buy a given type of ammunition.

He goes on to say:

The truth of the matter is that only one law enforcement officer has been killed by a round fired from a handgun which penetrated his soft-body armor—and in that single instance, it was the body armor that failed to provide the expected ballistic protection, not because the round was ''armor piercing.''

It is our view that no expansion or revision of the current law is needed to protect law enforcement officers. To put it simply, this is not a genuine officer safety issue. If it were, Senator Kennedy would not be offering his amendment to a bill he strongly opposes and is working to defeat.

It sounds as if not only is the president of the Fraternal Order of Police talking about the facts, he is talking about some reasonable logic.

He goes on to say:

The real officer safety issue is the adoption of——

The amendment we just set aside——

the Law Enforcement Officers' Safety Act.

That amendment deals with carrying a concealed weapon, to which I believe the Senator spoke in opposition, which would exempt active and retired law enforcement officers from local prohibitions for the right to carry concealed firearms.

Mr. Canterbury goes on:

The Kennedy amendment was considered and defeated by the Senate Judiciary Committee in March of 2003 on a 10–6 vote. We believe that it should be rejected again.

On behalf of more than 311,000 members of the Fraternal Order of Police, I thank you for taking our views on this issue into consideration.

Here is the president of the National Grand Lodge of the Fraternal Order of Police saying that the Kennedy amendment is not what it is. What he is, in fact, saying is that the current armor-piercing, cop-killing bullet law in place is the kind of adequate protection they need.

I have made that letter available to all of our colleagues as we debate this issue.

What will the Kennedy amendment do? I think it is important for us to understand in reality the impact of expanding this kind of definition and understanding.

What it does—and I don't know that the Senator intends this purpose—is that it begins to eliminate ammunition that is used in a legitimate way for hunting. He is right, Bambi doesn't wear body armor. Bambi doesn't need to wear body armor. But in the legal sportsmen's industry and in hunting, here are some very common rifles: 30.30 Winchester, 30.06 Springfield, 308 Winchester, 300 Savage, 7 mm Remington, 270 Winchester, 257 Roberts, 253 Winchester, and 223 Remington, just to name a few. We believe based on our interpretation of the amendment that this kind of ammunition is eliminated.

What we also know is that there is ammunition out there used with a rifle

that can pierce body armor. That is a fact. But the ammunition we are talking about that is traditionally known as the cop-killer bullet that is now outlawed in this country has nothing to do with the rifle. It had everything to do with the pistol, that weapon of choice by criminals in our country, and we know why.

Criminals do not walk down the street with a 30.06 over their shoulder. Somehow there is the visible factor that denies them the use of that rifle. They use handguns. They conceal them. They hide them on their person. They carry them in a package or in a carrying type of valise. They do not carry rifles. Yet the Senator's amendment goes directly at the hunting sports; it goes directly at hunting ammunition. This is why at the appropriate time when we have concluded the debate on the Senator's amendment, I will offer an alternative amendment under the unanimous consent agreement that we think reflects what ought to be done in relation to what the Senator is offering.

Let me also add that the most extensive study on this issue pursuant to a congressional mandate to the Antiterrorism and Effective Death Penalty Act of 1996 was a BATF draft report provided in 1997 to those individuals and organizations that had assisted in a BATF study of the issue of armor-piercing ammunition.

That study mandated, in response to President Clinton's repeated call, for a ban on bullets capable of penetrating soft body armor. Those Presidential statements rightfully concerned many in Congress who were aware that a performance-based ban, and that is what the Senator is offering, would outlaw the majority of rifle ammunition used for hunting and target shooting worldwide. That is just what I have spoken to. If that is the Senator's intent, then I wish he would address that. Clearly that is what we believe one begins to enter into when they deal with a performance-based standard. The 1997 study took an intelligent and honest approach to examining how best to protect the lives of law enforcement officers, recognizing the reality that between 1985 and 1994 no officer in the United States who was wearing a bullet-resistant vest died as a result of any round of ammunition having been fired from a handgun penetrating that officer's armor causing the primary lethal injuries.

The study instead focused on how to improve police training, both in teaching officers how to defeat snatches by criminals and to encourage officers to wear vests routinely. Legislatively, the 1997 study rightfully concluded that to prohibit any of these commonly used pistol, rifle, shotgun cartridges because they might defeat a level 1 bullet-resistant vest would create an unreasonable burden on the legitimate consumer of such cartridges.

Combined with the availability of sensible, defensive strategies, the existence of laws restricting the common availability of armor-piercing ammunition was clearly working to protect law enforcement officers, and no attempt to discard the existing law, in my opinion and many others, should be undertaken.

At the same time, because the existing laws are working, no additional legislation is necessary or required, certainly that that deals with performance-based standards, because one goes directly at ammunition used in target practice and in hunting. We do not believe, and I would hope the Senator from Massachusetts would agree, that is what we would intend to do.

In conclusion, what I am saying is the current law is adequate. This is not perfecting language. This is language to try to defeat the underlying bill, S. 1805. Obviously, the Senator has spoken openly against that. This is in no way a bill that improves the underlying bill itself and we think very questionably does it improve any existing Federal law. What it begins to do is what the sporting community and the legitimate owners of firearms have always been fearful of, that if the handgun or the rifle could not be controlled, the ammunition would be targeted and certain classes of ammunition would begin to be controlled and outlawed, and that is exactly what Senator KENNEDY is attempting to do with this amendment.

I think it is obvious by my statement I will strongly oppose this, but I will offer—or I should say the majority leader will offer—an amendment finalizing the debate on Senator KENNEDY's amendment that we think if there is reason to fine-tune the existing law, then we will offer that fine-tuning to make it extremely punitive for anyone who might use armor-piercing bullets that would strike a law enforcement officer in our country, or anyone else for that matter, that would result in injury or death.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. How much time do I have remaining?

The PRESIDING OFFICER. Just under 19 minutes.

Mr. KENNEDY. I yield myself 7 minutes.

Mr. President, I read through the copy of the Fraternal Order of Police. As the Senator pointed out, the truth of the matter is only one law enforcement officer has been killed by a round fired from a handgun. We are not talking about ammunition in a handgun. We are talking about assault weapons and rifles, and I am talking about the FBI. Let's look at what the FBI says.

From 1992 to 2002, 20 law enforcement officers have been killed. Seventeen out of the 20 were killed with a rifle. That is what this amendment is about.

The Senator referred to the earlier bill we had on the law. I am the author of that. It took 5 years to get that passed. Five years it was opposed by the NRA. I do not doubt it probably is going to take 5 years to do something about armor-piercing bullets that can shoot through body armor, through a limousine, or bring down a helicopter. That is what we are talking about, 17 of the fatal shootings.

I ask unanimous consent that tables 10 and 36 of a document entitled ''Law Enforcement Officers Feloniously Killed by Firearms'' be printed in the RECORD.

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

TABLE 10.—LAW ENFORCEMENT OFFICERS FELONIOUSLY KILLED BY FIREARMS

[Wounded in Upper Torso While Wearing Body Armor, 1992–2001]

Point of entry	Total	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Total	114	5	11	11	10	12	16	14	11	10	14
Entered between side panels of vest	19	1	3	4	2	4	2	1	0	1	1
Entered through armhole or shoulder area of vest	32	1	2	2	3	2	2	1	6	5	8
Entered above vest (front or back of neck, collarbone area)	36	1	2	4	2	4	9	6	2	3	3
Entered below vest (abdominal or lower back area)	8	0	1	0	1	1	0	3	0	1	1
Penetrated vest	19	2	3	1	2	1	3	3	3	0	1

TABLE 36.—LAW ENFORCEMENT OFFICERS FELONIOUSLY KILLED BY FIREARMS

[Point of Entry for Torso Wounds and Use of Body Armor, 1993–2002]

Point of entry	Total	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Total	120	11	11	10	12	16	14	11	10	14	11
Entered between side panels of vest	19	3	4	2	4	2	1	0	1	1	1
Entered through armhole or shoulder area of vest	34	2	2	3	2	2	1	6	5	8	3
Entered above vest (front or back of neck, collarbone area)	38	2	4	2	4	9	6	2	3	3	3
Entered below vest (abdominal or lower back area)	11	1	0	1	1	0	3	0	1	1	3
Penetrated vest	18	3	1	2	1	3	3	3	0	1	1

Mr. KENNEDY. Seventeen of the fatal shootings were done by .223, .762, or 30.30 caliber rifles. Armor-piercing ammunition for these caliber rifles is widely advertised and available, and there are no restrictions at all on the deadly ammunition.

My amendment will not apply to the ammunition routinely used in the hunting rifles or other centerfire rifles. To the contrary, it covers only the ammunition that is designed to market bullets having armor-piercing capability. If that definition is not satisfactory to the Senator from Idaho, work with me over the weekend to get the right language that stops this, and he and I will offer a unanimous consent to be able to vote on that on the Senate floor. The Senator knows what we are driving at, the kind of armor-piercing bullets that can penetrate the vests our law enforcement officers are going to wear.

I know the Fraternal Order feels we are trying to slow this bill down. With all respect to them, I have been the author of the armor-piercing bullets for 20 years. I have put it on this. I will put it on something else. They will support us. The Senator from Idaho will support it. We will put it on the next bill that comes down here. They know that is not the issue.

As I have pointed out, we are talking about the kind that is being advertised on the Web site. Here it is for everyone to see. What in the world is the possible justification for armor-piercing ammunition being sold in the United States of America today when we have threats in terms of homeland security, and we are advertising armor-piercing bullets out of rifles and assault weapons that can penetrate armor and penetrate helicopters ought to be permitted in the United States of America? The Senator has not given an answer for it. I have not heard a good answer for it.

How does this infringe on the hunters in our country? What do we need an armor-piercing bullet for to go out and hunt deer? What is the reason for that? I still have not received any answer.

Oh, it is difficult to define. This is open to a lot of different interpretations. We do not quite know what this will cover.

We will work that out. We will work that out. That is not a good enough excuse. We are talking about the lives and deaths of these police officers, their families. We will be back again year after year. Make no mistake about it, this amendment is not going away. We are going to come back year after year, and those who are going to vote against it will have the opportunity to go back and explain it to the families of those brave law enforcement officers who are killed.

What is the justification for permitting that? What possible justification is there for permitting that? There is absolutely none.

This is the discussion the General Accounting Office had. It is a GAO study, which I will put in the RECORD. The whole section III of it is only 2½ pages. I ask unanimous consent that it be printed in the RECORD.

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

III. THE WIDESPREAD AVAILABILITY OF ARMOR PIERCING AMMUNITION IN THE CIVILIAN MARKET

As part of their investigation, GAO agents went undercover to assess the availability of armor piercing fifty caliber ammunition. This investigation showed that military surplus ammunition is widely available.

First, GAO agents contacted weapons dealers in Delaware, Maryland, Pennsylvania, Virginia, and West Virginia. GAO found that these dealers were willing to sell armor piercing fifty caliber ammunition. According to GAO, the dealers in Delaware, Pennsylvania, and West Virginia informed the agent that purchasing these kinds of ammunition was not subject to any federal, state, or local restrictions. The dealers in Virginia told the agent that this specialized ammunition was illegal to sell or possess in that state. The dealer in Maryland said he would sell such ammunition only to Maryland residents. Although the investigator told the dealers in Delaware, Pennsylvania, and West Virginia that the investigator was a Virginia resident, none of the other dealers warned the agent about Virginia's restrictions.

An undercover GAO agent also telephoned several ammunition dealers that advertised specialized ammunition over the Internet. The agent called ammunition dealers in Alaska, Nebraska, and Oregon and recorded conversations in which he purported to be a customer interested in buying ammunition for shipment to Washington, D.C., or Virginia. The agent found that he could secure the purchase of specialized ammunition from any of the three dealers within a matter of minutes.

The dealers in Nebraska and Oregon stated that they could make the transaction when the agent faxed a copy of his driver's license with a signed statement that he was over 21 and was violating no federal, state, or local restrictions on the purchase. Although the agent said he was from Virginia, which bans this type of ammunition, neither dealer expressed reservations about selling the ammunition to a Virginia resident. According to the GAO investigator, the dealer in Alaska said he had 10,000 rounds of armor piercing ammunition and would sell the ammunition to the investigator. However, the Alaska dealer said the investigator would have to pick up the ammunition in Alaska because UPS Ground did not ship goods from Alaska to the lower 48 states.

The GAO investigator taped the conversations with the three ammunition dealers. These conversations reveal that the ammunition dealers employ an ''ask no questions'' approach. They were willing to sell military surplus ammunition without restriction even after the investigator said he wanted the ammunition shipped to his work address in Washington, D.C., and needed it to pierce an armored limousine or, theoretically, to ''take down'' a helicopter.

One of the dealers that GAO contacted was Cascade Ammo, in Roseburg, Oregon. Cascade Ammo is one of Talon's three largest civilian customers of refurbished military ammunition. Although this dealer initially expressed reservations about shipping armor piercing ammunition to Washington, D.C., the dealer ultimately agreed to allow the sale. When asked about the power of the ammunition, the Oregon dealer said he believed armor piercing ammunition would penetrate an armored limousine, as the following interchanges indicate:

Agent: I'm very much interested to making sure that these rounds can go through like, the bullet-proof glass. Do you think they'll go through bullet-proof glass?

* * *

Dealer: Well, in the old days, in the old [inaudible], they used 700 grains, 720 or something. But nowadays they use 660, so they're getting a little more velocity out of it. And, I just can't see glass standing up to that.

Agent: How about an armored limousine?

Dealer: Yeah, you're using it to test it?

Agent: Well, I . . .

Dealer: Because we have some people who are testing armored cars. Like 30-06 AP-rounds.

Agent: Well, I . . . these would be a lot . . . theoretically the .05 cal should be a lot stronger than a 30–06 . . .

Dealer: Right, right.

Agent: AP.

Dealer: Right . . . So it should go through.

Agent: Well, yeah, I guess you say testing against armored limousines . . . Yeah, I'll be testing against armored limousines. But, but it's gotta work.

Dealer: Right.

The Oregon dealer also was confident the ammunition could ''take down'' a helicopter:

Agent: Right. And then, if I theoretically wanted to use these rounds to take down an aircraft, say either a helicopter or something like that, I should be able to take a helicopter down, shouldn't I?

Dealer: Yeah, they're not armored. They're not armored to a point that it would stop. If you look at, uh, a military helicopter that's been through, uh, like the ones that came back from Vietnam, they've got, uh, little plates of metal where they weld up the bullet holes. They just take a little piece of metal and they just weld over the bullet holes. It makes the guy, the next guy, feel more comfortable when he's in there.

Agent: I guess so.

Dealer: (laughing) You don't want to see a bullet hole in there.

Agent: Okay.

Dealer: So, yeah, it'll go through any light stuff like that.

The final interchange with the Oregon dealer included the following passages:

Agent: Good. You know, I'm very happy to see that we'll be able to do business here, because, I'm a little bit concerned, because here on the East Coast when you go to buy ammunition—these large, heavy-duty .50 cal—they ask a lot of questions.

Dealer: Oh.

Agent: And I don't like people asking me questions why I want this ammunition.

Dealer: Well, see, they use them out here for hunting.

Agent: Um huh. Well, you could say I'm going to be using this for hunting also, but just hunting of a different kind.

Dealer: (laughing) As long as it's nothnothing illegal.

Agent: Well, I wouldn't consider it illegal.

Dealer: Okay. Alright.

The conversations with the other ammunition dealers were similar. For example, the dealer in Nebraska assured the agent that this ammunition would go through metal, an armored limousine, and bullet-proof glass. Later in the conversation, the agent and the dealer discussed whether ordinary ''sniper round'' ammunition or specialized armor piercing incendiary ammunition would best meet the agent's need ''to be using this against . . . an armored limousine and something with ballistic glass.''

During the agent's other conversation, the dealer in Alaska claimed his armor piercing ammunition would ''go through six inches of steel up to a 45 degree angle at a thousand yards.'' When the agent explained that it was very important for him to ''defeat an armored-type vehicle,'' the dealer respond that

''when them cattle carts come running down your drive, you'd better be able to stop it.'' The agent respond by saying, ''Exactly, but you know, you can think who drives in armored limousines, that's why I'm going to need it someday, those people in armored limousines.'' Audio tapes of these conversations are available on Rep. Waxman's webpage.

Mr. KENNEDY. This is the part I want to read. They had discussions with different dealers, and we can go through some of those, but listen to what the Oregon dealer said. He was confident the ammunition could take a helicopter down. This is the agent from the GAO:

Right. And then, if I theoretically wanted to use these rounds—

Armor-piercing ammunition of this type—

to take down an aircraft, say either a helicopter or something like that, I should be able to take a helicopter down, shouldn't I?

Dealer: Yeah, they're not armored. They're not armored to a point that it would stop. . . .

Then it continues. These are the discussions with the dealers. They talk about how they can penetrate the armor plating on automobiles and how they can bring down helicopters, and we are talking about continuing to let them be sold unregulated in this country, over 100,000 rounds for it, and the result of which is we are seeing brave police officers wearing those armor-piercing vests killed.

What is the possible justification? Why are we so intimidated by the National Rifle Association that we are not willing to deal with armor-piercing bullets? That is it. That is it. We haven't heard the argument—and I would welcome it—how these kinds of bullets are necessary for hunting. I would love to hear that argument.

Oh, we need these. I remember when we first offered legislation on the cop-killer bullets in the Judiciary Committee we heard they are necessary because we want to be humane to the deer, and those bullets go on and kill the deer rather than wound it. That is what we heard. Cop-killer bullets. That was the answer we heard for 5 years before we finally got that passed.

I remember the time it passed. It was with the help and support of, actually, the Senator from South Carolina, Mr. Strom Thurmond. I remember it very clearly because I could not understand why we could not make progress. Now we know, with the new technology in this area, as we have seen in other areas, exactly what is happening. It is putting these police officers more and more at risk. That is why we are attempting to do this.

We hear from the Senator he is going to offer some kind of other substitute. Why not do the real thing? What are we going to have, armor-piercing bullets ''lite''? So instead of 20 officers being killed there will only be 8? 12? Why not do the whole job? That is what this amendment will do. It will do something.

When this amendment is eventually accepted, and it eventually will be, they will be able to look on page 40, the list of the law enforcement officers killed from armor-piercing bullets, and it will be empty because we will have done something that will be meaningful. But I tell you, we are going to come back every single year. We are going to have the FBI, and those numbers are going to continue to go up and up, as they are going up, according to the FBI report, with no justification whatsoever for including these provisions.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG. Mr. President, how much time is left on both sides?

The PRESIDING OFFICER. The proponents of the amendment have 10 minutes 11 seconds, the opponents of the amendment have 18 minutes.

Mr. KENNEDY. If the Senator would like to agree, I would just as soon have each of us have a little time before we vote. I know the leadership has it tight, and I know it has been difficult to work, but I would rather take 3 or 4 minutes before we vote on Monday. But I don't know whether that is possible. I don't like to ask consent here. I welcome the opportunity to continue to discuss this, but I think we probably would have more involved in it later on.

I am instructed by the floor staff we will have a very brief time prior to the vote.

Mr. CRAIG. Let me respond to the Senator's inquiry. I don't disagree with him. I think it is important we do have some limited time to discuss the difference between his amendment and what will be known as the Frist-Craig amendment that will be offered in a few moments. That is important.

I think we have all heard the Senator from Massachusetts very clearly. He said he wants to ban assault weapons and rifle ammunition. What he didn't say, or what he will not say, is that the standards he establishes in his legislation, performance-based standards, ban what is currently on-the-shelf hunting ammunition. Does the hunting ammunition in a high-powered rifle have the ability to penetrate soft body armor? Yes, it does.

Does it have the ability to penetrate other soft armor? Yes, it does. Is it used for that purpose? No. It is rarely ever found used for that purpose.

We have a choice. Clearly it is against the law when it is used for that purpose and we all know that and we ought to go at those people who use legitimate firearms in illegal ways instead of trying to eliminate the firearm or, in this case, the ammunition. But, of course, we know, and all of America's hunters know, they could have a 30.06 in their gun safe, they could have a 30.30 in their gun safe, they could have a .308 in their gun safe, they could have a .270 in their gun safe, and if they didn't have the ammunition for it, it would be a marvelous historic relic of America's past. Is that what the Senator from Massachusetts wants?

He says not. But we all know what performance-based standards do. When you establish a band through that, that is what you accomplish. The fact is, virtually all hunting and target rifle ammunition is capable of penetrating soft body armor. That is a reality. So by his definition does that go off the market? I believe it does. That is why I think it is unnecessary. That is why the President of the Fraternal Order of Police said the Kennedy amendment is to kill the underlying amendment or to make it dramatically of less value, and that he and 311,000 members of the Fraternal Order of Police disagree.

Probably a good many of them are hunters, and they recognize more than anybody else because they are probably pretty talented people when it comes to understanding ballistics. When it comes to understanding ammunition, they probably know a great deal more about it than Senator KENNEDY or this Senator, Mr. CRAIG.

They say no, it isn't necessary. The current law that the Senator speaks to, that he is proud of—and he should be—is adequate. It does protect. It has removed armor-piercing bullets of the handgun type.

Now we step into a whole new arena. Historically, those who want to control firearms in this country have always said: Oh, no, it is only the handgun we are after because it is the handgun that is most often used in the commission of a crime. It is the handgun we want to take out of circulation and away from the citizens of this country. Leave the long gun alone. We are all for sportsmen. We are all for hunters. We like guns. They are good guns. Those are bad guns.

What the amendment of the Senator is suggesting is—he may not say they are bad guns, but he says their ammunition is bad. And if you take their ammunition away, then as I said earlier, these kinds of hunting rifles will become a marvelous museum piece and a relic of our historic past. I don't believe a majority of the Senate will go there. I hope the amendment I will soon offer will provide ample reason to say, yes, we are going to get tough on anybody who uses an armor-piercing bullet of any kind that is capable of penetrating a vest, soft body armor. That is what we ought to be about, instead of using the language and not the definition—and using the language and not the reality—and using performance-based bans to eliminate a very large category of hunting ammunition and other types of ammunition used for target practice and professionally in this country.

I strongly oppose and will encourage my colleagues to oppose this amendment.

Mr. President, we have possibly one other Senator wishing to come to speak. Let me check on that. If that is not true, I see no reason we couldn't reserve the remainder of our time or move on to another amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I just want to remind the Senate what we have just heard. It is a wonderful technique. I don't disparage my friend from Idaho, and he is my friend. But that is to misrepresent what the amendment does and then to differ with it.

I have been here several years and I know that technique. It is one that I have used once in a while.

People ought to understand, when we are talking about life and death, we ought to be willing to at least deal with the facts.

The facts are as described in the amendment about what the definition would be in terms of the armor-piercing bullets. That talks about a projectile for centerfire rifles designed or marketed as having an armor-piercing capability that the Attorney General determined pursuant to the section 926(d) to be more likely to penetrate body armor than standard ammunition of the same caliber, period.

Armor-piercing bullets—as my good friend says, wants to eliminate all ammunition for these weapons and, therefore, they will just be relics on the shelves of time.

This is what it is; it is written into the amendment: a projectile for centerfire rifles designed or marketed as having armor-piercing capability that the Attorney General determines—not the Senator from Massachusetts, not the Senator from Idaho—but the one that has the capability to more likely penetrate body armor.

That is what we are talking about—penetrating body armor that law enforcement officers wear and which stands between their life and their death.

That is what this amendment does. We have already seen and sadly reviewed the statistics that are out there now about the brave officers who have already been killed. We will have an opportunity to do something about that on Tuesday next. Let us not fail to do so.

Over the weekend, if there is language that is necessary to ensure that particular purpose can be achieved with more effective language, let me give the assurance to the Senator from Idaho and others interested who take that position that we are more than glad to work that out.

We will not compromise on dealing with the fundamental issue; and that is armor-piercing bullets penetrating those vests or put at risk the lives of brave officers today and in the future.

I withhold the remainder of my time. I saw the Senator from the State of Washington who I believe is ready to move ahead. I will either yield back my time or retain my time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I ask at this moment that the Senator not yield time. I have a few moments remaining on my time. I am going to ask for a very short period of time to go into a quorum call at which time we will come out of it and offer the Frist-Craig amendment. I don't need to debate that for any length of time. That is in the order of the unanimous consent. As the Senator from Massachusetts knows, those two then will be set aside to be voted on Tuesday next.

With that, 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. CRAIG. 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. CRAIG. How much time remains on the current amendment, the Kennedy amendment?

The PRESIDING OFFICER. The sponsor has 6½ minutes and the opponents have 1½ minutes.

Mr. CRAIG. I am prepared to yield back if the Senator is, and I will offer the first Craig amendment and speak for a few short minutes on that and then move on.

Mr. REID. We yield back the time of Senator KENNEDY.

The PRESIDING OFFICER. Without objection, the time of the proponent of the amendment is yielded back.

Mr. CRAIG. I yield back my time.

The PRESIDING OFFICER. All time is yielded back.

Mr. CRAIG. It is my understanding that the Kennedy amendment will now be set aside to be voted on Tuesday next.

The PRESIDING OFFICER. That is correct.

AMENDMENT NO. 2625

Mr. CRAIG. I send to the desk the Frist-Craig amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAIG], for Mr. FRIST, for himself and Mr. CRAIG, proposes an amendment numbered 2625.

Mr. CRAIG. 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 as follows:

(Purpose: To regulate the sale and possession of armor piercing ammunition, and for other purposes)

At the appropriate place, add the following:

SEC. 5. ARMOR PIERCING AMMUNITION.

(a) UNLAWFUL ACTS.—Section 922(a) of title 18, United States Code, is amended by striking paragraphs (7) and (8) and inserting the following:

''(7) for any person to manufacture or import armor piercing ammunition, unless—

''(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

''(B) the manufacture of such ammunition is for the purpose of exportation; or

''(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General.

''(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery—

''(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

''(B) is for the purpose of exportation; or

''(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General.''.

(b) PENALTIES.—Section 924(c) of title 18, United States Code, is amended by adding at the end the following:

''(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

''(A) be sentenced to a term of imprisonment of not less than 15 years;

''(B) if death results from the use of such ammunition—

''(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

''(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.''.

(c) STUDY AND REPORT.—

(1) STUDY.—The Attorney General shall conduct a study to determine whether a uniform standard for the uniform testing of projectiles against Body Armor is feasible.

(2) ISSUES TO BE STUDIED.—The study conducted under paragraph (1) shall include—

(A) variations in performance that are related to the length of the barrel of the handgun or centerfire rifle from which the projectile is fired; and

(B) the amount of powder used to propel the projectile.

(3) REPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report containing the results of the study conducted under this subsection to—

(A) the chairman and ranking member of the Judiciary Committee of the Senate; and

(B) the chairman and ranking member of the Judiciary Committee of the House of Representatives.

Mr. CRAIG. Mr. President, Senator KENNEDY has a copy of this straightforward amendment that strengthens the current armor-piercing bullet law. It does a couple of things.

It says the Attorney General shall commission a study to determine whether a uniform standard for the uniform testing of projectiles against body armor is feasible and what impact it would have on sporting and hunting endeavors. It includes within the issues to be studied variations in performance that are related to the length of the barrel of the handgun or the

centerfired rifle from which the projectile is fired and the amount of powder used to propel the projectile. The Attorney General shall deliver such report to the chairman and the ranking member of the House and Senate Judiciary Committee within 2 years of the date of the enactment of this legislation.

This became the core of the debate between the Senator from Massachusetts and myself. What does ''performance-based standards'' mean, and how do they impact legitimate sporting and hunting ammunition?

Also, insert as new, 18 USC, 924:

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction [under title 18 USC 924]—

''(A) be sentenced to a term of imprisonment of not less than 15 years;

''(B) if death results from the use of such ammunition—

''(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

''(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.''

What are we doing? We are adding real teeth to current law. We are saying to the criminal element and the drug trafficking element in our country, if you use armor-piercing ammunition in your firearm and it maims or kills a law enforcement officer, we will put you away for life.

That is what we are going to do. We do not tolerate it. We never have. The current law serves effectively, but if there is a sentence, then let's toughen it, let's strengthen it, let's give stronger positions to the law enforcement community of this country.

That is the crux of the bill. It is straightforward. It is simple. We think it offers what certainly all of us want to see and what the law enforcement community of this country needs.

I hope the Frist-Craig amendment will be accepted. It is a straightforward amendment. If the Senator would make himself available, we can conclude this debate, set this amendment aside, and move to the next amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. CRAIG. 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. CRAIG. Mr. President, the Senator from Massachusetts is in the Chamber. In his absence, I offered the Frist-Craig amendment and spoke briefly to it as a true strengthening of current armor-piercing bullet legislation, to suggest very directly to the criminal element and the drug trafficking element in our country: If you use armor-piercing bullets and it wounds or takes the life of a law enforcement officer, we will put you away for life. I think that is about as clear and direct as we can become with the already strong prohibition that is in place for armor-piercing bullets that would be used in handguns.

With that, I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will oppose the amendment because it does nothing to protect our law enforcement officers from armor-piercing bullets. All it does say, as I understand it, is if law enforcement officers are killed, under the current law the penalties are going to be greater, including even in the death penalty.

My amendment says, let's stop the armor-piercing bullets now to save lives. Let's be proactive and prevent the loss of lives. The Senator from Idaho says, well, after they are killed we are going to penalize these people more. My amendment would effectively save lives because we would effectively prohibit the kind of armor-piercing bullets from being sold or available to those who want to do our law enforcement personnel harm.

So it just misses the point, the idea that we are going to do something after that police officer is killed. That will not do anything about these numbers I mention. We have just seen 20 officers killed over the last 10 years, and 17 of them by armor-piercing bullets. That is what they were killed by; and that is what my amendment is focused on. The Senator's amendment will do nothing about preventing that kind of activity. I appreciate his efforts in trying to do something, but this fails the mark.

I withhold my time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, in response to the Senator from Massachusetts, his legislation goes at long guns, rifles, and their ammunition. What I did not say, with him coming back into the Chamber, is we do direct the Attorney General to look at, over a period of time, 2 years—no later than that—and report to the Senate Judiciary Committee, on which the Senator serves, a study to see whether what the Senator is proposing in his amendment wipes from the shelves of this country the kind of hunting ammunition we believe it will, and that certainly a good many others do.

I am not insensitive to what the Senator is saying, but I am saying, let's get the facts. We do not want to wipe out half the hunting or two-thirds of the hunting ammunition and the target ammunition in this country. That is legitimate. It is law abiding. Does it get misused? Yes. Does some of it have armor-piercing capability, to some extent? Yes.

Certainly this is what our intent is. In the meantime, let's toughen the law. Let's send the message to the criminal element in our country that armor-piercing ammunition is flat off limits or you pay a phenomenal price for it.

Is it a deterrent? The Senator from Massachusetts would suggest it is not. In most instances, we find good, tough law enforcement, and a reality known by those who would commit crimes with this kind of ammunition in this country, does serve as a deterrent. That is the intent of the amendment. We believe it is a good amendment.

I am prepared to yield back the remainder of my time if the Senator believes he has adequately covered this issue.

Mr. KENNEDY. No. I just want to respond.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. If I may, Mr. President, I yield myself time.

Let me remind my colleagues that armor-piercing ammunition for rifles and assault weapons is virtually unregulated in the United States of America. A Federal license is not required to sell such ammunition unless firearms are sold as well. Anyone over the age of 18 may purchase this ammunition without a background check, and there is no Federal minimum age for possession. Purchases may be made over the counter, by mail order, by fax, or by Internet, and there is no Federal requirement that dealers retain sale records.

It is this current lawlessness that jeopardizes the safety of police officers. It is this failure of the existing law that has led to 20 fatal shootings of police officers, and will lead to many more unless Congress acts, not studies—acts, not studies.

The facts are well established. The FBI statistics do not lie. We do not need another study. We do not need another report. All we need to do is adopt the underlying legislation that gives the Attorney General the authority and the power to ensure the kind of armor-piercing bullets that are being used, that pierce the armor and kill our law enforcement officials, will be prohibited from use today.

As I outlined in my amendment: ''a projectile for a centerfire rifle, designed or marketed as having armor-piercing capability, that the Attorney General determines . . .''—not the Senator from Idaho or the Senator from Massachusetts—''to be more likely to penetrate body armor than standard ammunition of the same caliber.''

We either have a problem or we do not. I believe we do. Certainly the families of those brave officers who died believe we do—their families and those police departments. We have an opportunity to do this on next Tuesday. I

hope the Craig amendment will be defeated and that the amendment I offered will be accepted.

I am prepared to yield back the remainder of time if the Senator is.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I thank the Senator. I too am prepared to yield back the remainder of our time.

Let me conclude my comments by saying, it is not the role of the Attorney General of the United States to determine what can or cannot be used in this country as forms of ammunition. It is our job, if we are going to do it. And we should not do it. The marketplace has done it. The Senator has shaped legislation that has controlled types of it, and that has been supported.

I do not think we need to get as arbitrary as some Attorneys General can be and have been in the past as it relates to what their vision is versus what we believe ought to be illegal or legal in this country.

Our job is to make it the law. That is what we are about here at this moment. But it is important that we establish parameters and understandings clearly to determine the kinds of tests that are performance based in what they do to what is now currently legal ammunition in this country.

With that, I yield back the remainder of my time, and ask that the Frist-Craig amendment be set aside to be considered on Tuesday next.

I believe the next item under our unanimous consent is to move to Senator CANTWELL for her amendment for an unemployment insurance extension.

The PRESIDING OFFICER. Does the Senator from Massachusetts yield back his time?

Mr. KENNEDY. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The amendment will be set aside.

The Senator from Washington.

AMENDMENT NO. 2617

Ms. CANTWELL. Mr. President, I call up my amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant Journal clerk read as follows:

The Senator from Washington [Ms. CANTWELL] proposes an amendment numbered 2617.

Ms. CANTWELL. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To extend and expand the Temporary Extended Unemployment Compensation Act of 2002, and for other purposes)

At the end, add the following:

TITLE ___—UNEMPLOYMENT COMPENSATION

SEC. ___01. EXTENSION OF THE TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002.

(a) IN GENERAL.—Section 208 of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 30), as amended by Public Law 108–1 (117 Stat. 3) and the Unemployment Compensation Amendments of 2003 (Public Law 108–26; 117 Stat. 751), is amended—

(1) in subsection (a)(2), by striking ''December 31, 2003'' and inserting ''June 30, 2004'';

(2) in subsection (b)(1), by striking ''December 31, 2003'' and inserting ''June 30, 2004'';

(3) in subsection (b)(2)—

(A) in the heading, by striking ''DECEMBER 31, 2003'' and inserting ''JUNE 30, 2004''; and

(B) by striking ''December 31, 2003'' and inserting ''June 30, 2004''; and

(4) in subsection (b)(3), by striking ''March 31, 2004'' and inserting ''September 30, 2004''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 21).

SEC. ___02. ADDITIONAL REVISION TO CURRENT TEUC–X TRIGGER.

Section 203(c)(2)(B) of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 30) is amended to read as follows:

''(B) such a period would then be in effect for such State under such Act if—

''(i) section 203(d) of such Act were applied as if it had been amended by striking '5' each place it appears and inserting '4'; and

''(ii) with respect to weeks of unemployment beginning on or after the date of enactment of this clause—

''(I) paragraph (1)(A) of such section 203(d) did not apply; and

''(II) clause (ii) of section 203(f)(1)(A) of such Act did not apply.''.

SEC. ___03. TEMPORARY STATE AUTHORITY TO WAIVE APPLICATION OF LOOK-BACKS UNDER THE FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 1970.

For purposes of conforming with the provisions of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note), a State may, during the period beginning on the date of enactment of this Act and ending on June 30, 2004, waive the application of either subsection (d)(1)(A) of section 203 of such Act or subsection (f)(1)(A)(ii) of such section, or both.

Ms. CANTWELL. Mr. President, how much time is allowed for debate on the amendment?

The PRESIDING OFFICER. One hour, evenly divided.

Ms. CANTWELL. Thank you, Mr. President. If I can be notified when I have used 10 minutes.

The PRESIDING OFFICER. The Senator will be notified.

Ms. CANTWELL. I thank the Chair.

Mr. President, while we are talking about gun liability, I think a more important question for this body to be debating is the liability we are leaving the American workers with when, in fact, this body refuses to pass unemployment benefit extensions at a time when our economy is not recovering at the speed it takes to create new jobs.

As our own newspaper in Washington State, the Seattle Post Intelligencer, said this past week:

Everything is not fine in the job market.

That is what many Americans are saying. That is what many people across the country are starting to debate when they talk about the issue of outsourcing. Everything is not fine in the job market.

The President and his economic advisers issued a report, the Economic Report from the President of the United States, as to the growth we were supposed to expect in our economy in 2004. If my colleagues have a copy of that report and turn to page 98, they will see that the President and his economic advisers, when talking about growth in real GDP over the long term, predict that jobs for this year are going to grow by 2.6 million. That was great economic news to a lot of Americans who have been sitting around since December without Federal unemployment benefits, sending out resume after resume, only to find that they are competing with hundreds of other more qualified Americans for a very few jobs.

What became more frustrating to those unemployed Americans who have lost their jobs through no fault of their own, many as a result of 9/11 and the impact of terrorist activities on our economy, such as in aviation, aerospace, and a general downturn, many of those Americans would rather have the paycheck than the unemployment check. But without jobs being created, they would like to have some assistance in making the mortgage payment, paying the rent, paying for health care, and taking care of their families.

They were stunned when they found out that the President doesn't really stick by the 2.6 million number. Last week, the President and two Cabinet Secretaries, the Secretaries of Treasury and Commerce, ventured to Washington State and refused to meet with unemployed workers there. We have had, for the better part of the last 2 years, an unemployment rate over 7 percent. We are a little bit below that right now, and we are concerned about stimulating the economy and from where job growth is going to come. When these two members of the President's Cabinet came to town and were asked about the President's economic forecast—asked whether they stick by the 2.6 million jobs that will be created, both of those Secretaries said: Those were assumptions based on economic models and the calculations have a margin of error.

The American worker is not a rounding error on a statistician's desk. They are real people who are not getting the economic assistance they deserve.

It is no surprise that other newspapers across the country have also noted this. The Atlanta Journal Constitution said:

But the economic bounce has not yet been strong enough for cautious employers to get beyond squeezing more production from existing workers and taking the crucial step of hiring. This leaves millions of unemployed sinking further into debt and desperation.

That points to what is going on here. The President is backing away from his economic numbers. People realize that job growth is not happening. Yet we refuse to pass an extension of unemployment benefits.

Why is that so important? It is important to many Americans who would

rather have that paycheck than an unemployment check, and it can provide a real stimulus because for every dollar in unemployment insurance, it generates $2 of economic stimulus into the local economy.

We continue to see these projections versus reality. The President's economic advisers said in 2002 that we were only going to lose a few jobs. We ended up actually losing 1.4 million jobs. In 2003, they said we were going to grow the economy, 1.7 million. We ended up losing another almost 500,000 jobs. Now in 2004, they say we are going to grow 2.6 million jobs in what is left of this year. So far we have only gained 112,000 jobs.

The economy is moving very slowly. We should not leave people out in the cold. That is exactly what we are doing by not passing Federal benefits on to those unemployed workers when they exhaust their State benefits. In fact, in December, we left out lots of workers: in Illinois, about 17,000 people; Texas, about 23,000; North Carolina, 10,000; Ohio, over 10,000; Pennsylvania, 17,000 people; Georgia, 14,000 people. At the end of December, when the benefit program expired at the State level, these people were no longer eligible for benefits at the Federal level because we curtailed the Federal program.

What that means is that every month more and more people exhaust their State benefits as no jobs are found and thereby are denied Federal benefits. For example, for the first 6 months of this year, over 50,000 additional people from Washington State would be eligible, but won't receive help. On a national level, 2 million people would be eligible to receive Federal benefits.

These numbers represent what happened to people in these States in December of 2003, when the other side of the aisle refused to grant the motion of seeking unanimous consent to pass unemployment benefits for American workers.

Our colleagues in the House of Representatives who heard the message, probably when they went home over the recess and did their town meetings, listened to people across America and found out that this was a pretty big issue. People wanted to know, where am I going to find a job? Where is my spouse going to find a job? People were relying on loans from families just to make mortgage payments.

So the House of Representatives came back from recess and actually passed unemployment benefit extensions because they got the message.

We are still down in our economy. The key question is, How have we as a nation responded to these economic recessions in the past? How have previous administrations, both Democrat and Republican, responded to recessions? We know that in the early 1990s we had a recession. The first Bush administration and the Clinton administration became aggressive about unemployment benefits and had a very expansive program that was in place for a total of 27 months.

During that time, we ended up creating 2.9 million new jobs, a very positive outcome. In this recession and recovery, which began in 2001, we have lost 2.4 million jobs. The difference between this recession and the last is that we have cut off the Federal benefit program. And yet, we haven't yet had a net creation of jobs.

We started to slowly shirk the jobs deficit, with 112,000 jobs in January, but we have curtailed the program before we have seen real results. Why would we do that when we have previous experience, from two different administrations, that shows that continuing the program really does help stimulate the economy?

That is what we want to do. That is why I am not surprised that other people around the country such as the Akron Beacon Journal said:

> The recovery has aptly been called jobless. Offer a bridge to a better time, and Congress won't simply aid those struggling to find work. The country as a whole will benefit.

This is not solely about helping individuals who are unemployed. It is a stimulus to the economy. What happens if the 2 million people who will lose Federal benefits over the next 6 months can't make mortgage payments and end up defaulting on their home mortgages. How is that good for the U.S. economy? Or say, for example, individuals can't make health insurance payments and end up costing more in uncompensated health care? How is that good for America?

I was not surprised when I saw in the San Jose Mercury News that the other side of the aisle had been accused of being of little interest or being silent on this issue.

Basically, the San Jose Mercury News said:

> Despite a recent uptick in hiring across the country in 2004, they could bring more hardship for million of Americans out of work. A callous Congress is sitting behind as their hope for receiving extended unemployment benefits fades.

The PRESIDING OFFICER (Mr. BURNS). The Chair advises the Senator she has used 10 minutes.

Ms. CANTWELL. Mr. President, I thank the Chair for that information. I would like to continue until other of my colleagues from different regions of the country, which have been hit with high unemployment, come to the Chamber.

I wish to focus on reality versus rhetoric. We have been promised 2.6 million jobs, but instead, we have seen a loss of 2.3 million. The rhetoric doesn't stand up. If the President is going to deny his own economic report and say we are not going to create 2.6 million jobs, then give American workers a hand—extend unemployment benefits as a lifeline to help stimulate their family incomes and help stimulate our national economy.

I ask the President and the other side of the aisle to take a little bit of time and go back in history. I know not everybody on the other side of the aisle agrees with the policies of a Democratic administration juxtaposed to this administration, but let's look at what the last Bush administration did when we had a downturn of our economy and how President George H. W. Bush handled the situation.

He had a similar problem when he came into office: the 1990s recession. In April of 1992, the President saw that we had tremendous job loss in the millions, but the economy had started to pick up again. The first President Bush saw that the economy had picked up 379,000 jobs. He could have stopped the unemployment benefit program right then and there. He could have said: My job is over; the economy is starting to grow again; I don't have to do anything else about this issue. But the President did not.

The first President Bush extended unemployment benefits for an additional 9 months. He did it for 9 months—and it was a program with more weeks of benefits than the current program. It was 20 weeks instead of the 13 weeks we have for basic unemployment States.

The first President Bush said: Yes, there was a little bit of job growth going on, but the negative impact of the recession means we should not stop Federal unemployment benefits.

What has the second President Bush done? He has been faced with a similar recession. As we saw from the previous chart, we have lost 2.4 million jobs in the last 2 years and this President sees a little uptick in the economic numbers. He sees about 112,000 jobs created in January. And what does he say? That's it; that's it; no more Federal unemployment benefit program. No unemployment benefits. No weeks, no program.

Basically, we have left the American workers out in the cold as it relates to this opportunity to sustain themselves and sustain our economy in great economically challenging times.

I ask my colleagues on the other side of the aisle to look at this history, to look at what the first Bush administration did under similar circumstances, to look at his results. They were very positive for the U.S. economy and for the U.S. worker. Analyze that juxtaposed to the positions we have taken in this body today, primarily because the other side of the aisle, a dozen times now, has refused us the right to have a vote on this issue. We are going to have that vote, and I hope my colleagues will stand up for the American worker and, most importantly, for the American economy that needs this stimulus.

I see some of my colleagues have joined me in the Chamber. I say to the Senator from Maryland, who has been eloquent on these issues, I don't know how much time the Senator is seeking, but I will be happy to yield to the Senator.

Mr. SARBANES. Is the Senator controlling time?

Ms. CANTWELL. Yes, I am. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 15 minutes 9 seconds remaining.

Ms. CANTWELL. I am happy to yield the Senator 3 minutes.

Mr. SARBANES. I thank the Senator.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I rise in very strong support of the amendment offered by the able Senator from Washington, Ms. CANTWELL, of which I am pleased to be a cosponsor. This amendment will extend the unemployment benefits which lapsed at the end of December—they have lapsed and are not available—and continue the program for 6 months, through the end of June.

The program lapsed not because the fundamental economic problem which led to its creation—the very weak labor market—has been solved. That market's weakness remains a serious concern.

Long-term unemployment—the problem for which this program was created—is near record levels. There are nearly 1.9 million unemployed workers in America who are long-term unemployed. That is, they have been unemployed for more than 26 weeks. They constitute almost 23 percent of all unemployed workers. This level has been above 20 percent for the past 16 months, the longest stretch of long-term unemployment at this level in more than 20 years.

It has been 34 months since the recession began. The economy has almost 2 percent fewer jobs than it had 34 months ago. Jobs are not being created in sufficient number to close this gap. Job creation is far below what is needed to improve the situation for unemployed workers.

Some colleagues have argued that we do not need the program because we are no longer losing jobs. However, the job growth that the economy is producing is too slow to put back to work those who have lost their jobs. Of course, the administration predicted after they passed the 2003 tax cut, that by last month, the economy would have created over 2 million jobs. It created 300,000 jobs over that period.

This amendment's proposal is not excessive by historical standards. In fact, the administration's refusal to act is what constitutes a break with historical precedent. Again and again in the past, we have extended unemployment insurance to provide some assistance to the long-term unemployed.

Finally, let me simply make this point: We build up an unemployment trust fund in good times to fund the benefits when we have an economic downturn. There is over $15 billion in the unemployment insurance trust fund to pay unemployment insurance benefits. We have millions out there needing this help. This money was collected for that purpose. It should be used for that purpose.

I strongly urge support of this amendment.

Ms. CANTWELL. Mr. President, I yield 3 minutes to the Senator from Oregon.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I thank my colleague for her leadership. I wish to make a couple of points. First, there is a staggering amount of economic hurt in virtually every nook and cranny of my State. Our unemployment rate is over 7 percent.

The Economic Development Administration recently announced that for key projects to create jobs in rural areas, small communities are going to have to come up with $22 to get $1 of help for infrastructure, something that can create good-paying jobs.

We are trying to get the transportation bill passed, but with those kinds of measures, we desperately need to extend this lifeline legislation to the thousands and thousands of Oregonians and other Americans who are out of work.

These are folks who simply have nowhere to turn to pay the bills. They are walking an economic tightrope, balancing fuel costs against food costs and fuel costs against medical costs.

Without this extension and without the look-back rule that this legislation would provide, these are folks who are going to fall into the economic abyss. They deserve better.

The fact is, the stock market is doing well. We are glad to see it. We are glad to see profits up at so many of our companies. All of these are pluses for our country. But the fact is, middle-class folks, and particularly the middle class that is unemployed, are feeling pinched like never before. I am very hopeful my colleagues will support this legislation. It is essential to provide a measure of relief to these folks who are enduring so much economic hurt.

I have just gone through a series of community meetings at home, and it came up again and again. So I hope, in the name of compassion, but also in the name of helping these middle-class folks get back on their feet as they look for alternatives, as they look for other positions that pay them enough to support their families, that my colleagues would support this important Cantwell amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I rise in opposition to the Cantwell amendment, and want to put this in a little perspective. We have an unemployment benefit insurance program and then we have the temporary extension of the benefit program which we have been doing for some time now. In fact, I think the temporary extension has been done two different times.

I also want to clear up some of the confusion because there is a payroll survey which measures the amount of jobs created, and there is a household survey. We know what statistics can do depending in whose hands they are, but let us at least know what the facts are.

Payroll survey measures—if someone goes to work for somebody, they get a job and go on their payroll, that is the payroll survey. So if a person is employed by somebody, it is counted in the payroll survey.

When I was practicing as a veterinarian, I opened my own practice. I was self-employed. That does not go on the payroll survey, but it does go on the household survey. Right now, on eBay—we have all heard of eBay—there is a fairly solid estimate that there are now over 200,000 people with full-time businesses operating on eBay. These are full-time jobs and the individuals are doing very well operating on eBay. They are buying and selling things on eBay.

However, those 200,000 jobs are not counted in the payroll survey. That is the survey the Democrats are commonly referring to all the time when they are saying there are job losses.

To show the difference between the payroll survey and the household survey with statistics, in January the payroll survey said we had created about 100,000 jobs. The household survey showed the creation of almost half a million jobs. Now if one believes the other side, they are saying to somebody who is self-employed that they do not have a job. Well, I am sorry, but when I was a self-employed veterinarian working 100 hours a week, I thought that was work. I thought that was a job. Listening to the other side, they are saying it is not a job.

Having said that, let's look at unemployment rates, which is a measure of the payroll survey. When the Democrats were in charge of the House, the Senate, and the White House, all three bodies, they had the ability to extend this program on their own because they had the votes to do that. Let's look at the historical unemployment rates versus today's unemployment rates to see whether they extended the program; in other words, to see when they had the ability to act whether they matched it against what they are saying today.

In the early 1990s when the Democrats were in control of the Senate, the House, and the White House, the unemployment rate at the start of the program was 7.0 percent. When we started the program this time, the unemployment rate was at 5.7 percent. At the peak of the program in the 90s, the highest unemployment rate under the Democrats went up to 7.8 percent. The peak unemployment rate this time went to 6.3 percent.

When the Democrats voted to end the program, to terminate the extension of unemployment benefits, the unemployment rate was at 6.4 percent.

What is that unemployment rate today? It is at 5.6 percent, almost a full percentage point less than when the Democrats controlled the Senate, the House, and the White House, and they voted to terminate the program. Why did they vote to terminate it? Because

the extension of unemployment benefits is put in during times of high unemployment rates.

Well, they are saying times have changed. Statistics back then do not compare with statistics now. I do not know why, but that is what they are saying.

Let's point out what this Senate and the House did last year. We gave the States $8 billion to help fund their own unemployment programs—especially those States that have high unemployment like Oregon. The Senator from Oregon was just on the floor speaking. We gave that money to the States to handle serious problems with individuals facing long-term unemployment.

What have the States done with that money? We gave them that money 2 years ago. In March 2002, we gave $8 million to the States. What have they done with it? Well, there is $4.3 billion the States have not used. Are our States not compassionate? Do they not care about people, as the other side would have us believe?

They have not spent over half of the money we gave from the Federal Government to the States.

So I think we have to look at what is going on today with this amendment. I believe this is very well intentioned by the other side, but what has happened is our mindset has changed. What used to be considered full employment is now considered high unemployment. All of us back in the early 1990s thought a 5.5 percent unemployment rate would be considered full employment in this economy, because there are always people who are changing jobs so they are temporarily unemployed. There are always people who have difficulty because of training, they are getting some new training so it takes them longer to find a job. Then sometimes, frankly, in a changing economy, people do have to move to find a job. Sometimes it takes a long period of unemployment for people to make that decision. It is a very difficult decision to make.

I think we need to be sensitive to people, but we also have to look at the reality we are facing. We are facing huge budget deficits today. How many of the people running for President have been talking about the budget problem? On the other side of the aisle, I have heard it talked about time and time again.

Well, the extension of the unemployment benefits costs almost $1 billion dollars a month. So if we extend it out to the end of this year, we are going to be talking about another $10 billion, or somewhere thereabouts, added to the budget deficit. That money will be borrowed from the Social Security trust fund, because when there is deficit spending, that is where it is taken out of. We all know that. It is a paper trust fund anyway, but we all know that is where it will be taken out of.

So I think it is important for us to understand, first, what got us here, what the historical implications have been as I have laid them out, and then what do we do to get out of this dilemma. What we do to get out of it is to make sure we have a strong enough economy so new jobs will be created.

What are all of the economists—and I do not care which philosophy the economists subscribe to, the one thing everybody agrees with is these large budget deficits we are experiencing today and that are projected out into the future are the No. 1 single threat to our economy. So if we want to have a secure future going forward, we must watch and curtail additional Federal spending.

The reason we have the deficit today, over half of it, is because of the poor economy. So when businesses and individuals are not making as much money, they do not pay as much in taxes. Over half of the budget deficit is caused by that. About another 27 or 28 percent of the budget deficit was caused by increased Federal spending. And about 20 percent of it were the last two tax cuts that were enacted. But without those tax cuts—it is widely accepted now those tax cuts have helped the economy—we would be in even worse shape.

The number one thing we can do for the economy, as a Federal Government is to create the atmosphere where those jobs are created. So the number one thing we can do is make sure we keep our fiscal house in order by restraining Federal spending.

Looking back at the payroll survey, eight months prior to the tax cuts we lost 386,000 jobs. Eight months after the tax cuts we produced 300,000 jobs. That is just the payroll survey statistics. That does not count the household survey, or all of those self-employed people I was talking about earlier. There are literally a couple of million jobs that have been produced since the tax cut, when you count self-employed people.

The other side says that doesn't count. Just ask somebody who is self-employed whether they think their job counts and should count in the national statistics. I think everybody who is self-employed out there, if you have a mom-and-pop business, if you are a doctor who used to work for a hospital and have your own practice, or you are a nurse-midwife and you decided to take the risk and go out on your own, does your job count? A nurse practitioner or a physical therapist, whatever the job is, should that job count? I believe it should. I believe that is why there are two different surveys, the household survey and a payroll survey. It is important that we have both of them so we can look at the big picture. The economy is changing. We have to have policies that reflect those changes.

I yield the floor at this time so we can go back and forth and continue the debate. I see my friend from Oklahoma. Next time I get recognized, I will yield some time to him.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator has 8 minutes 57 seconds; they have 18 minutes 41 seconds.

Ms. CANTWELL. I yield to the Senator from Massachusetts 4 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Will the Chair let me know when 3½ minutes has passed?

The PRESIDING OFFICER. The Chair will do that.

Mr. KENNEDY. Mr. President, I thank the Senator from Washington for being our leader on this issue about concern for the unemployed. She has, along with our colleagues, on over 12 different occasions challenged the Senate to try to do the constructive and positive thing, in terms of the unemployed in this country.

I listened to my friend from Nevada. I wonder what world he is living in. It probably is the world of the President of the United States. First, he gave us the State of the Union and said the economy is wonderful and getting better. Then he made a speech on the State of the economy and said everything is just rosy-posy. Then he spoke to the National Governors Association just this last 2 days ago and said everything is just fine; everything is doing well.

Here I have three of this week's magazines talking about what is happening. ''Jobs Going Abroad.'' What is happening? ''New Jobs Migration.'' What is happening? ''Will America still be able to be a strong economy?'' This is what is happening in the world. And we have silence by this body.

Look at this chart. Thirteen million children are going hungry every day in America, 3 million more Americans are living in poverty than 3 years ago, and 90,000 workers are losing their unemployed compensation every single week. That is the real America.

What we know is what has happened to real people in America. These are the administration's own figures. This is the Department of Labor. In 2000, the average family earned $44,000; now it is down to $42,000—a near $1,500 reduction. That is what is happening.

We have a real need out there. Everyone who travels the country understands it, except the Republicans.

You have $15 billion in that fund. The Senator from Nevada says we have $4 billion that the States have. He knows as well as I they are restricted from using it because of Federal law. There is $15 billion out there. These are hardworking, decent Americans trying to pay a mortgage, trying to put food on the table, trying to take care of their children, and we are here saying, no, no, no; we are not going to give them the help and the assistance, the lifeline. They paid over a lifetime of working hard into this country. They paid into this fund. They are entitled to it. What is the reason for not providing this? What is the reason for not providing it? That is what the amendment

of the Senator from the State of Washington will do. It will give them a lifeline for the next 13 weeks so they will be able to keep their families together, have a sense of dignity, have a sense of pride, have a sense of optimism in their future and their family's future. We ought to be about the business of passing that and I hope we do this afternoon.

I withhold the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I am going to reclaim 30 seconds, if I can.

I will just take the time to read from this letter. I have a score, but this one says it all. It is from Tim O'Neal of Lexington, MA.

I strongly urge your immediate action to support and to implement supplemental federal funding of unemployment benefits. I have been unemployed for approximately 18 months, though I'm a Vietnam veteran with a baccalaureate in chemistry, a recent JD, and more than 20 years of computer industry experience.

Here you have in the paper today, number of mass layoffs rose sharply in January. More than 2,400 employees across the country reported laying off 50 or more workers in January, the third highest number of so-called mass layoffs since the Government began tracking them a decade ago. That is in today's Washington Post. There is the need.

Senator CANTWELL has the answer.

The PRESIDING OFFICER. Who yields time? The Senator from Nevada.

Mr. ENSIGN. I would like to ask the Senator from Washington a question.

I mentioned before that we gave the States about $8 billion a couple of years ago and that there is still over half of that money unexpended.

I wanted to know if the Senator from Washington was aware that her State was given about $167 million and so far the unexpended available balance to the State of Washington is about $165 million out of $167 million that was given to your state.

I realize you have a higher unemployment rate than the rest of the country. I am kind of curious why your State has not spent the money we gave from the Federal Government?

Ms. CANTWELL. I am happy to answer the Senator's question. I would like to do so on your time, since you have a little more time left than I do.

Mr. ENSIGN. I will yield you 1 minute.

Ms. CANTWELL. I thank the Senator.

As the Senator from Massachusetts said, the States have that money obligated. They are committed to use it. The issue about the Federal program is that the Federal program is to lay on top of the State program.

The point about $15.4 billion being in the Federal trust fund is that $15.4 billion is continually added to by the American employer on behalf of them and the employee and that fund grows. So the amount at the Federal level can be dedicated to help with this Federal extension program.

The PRESIDING OFFICER. Who yields time?

Mr. ENSIGN. Mr. President, I will take a minute while the Senator from Oklahoma is getting ready to make a couple of other points.

At some point we have to have some fiscal discipline around the Senate. There are good arguments to make in support of extending unemployment benefits. There is always anecdotal evidence, stories of hardship cases. You can always find those. If we had a 1-percent unemployment rate, you could find people out there who were unemployed, and unemployed for a long period of time, no matter how low the unemployment rate.

The question is, by extending these benefits, do you create more of a problem than you are solving? In other words, we know that about 50 percent of the people who are on unemployment will get a job in the last 2 weeks before their benefits run out.

We have to have some discipline around here, put our fiscal house in order so that in the future we don't harm the economy, so that those jobs will be there for those people who want employment. For every person who wants to get a job and is willing to work, we need to have a job available.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant Journal clerk proceeded to call the roll.

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

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

Ms. CANTWELL. Mr. President, how is the time being counted under the quorum call?

The PRESIDING OFFICER. The time has been charged to the Senator who put the quorum call in.

Ms. CANTWELL. Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

If neither yields time, the time will be shortened on both sides of the aisle equally.

Ms. CANTWELL. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator's time is 4 minutes 29 seconds; 14 minutes 34 on the opposite side.

Ms. CANTWELL. Mr. President, I will take a minute to report something to my colleagues. Hopefully this debate has stimulated some great thinking.

As I pointed out, we can look at the history of the two different Bush administrations. The first Bush administration decided after creating 379,000 new jobs that it was going to extend unemployment benefits for 9 months—20 weeks for individuals who had already received State benefits could get a Federal benefit. This administration, having a similar recession in challenging economic times, only created 112,000 jobs in January and decided there would be no benefit program and no weeks for employees.

I am not surprised to see the Washington Post headline ''Number of Mass Layoffs Rose Sharply in January''—''2,400 employers let go 50 or more people.'' That is the economic news facing the country.

This administration and the other side of the aisle are not promising jobs or promising unemployment benefits. If someone wants to stand up and say we are going to have real job creation in 2004 and stand by the President's numbers, that is one thing. But if you are not promising either growth or economic assistance, then we have a serious problem.

I reserve the remainder of my time.

Mr. LEVIN. Mr. President, extending unemployment benefits would be one of the most important and significant action Congress takes this year. The economy and jobs are consistently the top areas of concern back home. The people that I speak to are far more interested in extending unemployment benefits than extending tax cuts to the wealthy. The House recently acted in strong bipartisan fashion and passed an amendment to extend unemployment insurance benefits to workers who have exhausted their state and federal benefits. Now it is time for the Senate to act as well.

According to the Center for Budget and Policy Priorities, the number of individuals exhausting their regular State unemployment benefits and not qualifying for further benefits is higher than at any other time on record—about 90,000 workers a week. Painful history is being made. This Senate cannot stay silent. In January alone, about 375,000 unemployed workers exhausted their regular state benefits and are not eligible for any Federal unemployment aid. This is on top of the 395,000 unemployed workers who exhausted their state benefits last December 2003.

Action is needed now. President Bush predicted that in 2003, we would create 1.7 million new jobs. Instead, the Nation lost 53,000 jobs. On Monday, President Bush said he thought the current unemployment numbers are ''good.'' Not where I'm from.

In earlier slow economic times, previous Congresses have acted. In the 1974–75 recession, Congress provided 29 weeks of Federal unemployment benefits. In the 1981–82 recession, Congress provided 26 weeks of Federal unemployment benefits. In the 1990–91 recession, Congress provided 26 weeks of Federal unemployment benefits. In the program that expired on December 31, 2003, Congress provided 13 weeks of Federal unemployment benefits. That was below previous levels of Federal weeks but it was something.

The Federal extended benefits program implemented during the last recession was not allowed to end until the economy had produced nearly three

million jobs above its pre-recession levels. The current program has ended when there are 2.4 million fewer jobs than when the recession began.

The recently expired Federal unemployment program was closed to new enrollees last December 31, 2003. Workers currently receiving federal unemployment benefits will be phased out by the week of March 29, 2004. The recently expired federal unemployment program not only provided an added 13 weeks of Federally funded unemployment benefits for workers who have run out of State benefits—it provided an additional 7 weeks in States with the highest unemployment. Renewing this program—and hopefully expanding it to more traditional levels—is crucial.

The Federal unemployment trust fund has over approximately $15 billion in it—for this exact purpose—to allow unemployed workers who contributed to the fund while working to now use it in their time of need. The trust fund is the workers' money, made up from their contributions. Keeping money in consumers' hands will help sustain the economic recovery, too. Without it, more families will postpone medical care, watch their savings dry up, and lose their homes.

The Bush administration has told us that a .1 percent national unemployment rate drop is proof positive that his tax cuts and other economic initiatives are beginning to work. However, what President Bush did not tell the American people that factory employment declined for the 42th consecutive month by eliminating approximately 24,000 manufacturing jobs. Despite last month's growth, America's manufacturing core has shed an average of 53,000 jobs per month for the last 12 months. If a recovery is going on, it is essentially a jobless recovery. A jobless recovery is no recovery at all. The term is an oxymoron.

The Labor Department statistics also reveal that five million Americans work part time jobs because they cannot find full-time jobs. Since President Bush took office, about 3 million private sector jobs have been lost and a total of almost 9 million Americans are now unemployed. We have also reached record levels of long-term unemployment.

Manufacturing jobs, which helped to build and sustain America's middle class, are disappearing. A total of 2.6 million manufacturing jobs have been lost since January 2001, 11,000 last month alone. Manufacturing jobs are good jobs that pay high wages, provide good health benefits and retirement security. We cannot afford to let these good jobs leave our country or be lost.

Michigan has been particularly hard hit, losing approximately 225,000 jobs since January 2001 of which 185,000 were manufacturing jobs. Our states and our nation cannot sustain such losses. On Labor Day President Bush acknowledged that ''thousands'' of manufacturing jobs were lost in recent years. He was off by about 2.6 million.

Let us pass an extension of unemployment benefits now. It is simply the right thing to do. It is the traditional thing to do in times like this.

I ask unanimous consent that the following chart be printed in the RECORD, illustrating previous Congressional action.

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

Year	Cumulative Extension of UI Benefits
1974–1975	29 weeks.
1981–1982	26 weeks.
1990–1991	33 weeks (states with high unemployment); 26 weeks (all other states).
2002	26 weeks (states with high unemployment); 13 weeks (all other states).
Proposed legislation	20 weeks (states with high unemployment); 13 weeks (all other states).

Mr. DODD. Mr. President, I thank Senator CANTWELL for offering a very important amendment on unemployment insurance. This amendment is absolutely necessary because this administration has put this country on the wrong economic path.

The economy is not improving, jobs are not being created, and workers and their families are suffering. Since this administration took office, America has lost nearly 3 million jobs, including over two and a half million in manufacturing. More than 9 million Americans are out of work. Unless we see an unbelievable turnaround in the next 8½ months, this administration will be the first since that of Herbert Hoover to preside over an economy where more jobs are lost than created.

And what is the President's plan for economic recovery and job creation? More tax cuts for the wealthy; eviscerating overtime pay for hard-working Americans; shipping service and manufacturing jobs overseas; all while raising our deficits to record levels.

It is not just the President alone who supports these policies—his administration supports these and other irresponsible policies as well. They have been forthcoming about their priorities and the priorities are out of step with working Americans. Therefore, no one should be surprised when instead of receiving a paycheck they receive a pink slip. No one should be surprised when they lose their house because the administration refuses to extend unemployment insurance benefits. No one should be surprised when retirees see their social security benefits slashed. No one should be surprised when companies move overseas or rely on workers overseas.

Also troubling, just yesterday the Fed Chairman encouraged Congress and the Administration to make cuts into future Social Security payments in order to bring down the deficit. So now this administration is telling men and women who have worked hard their whole lives and are relying on Social Security to help them during their retirement years that they are better off cutting Social Security benefits rather than eliminate the tax cuts that go to the wealthy.

The chairman of the President's Council of Economic Advisors is quoted as saying, ''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.'' American workers are losing their jobs and the Administration says it's a ''good thing''. That is an extraordinary statement.

In fact, not once in the past month has the President mentioned extending Federal unemployment benefits. What more must happen for this administration to wake up and begin to take meaningful action?

The President talks about tremendous job growth this year. This prediction would only be met if job growth averaged more than 450,000 new jobs each month, about four times the level of job growth in January according to the Economic Policy Institute.

Americans are hurting and instead of taking steps to ensure job creation, this administration continues to call for more tax cuts—tax cuts that will favor the most wealthy, but do nothing for the families that are struggling today. These tax cuts will cost an additional $1 trillion dollars over the next 10 years. What is even more alarming about this is that this is coming at the worst possible time—right when the baby boomers begin to retire.

It is dumbfounding to me that just 3 years ago we were looking at the biggest surplus in our Nation's history—an annual surplus of $236 billion. We were actually having interesting discussions about the effects of paying down the debt too fast. If only we were debating that today. Instead, we are facing an unsustainable fiscal path with the largest deficit in history—a deficit of $521 billion this year, a deficit that if not tackled soon, will have dangerous consequences.

It has been projected that by 2009, if we continue on this irresponsible path, each person's share of the debt will total $35,283. This will lead to a reduction in consumer demand, an increase in interest rates, and it will make it enormously difficult for families across this country to achieve financial security.

Today, the Labor Department reported that 350,000 people filed new claims for State unemployment benefits last week. Just yesterday, the Center on Budget and Policy Priorities estimated that from late December, when the Federal unemployment benefits program expired, through the end of February, 760,000 jobless workers will have exhausted their regular unemployment benefits without receiving any additional Federal aid. More than 4,700 jobless workers in Connecticut will exhaust their benefits without qualifying for additional Federal aid.

So that is why I wholeheartedly support extending Federal unemployment benefits right now. At the very least, we need to reach out to American workers and offer them a lifeline. This ought not be a partisan issue. I urge my colleagues to support this important amendment.

Mrs. FEINSTEIN. Mr. President, I rise to support Senator CANTWELL's amendment to reinstate the temporary emergency unemployment compensation program.

The amendment will reinstate the 13-week Federal unemployment insurance program, extend it for 6 months and ensure that ''high unemployment'' States continue to be covered.

Given all of the pressures that workers face today—outsourcing, a political environment that is hostile to organized labor, and a lack of high-paying jobs—there is no more pressing issue facing our nation's workforce. And yet although Senate Democrats have asked more than a dozen times to unanimously pass the unemployment extension—each time Senate Republicans have said no. It is time that the Senate stop putting partisanship ahead of what nearly everyone agrees is smart policy.

On February 4, the House of Representatives voted to reinstate unemployment benefits by a vote of 227 to 179, with 39 Republicans defying their leadership and voting in favor of the benefits.

But until the Senate acts, hundreds of thousands of workers will be in the impossible position of trying to feed, clothe, and house their families with no work and no benefits.

These are people who are persistently trying to re-enter the workforce, and yet must contend with an economy that has less than one job opening for every three workers.

Today we can change this. This amendment provides crucial temporary assistance to those who have been hardest hit by the recent economic downturn, and provides them a chance to support themselves and their families while they look for work.

Although the amendment would not provide more than 13 weeks of additional benefits to California, since my State's unemployment rate is 6.4 percent, not high enough to meet the 6.5 percent unemployment rate trigger in the amendment, it provides a meaningful extension for Californians by allowing unemployed Californians who were previously unqualified for unemployment benefits to collect 13 weeks of benefits as they look for new work.

As of today, 2.3 million Americans have lost their jobs since President Bush took office in January 2001.

In total, nearly 15 million Americans are out of work, including discouraged and underemployed workers.

Historically, job loss during a recession is about 50 percent temporary and 50 percent permanent. Today, nearly 80 percent of the job loss is permanent. As a result, many of the unemployed will not return to work soon.

In his Annual Economic Report, President Bush said that the outsourcing of jobs was the inevitable byproduct of an improving economy.

The White House says 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 these goods and services? How do you keep a consumer economy going when you export all the jobs?

The chairman of the President's Council of Economic Advisors, 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.''

As Senator DASCHLE pointed out, that sounds like a cruel joke. The President's proposed budget for next year cuts money for Federal job training programs. And how do they know that the jobs they are training for will not be the next jobs targeted to be shipped overseas? It certainly will not be because the President is fighting to keep them here.

It seems to me that the jury is in on the course we must take. I think it is wrong to move to a protectionist stance by raising tariffs or promoting a weak U.S. currency. Historically, such strategies have led to more problems than they have solved.

U.S. companies should not be rewarded through our tax code for moving jobs offshore and then be allowed to bring foreign earned profits back into the U.S. at a tax rate that is a fraction of what they pay on their U.S. earned profits—just 5 percent, as compared to 38 percent in some cases.

You and I pay more than five times that in personal income taxes.

We should be encouraging firms to keep jobs here by producing the best trained, best educated workforce in the world.

And, we must help those who are displaced by outsourcing by providing emergency unemployment insurance.

This amendment provides just such a safety net for those who are temporarily displaced by the economic changes that are engulfing us.

I ask President Bush to put his weight behind this effort to get unemployment benefits extended to those who have been looking for a job more than 13 weeks.

If you are the President, you should be cheerleader number one for the American worker. And you should be supporting workers when they find themselves overcome by economic circumstances beyond their control.

When the national economy was booming 4 years ago, California was particularly blessed. California's economy grew at double-digit rates, and California became the fifth-largest economy in the world.

Billions of dollars of investment flowed into our State, and thousands of talented workers moved to California to take advantage of opportunities in Silicon Valley and other growth engines of the New Economy. Now that picture is dramatically different.

After dropping to a decade-long low of 4.7 percent in December of 2000, the unemployment rate in California is back up to 6.4 percent as of the end of 2003.

During this period of economic hardship, we have a duty to give people the chance to get back onto their feet. This is an obligation that we have met in the past, most recently when faced with an economic downturn during the first Bush Administration. The Senate voted in 1991 to extend temporary unemployment insurance on five separate occasions. Each time such extensions were approved by overwhelming bipartisan majorities.

I urge my colleagues to support this amendment and those Americans who have fallen on hard times.

Mr. ENSIGN. Mr. President, how much time does the Senator from Oklahoma wish?

I yield to the Senator 10 minutes.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 10 minutes.

Mr. NICKLES. Mr. President, I compliment my colleague and friend from Nevada for his statement.

It is important that we create an environment to create jobs. We did that last year. We didn't have bipartisan support, with the exception of Senator MILLER. But we passed a jobs bill last year. We passed a bill to help grow the economy. Guess what. It is working.

We passed a bill last year that cut the tax on individuals about in half—15 percent. We passed a bill last year that cut the tax on capital gains from 20 to 15 percent. We passed a bill that reduced marginal rates; that took the rate from 27 percent, for example, and made it 25 percent.

As a result of that, the economy is growing. With a rather stagnant economy, the stock market a year ago was less than 8,000; that is, the Dow Jones. It is over 10,500 today. The Nasdaq is over 50 percent. For the last three quarters, we now have significant economic growth. During the last two quarters, one quarter was 8 percent and the other quarter was 4.4 percent.

We have had the most significant rapid expansion of job growth and economic growth in the last several months. In the last 6 months, according to the Wade survey, we have added about 300-some thousand jobs. If you look at the household survey, it is a couple of million jobs. The household survey includes self-employed, working at home on their computers, and so on.

Also, I know this amendment says let us continue this Federal program. We have a State program of 26 weeks. We had a temporary Federal program for an additional 13 weeks. Many tried to make that a permanent program and many tried to double it. They weren't successful in doubling it. Now they are trying to make it permanent.

They want to take a 13-week program that traditionally was temporary and usually phases out when the unemployment rate drops down. The unemployment rate has been dropping down. In

2003, it was 6.3 percent, and it has declined almost every month to 5.6 percent. We have had significant improvement in the number of jobs, and the unemployment rate is 5.6 percent.

But I notice that the proponents of the amendment said: What about the early 1990s? In the early 1990s, we discontinued unemployment temporary assistance when the rate was 6.4 percent. Today, it is 5.6 percent—a full percentage point less than it was several years ago when we had this temporary program.

Some people do not like the idea that it is a temporary program. They would like it to be a permanent program.

It is not.

A couple of other things:

The number of unemployed is falling. If you go back to last year, it dropped from 9.2 million to 8.3 million—again, a significant improvement by almost a million.

The number of Federal extended unemployment benefit claims has fallen dramatically as well. It is declining. That is because economic growth is going up. Yes. Sometimes there is a lag between economic growth and the number of new jobs created because you have a lot of inefficiency in the system.

You have a more productive system. People are producing more with less, people are more efficient, and people are very productive. The productivity index has been skyrocketing. We have had a very productive, efficient workforce. So that is contributing.

I want to make these points. We spent about $30 million in the last 36 months for this program. Again, some people would like it to continue forever. When you have a national unemployment rate of 5.6 percent—I don't know that we have had the Federal temporary unemployment assistance apply at a rate that low. I mention that.

I also might mention that almost half the States have less than 5 percent unemployment.

I used to be in manufacturing. When the unemployment rate was less than 5 percent, it was almost full employment.

You are always going to have an unemployment rate. You are always going to have some people moving from job to job. With a dynamic economy, people basically transfer from job to job. Their job may be phased out, but they are going to another job. That is part of high tech. That is part of modernizing industry. This is part of keeping up. That is part of the dynamics of the marketplace which maybe a lot of people would like to replace. People change jobs. That is not all that unhealthy. Sometimes that next job is a better job. Sometimes that next job might have great growth potential.

This program is a Federal temporary program, and it shouldn't be made permanent. To make it permanent will add $5.4 billion on to the deficit this year. The deficit this year is already over $500 billion, according to OMB. CBO is going to say it is less than that. I happen to agree with the Congressional Budget Office. If you have a deficit of 400-plus or 500-plus billion dollars, let us not add on another 5.4 billion on top of it for this year. Enough is enough.

How long are we going to continue the program? Do we continue this program if the unemployment rate gets below 5 percent? There has to be a time when we say enough is enough.

The current program is in the process of phasing out. When we passed the last bill, we avoided a cliff by December 30. If somebody was in the 13-week program by the end of December, they got the full Federal 13-week extension. We didn't have somebody automatically losing their benefit after 1 week on the Federal program.

We also have a program for high unemployment States. That is a permanent Federal Extended Benefits program. Right now, Alaska qualifies for extended benefits. Nationally, they already get a 13-week Federal on top of the State 26 weeks. So Alaska already has 39 weeks. That is three-fourths of the year.

We have to determine when is enough. I think we have crossed the line. There is a direct relationship—and the Senator from Nevada alluded to this—when we discontinue making extra payments, more people will find work. There is more incentive to get out and find that job, to make sure you get a job, to make sure you can take care of your family.

Tradition has shown—and we saw this in the 1990s—when this program stopped in the 1990s, the unemployment rate declined by another percentage point because a lot of people went out and found jobs. In other words, the more you pay people not to work, the less inclined they are to work. There is a direct relationship. So we should, at some point, draw this program to a conclusion.

We are saying keep the 26 week State program, keep the permanent Federal program for high unemployment States, those States that are really suffering through economic decline. But for the rest of the country, this is not called for. It is not affordable. It will be adding to the deficit. It is out of order as far as the budget is concerned.

I will make a point of order on this but I withhold the vote until all time has expired on both sides. The pending amendment No. 2617 offered by the Senator from Washington increases direct spending in excess of the allocation to the Judiciary Committee. Therefore, I raise a point of order against the amendment pursuant to section 302(f) of the Budget Act.

The PRESIDING OFFICER. The Chair advises the Senator the point of order is not timely. It can be made when all time has expired.

Mr. NICKLES. I will reserve the point and see if additional Senators wish to speak.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. How much time do I have remaining?

The PRESIDING OFFICER. Six minutes five seconds.

Mr. ENSIGN. I will take a couple of minutes.

I asked the Senator from Washington a question a little while ago. Of the $8 billion we gave to the States, each of the States was allocated a certain amount of money and the State of Washington was allocated around $167 million. Up to this point, the State of Washington—this is money on which the legislature in the State of Washington has to act; they take that money and spend it on unemployment benefits—so far has only used about $3.5 million of the $167 million.

Earlier, the Senator from Massachusetts was in the Senate discussing with the Senator from Washington, saying it is difficult to access. Massachusetts has used every dollar they were given at that time—every dollar. So the Senator from Washington, the sponsor of this amendment, her own State has not used the money the Federal Government made accessible to them. It seems to me they ought to at least use that money to help the people in their own State.

Also, we had the Workforce Reinvestment Act that passed unanimously in the Senate. This act would help about 900,000 people in the United States to be retrained for new jobs. The other side is filibustering the appointment of conferees. We need to complete that bill if we want to help those people out of work get retrained so we can get them into other jobs.

Mr. NICKLES. Will the Senator yield?

Mr. ENSIGN. I yield.

Mr. NICKLES. I want to make sure everyone is aware, when you talk about the State has money it has not utilized, are you referring to $8 billion Congress appropriated as part of the package in 2002?

Mr. ENSIGN. Yes.

Mr. NICKLES. There was $8 billion and there is still $4 billion on the table the States have not utilized for the unemployment compensation?

Mr. ENSIGN. There is $4.3 billion that has not been used that we gave the States.

Mr. NICKLES. My colleague mentioned the Workforce Investment Act that passed unanimously through the Senate and for whatever reasons our colleagues on the minority side have not agreed to the appointment of conferees. This is a bill that would help train people to get jobs.

Mr. ENSIGN. They are filibustering the appointment of conferees.

For those people who do not know what that is, we have to appoint people to be able to work out the differences between the House and the Senate so we can bring the final bills back to both before we take it to the White

House. They are filibustering a bill that was passed unanimously.

Mr. NICKLES. A further clarification. I find it totally unacceptable and I cannot imagine not agreeing to appointing conferees on a bill that will help get people trained to find jobs.

Also, I make an editorial comment. There is way too much of that happening. Our colleagues should be advised, this not agreeing to appointment of conferees is a travesty on the Senate procedures. Maybe people think it is commonplace. It is not commonplace in the tradition of the Senate.

Mr. ENSIGN. The Senator from Oklahoma is correct, it is a rarely used tactic from the past that has been used increasingly more. It is obstructing the work of the Senate.

I reserve the remainder of my time.

Ms. CANTWELL. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Washington has 3 minutes 7 seconds and the other side has 2 minutes 3 seconds.

Ms. CANTWELL. Mr. President, I will take 2 minutes to try to explain for my colleagues that while I have a great deal of respect for both my colleagues on the other side of the aisle as they argue their points, obviously, we all hope for a better economy; we all hope things are going to get better.

I have some experience with these issues. I have been in the private sector myself and been part of an organization that was about job creation, been part of an industry that has great hope for the future.

The question is whether we want to take stimulus out of the economy by denying people unemployment benefits.

I will not debate the chairman of the Budget Committee about his budget point of order, but I will say most Americans know that they pay into a trust fund, through their employers, and those funds are available at the Federal level in a trust fund for this program. So you can call it what you want as it relates to the Budget Act; these dollars are in a trust fund, paid into by employers on behalf of employees, and those funds can only be used for this purpose.

We can decide we do not want to use them because we think the economy is getting better. That is what the other side seems to say. Unfortunately, that is not what the administration is willing to own up to. Basically, it will not promise job growth after issuing a report saying there will be 2.6 million jobs. And the other side will not own up to the need for job growth or own up to helping unemployed workers.

The last Republican administration took the same problem and had a different outcome. It stepped up its efforts. Even though unemployment was dropping, even though the rate of unemployment was, month by month by month, dropping, and even though employment or new job creation was happening, the first Bush administration said, we believe 9 more months of unemployment benefits is needed.

I am only asking for 6 months today. I ask my colleagues to take that into consideration when they are thinking about all the economic assistance we could be giving. You want to say the tax cut is working. Great. Then ask the President to stick by his economic plan of 2.6 million jobs.

Mr. NICKLES. I am finding out more about this amendment, and the more I find out, the less I like it. The sponsor of the amendment has written it in a way that her State receives extra benefits that most States do not. So this is not a simple extension. It is a simple extension, except a few States will get additional high unemployment assistance.

I am bewildered. I came to the floor and thought it was a simple extension. It is not. It rewrites the definition of high unemployment. It changes the criteria and benefits for the State of Washington, and a probably one or two other States. The State of Washington has money on the table that we have already appropriated that the State legislature has not used, as the Senator from Nevada alluded to.

One final note. We discontinued the Federal temporary assistance program in the early 1990s when the unemployment rate was at 6.4 percent. The unemployment rate today is 5.6 percent. It is much lower. It is time to say, let's go back to the program that has permanent extended benefits only for high-unemployment States, not for every State.

The PRESIDING OFFICER. Who yields time?

The Senator from Nevada.

Mr. ENSIGN. Mr. President, I will wrap up my remarks. I have a couple comments.

First of all, the economy is improving now, it is not just going to improve in the future. We are in the middle of a recovery. We just had the strongest quarter of GDP growth in 20 years. Jobs are being produced.

Payroll versus household—I do not know how many times we have to say it, but self-employed people count. They count in the household survey. Over 2 million jobs have been produced within the last year. When you count the households and all those self-employed people, those jobs should count in what we are talking about here.

If somebody lost their job and then started their own company, that should count as a job. And that is what a lot of people have done. We know incredible success stories of when people have lost their jobs and then started their own companies.

Mr. President, it is time to end this continued unemployment benefit extension, this billion-dollar-a-month program and encourage people to go to work.

The PRESIDING OFFICER. The Chair advises the Senator from Nevada that all his time has expired.

The Senator from Washington has 34 seconds.

The Senator from Washington.

Ms. CANTWELL. Mr. President, I think the point is clear; and that is, this side of the aisle believes the American workers, who have lost their jobs through no fault of their own, should be given assistance until job creation is on the upswing in America so we can move further along this path and so that stimulus is still in the economy.

That has been the result in the past two administrations. The last Bush administration believed in this, and now, somehow, we want to forget that economic success.

I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, the amendment No. 2617 offered by the Senator from Washington increases direct spending in excess of the allocation to the Judiciary Committee. Therefore, I raise a point of order against the amendment pursuant to section 302(f) of the Budget Act.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. TALENT). The Senator from Idaho.

Mr. CRAIG. Mr. President, pursuant to the unanimous consent agreement, I now ask unanimous consent that this amendment be set aside, and we will now move to the issue on voting rights.

The PRESIDING OFFICER. Is there objection?

Hearing none, it is so ordered.

Mr. CRAIG. I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

AMENDMENT NO. 2626

Mr. MCCONNELL. Mr. President, shortly the majority leader will send an amendment to the desk to provide for a permanent extension of the Voting Rights Act of 1965. This was one of the truly landmark pieces of legislation in American history.

Last Congress, Senator DODD and I spearheaded, along with Senator BOND, what became a 2-year quest to reform the way elections are conducted in this country. Senator DODD was correct in saying the election reform legislation we passed was the most important civil rights bill of this century, the 21st century.

With the support of 92 Members of this Chamber, we were successful in protecting the rights of all Americans—all Americans—to cast a vote and have it counted, but to do so only once. Gone will be the days of dogs and dead people registering and voting, and so, too, will be the days of faulty equipment and being turned away at the

polls. Now the majority leader shortly will offer an amendment which makes permanent the most important civil rights bill of the previous century, the 20th century.

If I may, let me recall a personal experience I had during that period in the 1960s that is indelibly imprinted on my mind. The day was August 28, 1963. It was the day Martin Luther King Jr. made that ''I Have A Dream'' speech from the steps of the Lincoln Memorial. The Mall was crowded with folks from here at the Capitol all the way down to the Lincoln Memorial. And in that crowd I found myself. I was there the day of the March on Washington and the day of the ''I Have A Dream'' speech. Unfortunately, I could not hear it because I was so far down the Mall, and there were so many people I did not hear the speech. But you had the sense, if you were in the crowd that day, and sympathetic with the effort to get voting rights, public accommodations, and fair housing, that you were in the presence of one of those seminal moments in American history.

Of course, we now all reflect on that day, August 28, 1963, with great reverence, and Rev. Martin Luther King, Jr.'s speech is remembered as one of the great speeches in American history, delivered that day on the steps of the Lincoln Memorial, August 28, 1963. I will always remember that I had an opportunity to be a part of that most important day.

A couple years after that, we passed the Voting Rights Act of 1965. There were three things that march was about: public accommodation, passed in 1964; voting rights, which passed in 1965; and fair housing, 1968. But voting, of course, is the most important in a democracy.

Over the years, the Voting Rights Act has successfully addressed truly egregious problems which existed at that time. Unfortunately, though, the pattern of the Voting Rights Act is to not make it permanent and, once again, it is set to expire in 2007.

The protections in the Voting Rights Act are, frankly, too important to provide on only a temporary basis, and that is the reason the majority leader will be offering shortly his amendment to make the Voting Rights Act permanent.

The majority leader, in fact, just within the last couple of weeks organized a civil rights pilgrimage which was attended by a number of our colleagues on both sides of the aisle. My wife Elaine and I went to part of this 3-day pilgrimage that began in Alabama and ended in Nashville, with the dedication of the Civil Rights Room of the Nashville Public Library, which is replete with photographs of the lunch counter sit-ins in Nashville in the 1960s, which led to the peaceful integration of Nashville during that period.

This was a meaningful experience for all of us who participated, at the majority leader's request, in this pilgrimage. Congressman JOHN LEWIS was along, one of the great heroes of the civil rights movement. We talked about August 28, 1963. He got to speak. He was the youngest speaker on the podium that day. Young JOHN LEWIS was there and thrilled to have an opportunity to speak, at age 23 or 22, on the same day and from the same podium as Rev. Martin Luther King.

I can think of no better way to memorialize our commitment to a free and equal society than the adoption of the Frist amendment. This amendment makes the preclearance and bilingual requirements permanent, providing a clear message from the Senate that we stand committed to not only the protection of civil rights but also to the preservation of those rights as well.

Some may suggest this action is premature. But how can the law of the land for 39 years be premature? Further, the language of the amendment is abundantly clear: ''the provisions of this section shall not expire.'' Let me repeat, in the amendment it says: ''the provisions of this section shall not expire.''

I cannot think of any reason why anyone on either side of the aisle would oppose the protection of the franchise of all Americans. If so, we potentially jeopardize the fundamental tenet of our representative democracy.

In conclusion, I commend the majority leader for this amendment. It is an excellent amendment. This is a step we should have taken years ago. I commend him for offering the amendment today. I hope it will be adopted by the Senate on an overwhelming bipartisan basis.

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST], for himself and Mr. MCCONNELL, proposes an amendment numbered 2626.

Mr. FRIST. 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 as follows:

(Purpose: To make the provisions of the Voting Rights Act of 1965 permanent)

At the end, add the following:

SEC. ___. MAKING THE PROVISIONS OF THE VOTING RIGHTS ACT OF 1965 PERMANENT.

(a) PERMANENCY OF PRECLEARANCE REQUIREMENTS.—Section 4(a)(8) of the Voting Rights Act of 1965 (42 U.S.C. 1973b(a)(8)) is amended to read as follows:

''(8) The provisions of this section shall not expire.''.

(b) PERMANENCY OF BILINGUAL ELECTION REQUIREMENTS.—Section 203(b)(1) of the Voting Rights Act of 1965 (42 U.S.C. 1973aa–1a(b)(1)) is amended by striking ''Before August 6, 2007, no covered State'' and insert ''No covered State''.

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

Mr. FRIST. Mr. President, the amendment I have offered is the amendment my distinguished colleague from Kentucky spoke to a few moments ago. I introduce this on behalf of the Senator from Kentucky and myself in response, in part, to the expiration of a portion of the Voting Rights Act. I will speak to the details of it shortly.

By way of introduction, 2 weeks ago, Congressman JOHN LEWIS and I participated in a trip to sites in Alabama and in Tennessee that reflected important times and places in those States as they pertained to civil rights and the movement of nonviolence and the struggle for voting rights. We had a wonderful, powerful trip crossing Selma's Edmund Pettus Bridge where almost 40 years ago Congressman LEWIS had led marchers in the name of voting rights for all.

The stories were powerful. They endured the beating without striking back, and they faced the hatred with the power of compassion and love.

Their courage captured a victory that has been to the benefit of millions today, not just for African Americans but for others all over this country. I was deeply moved by their courage and their sacrifice at the time, and I am grateful for their service.

This year, the 39th anniversary of the Voting Rights Act occurs. That act enshrined fair voting practices for all Americans. The act reaffirms the 15th amendment to the Constitution and prohibits individuals and governments from sabotaging the ability of African-American citizens to vote.

Dorothy Cotton, one of the participants with Congressman LEWIS and I, who ran the Citizenship Education Project of the Southern Christian Leadership Council with Andrew Young, remarked that she remembers when voting registration offices were open only when most African Americans were working during that time of day. Rev. Bernard Lafayette, who was also with us, another great civil rights leader, remembers routine harassment at the registration office, such as being required to interpret obscure sections of the U.S. Constitution or—and his words are so vivid in my mind—being required to give the number of bubbles in a bar of soap.

Clearly this was wrong. It was ugly, and it was unconstitutional. That is why the Congress moved to pass the Voting Rights Act of 1965, to once and for all protect the right of every American to vote.

The Voting Rights Act also includes section 4, and it will be up for reauthorization in 2007. President Reagan reauthorized it for 25 years in 1982. Section 4 is the section that contains the

temporary preclearance provision that applies to certain States: Alabama, Georgia, Louisiana, Mississippi, South Carolina, Texas, Virginia, and parts of Alaska, Arizona, Hawaii, Idaho, and North Carolina. These States must submit any voting changes to the U.S. Department of Justice for preclearance and, if the Department of Justice concludes that the change weakens the voting strength of minority voters, it can refuse to approve the change.

Section 4 provides an important measure of assurance that the full force of the U.S. Government stands behind voting rights for all Americans. That is why Senator MCCONNELL and I today are offering an amendment to permanently reauthorize section 4 of the Voting Rights Act. With or without section 4, every American has the right to vote. That will never change. However, Senator MCCONNELL and I want to make clear that America will never renege on the hard-fought gains of the civil rights movement. We don't want anyone to fear that their right to vote will ever be taken away. Those shameful days are over.

Some of the heroes of the civil rights movement have endorsed this particular amendment. Congressman JOHN LEWIS supports it.

Rev. Bernard Lafayette, who joined Congressman LEWIS and I—actually Bernard Lafayette went with us on our pilgrimage last week, but also he and JOHN LEWIS were together at that fateful time in 1965 for the march in Selma. His words were this amendment would be an ''important psychological and political victory for democracy.''

It is my fervent hope that one day soon racism and discrimination will be totally a thing of the past. Until that time, it is critical that the Justice Department retain this preclearance authority to review changes to State voting requirements, not only to allay fears that might arise but also to enshrine our progress to date.

I do hope all of my colleagues will join me in ensuring the Federal Government will do all it can to protect the right to vote for all Americans. I ask my colleagues on both sides of the aisle for their support of this amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself such time as I may consume.

I commend our majority leader for his strong statement and commitment of ensuring that the Voting Rights Act, which is of fundamental and key importance in terms of what American democracy is all about, is something that he wants to see and will extend it and that he is fully committed to working in every possible way to make that commitment come true. I also commend my friend and colleague from Kentucky, Senator MCCONNELL, for expressing similar sentiments. But this is not the best way to achieve that goal.

What is important to come out of this debate is that the Senate, as an institution, is firmly committed, as we hear from the majority leader and from the leadership from that side, to making sure we continue the Voting Rights Act. The real question is, How is the best way to make sure that is possible?

I was here in 1964 when we addressed the public accommodations laws and offered the amendment to eliminate the poll tax, and it was defeated. I was here in 1965. I am very familiar with the weeks we spent on that bill to actually get the Voting Rights Act.

I was on the Judiciary Committee in 1982 and listened to the Republican Attorney General William French Smith—I can remember it almost as if it were yesterday—because the extension of the Voting Rights Act had been offered by myself and my wonderful friend and a great Senator, a Republican Senator, Senator Mathias. We had 32 votes. The Reagan administration was opposed to extending the Voting Rights Act. That is the history.

Until the House of Representatives passed the Voting Rights Act overwhelmingly, we were unable to get to 50 votes and get a majority of the Judiciary Committee to vote to pass that out. It was only in the final hours actually that we were able to accept what was the Dole amendment.

Those who are interested in looking at the history, we were able to get up to more than a veto-proof majority, and President Reagan signed the bill.

This is not an issue to be lightly dealt with. This right to vote is a core issue in our country. We enshrined slavery into the Constitution. We fought a civil war to free ourselves from the pains of discrimination. It was Dr. King, quite frankly, who awakened the conscience of the Nation and the Nation came together and we saw the great progress that was made in the early 1960s to move us ahead with voting rights and public accommodations. Then, in 1968, we passed the Housing Act which really did not do a great deal in housing until actually the 1988 act.

This has been a long march, as the Senators have pointed out. We have to ask ourselves whether now is the time to take this action.

Let me read into the RECORD the letter I have received from the Leadership Conference on Civil Rights. I read it at this time:

On behalf of the Leadership Conference on Civil Rights, the Nation's oldest, largest, and most diverse civil and human rights coalition, we write to express our opposition to the amendment being offered by Majority Leader Frist to the protection of the Lawful Commerce in Arms Act, S. 1805, to make the preclearance of the minority language provisions of the Voting Rights Act permanent.

The Voting Rights Act is one of the most important civil rights statutes ever enacted by Congress. This law, which enforces the 15th amendment, has been successful in removing direct and indirect barriers to voting for African Americans, Asian Americans, Latino Americans, and Native Americans. And since its passage, the act has survived narrow interpretations by the United States Supreme Court only to be amended by Congress to restore its original strength. Nevertheless, voting disenfranchisement still exists today.

As you know, the VRA's preclearance and minority language provisions are scheduled for reauthorization in 2007. We in the civil rights community plan to actively engage in the process, including working to establish a strong legislative record in support of reauthorization.

I underline, Mr. President, the language that says ''establish a strong legislative record in support of reauthorization.'' That is a key phrase in terms of this letter and for reasons to which I will refer in a moment.

Nevertheless, we oppose the Frist amendment because it is premature. Critical analysis of issues surrounding preclearance of minority language provisions of the Voting Rights Act have not yet been fully examined and analyzed carefully to reflect the current status of our laws, court decisions, enforcement actions, and society.

The Supreme Court has made it clear in recent years that it will require Congress to establish a detailed record through hearings and legislative findings in order to ensure that provisions such as these survive constitutional scrutiny.

Therefore, while we plan to strongly support the reauthorization of these important provisions, we urge you to vote no on the Frist amendment.

The reasons for this urging are the relevant parts of this letter which have strong justification, given holdings by the Supreme Court on other actions that the Congress has taken in trying to expand rights and liberties for American citizens, and which have been struck down.

Time in and time out and time and again the courts have referred to the legislative record that has been made on the Voting Rights Act. I remember it. I was a member of the Judiciary Committee. I remember the days and months of hearings and testimony, an extraordinary record was made, unparalleled in recent history, justifying that act, respected by the Supreme Court. And we are going to say that last night at 11 o'clock the Senate agreed to take up an amendment with a 1-hour time limitation that is going to extend this, and the possibility of the Supreme Court looking back, when it is challenged—as we know it will be challenged—at the legislative history, the background, and they will find we had 1 hour of debate on the floor of the Senate and put at risk the Voting Rights Act.

There are some—not the Senator from Tennessee, the majority leader, or the Senator from Kentucky, but there are those who want to see this undermined. We know that. We have to be guarded against that possibility. Voting rights are too important to risk it.

Those families, those individuals, those Americans who are concerned about the issue of voting rights and in so many instances have been denied the right to vote and whose families have been denied the right to vote and have suffered, and in some instances have friends and family members who lost their lives in the struggle for civil

rights, say to us, let us do what we believe is necessary to do. Let us not have an abbreviated legislative process.

Let us go to what the Supreme Court has recognized as being the way to ensure we will have the kind of protection for this most basic and fundamental right, and that is do it through the legislative process, through the hearings, through the testimony, through the evidence that will be collected and debated on the Senate floor. That is effectively what is being said by the leadership conference.

That is why I am instructed, under more careful consideration, that Congressman LEWIS, having read this and consulted with lawyers and constitutional authorities this afternoon, is opposed to this amendment.

As I say, I am sure the majority leader understands the Supreme Court decisions that say how important it is to require a substantive record is made, and we do not have that record on the basis of an hour's debate this afternoon.

The recent experience in the courts, in the Supreme Court decision of Nevada Department of Human Resources v. Gibbs, and City of Burns v. Florida, show the Court will require a substantial legislative record when reviewing any future challenge to the provisions made permanent by this record. That is the holding of the Supreme Court, that they will require a substantial legislative record.

We do not have a substantial legislative record. That is not a part of this debate. As a result, the Senate should take every necessary step to develop that substantial record that will ensure any amendment will withstand the constitutional scrutiny.

I want to give assurances to the majority leader and my friend from Kentucky that we on the Judiciary Committee will work eagerly with the leadership on the other side to make sure when we come to grips with this issue, when we deal with the issue on the Senate floor and we have the full kind of debate and discussion, it will have the kind of background, experience, record, testimony, and extensive, exhaustive historical context so it will meet any possible challenge before the Supreme Court.

We do not have that. According to constitutional authority, we are risking not only the provisions we are talking about but the underlying legislation. That is a risk this Senator is not prepared to support. So I respect and admire the motives that have inspired our colleagues and friends to offer this amendment, but I have to indicate virtually the unanimous recommendation of those who have benefited from the Voting Rights Act are in strong opposition to this amendment and have instructed me to make their positions clear to the membership of the Senate.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Idaho.

Mr. CRAIG. Might I inquire how much time is remaining on either side?

The PRESIDING OFFICER. The Senator from Idaho has 16 minutes and the Senator from Massachusetts has about 16 minutes 40 seconds.

Mr. CRAIG. Might I inquire of the Senator from Massachusetts if he has anyone further who wishes to speak in opposition to the Frist amendment?

Mr. KENNEDY. First, I will make a few comments. I have been notified I have one other colleague who will be on his way in the next 4 or 5 minutes. If not, we will be glad to go on.

Mr. CRAIG. Fine.

The PRESIDING OFFICER. The Senator from Idaho has the floor. Does the Senator yield the floor?

Mr. CRAIG. I do.

The PRESIDING OFFICER. The Senator from Idaho yields the floor.

The Senator from Massachusetts.

Mr. KENNEDY. I yield myself 5 minutes.

Mr. President, we have to understand, as I think all of us do, that obviously the underlying legislation is important. I have spoken on this issue. I take strong exception to what is special interest legislation and singling out a particular industry from liability. That is important. The provisions that have been debated earlier this afternoon on the concealable weapons are very important as well in terms of safety and security. We debated the armor-piercing bullet. That is important in terms of lives and family. When we are talking now about the right to vote and ensuring the right to vote, this reaches the core value of our society and what this Nation is all about.

We know the history of our Nation. I mentioned very briefly slavery was enshrined in the Constitution. We fought a civil war in order to free ourselves from it. But it was only in the early 1960s that we began to make the real progress. The most important of all of those kinds of civil rights was the right to vote and the extension of that right and the elimination of the poll tax, the literacy tests, all of the other kinds of tests that were put up there. This country has been reminded once again about the importance of the right to vote in the recent Presidential elections where we saw this enormous fiasco that took place in the State of Florida, the future of this country ultimately being decided in the Supreme Court of the United States rather than the hands of the American people.

So the American people understand the importance. It is almost like a sacred right. If we were to talk about sacred rights in terms of what this society and country is about, it is about the right to vote. Nothing else is possible unless we have the right to vote, guaranteed to all of those citizens in our country who are eligible to have that right. It is fundamental to everything else this society is about.

We know it is being challenged and we know there are many who would set it aside. We have seen that in recent times. We have seen the threat to the right to vote. Even after we understand some of the difficulties we had in the last Presidential election, we have seen the difficulty we have had in this body and around the States to make sure we were not going to have that problem again and again. We have not solved the problems we had, but we have to preserve it and protect it and we cannot tamper with this very important and significant responsibility we have.

As I said before, I eagerly look forward to working with our two colleagues, who have spoken eloquently about their strong commitment, in ensuring that we are going to have an extension of the Voting Rights Act. I look forward to working with them in the Judiciary Committee. I know our two colleagues are not members of the Judiciary Committee, but we have enormous respect for them and their strong support will make an incredible difference in ensuring we will get the extension, we will build the record, and we will ensure the next time we pass this, we will have the kind of record that will be sustained in this Supreme Court and any future Supreme Court.

We do not want to put that at risk now. We do not want that. That is not a wise decision. The people who have suffered too long and been denied that right to vote believe very strongly that to be the case. I think we should observe their very serious concerns, follow those, and work to build the kind of record that will survive any constitutional scrutiny and ensure that rather with the existing protections we have, we are going to create even greater ones.

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. KENNEDY. 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. KENNEDY. If the Senator from Idaho wishes to yield back his time, we can do so.

Mr. CRAIG. I thank the Senator. I believe we have one of our colleagues still yet to come so we will wait for him for a short time. Time is running on this amendment.

How much time remains on this side?

The PRESIDING OFFICER. The Senator has 15 minutes 7 seconds. The Senator from Massachusetts has 11 minutes 40 seconds.

Mr. CRAIG. I appreciate that. 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. DODD. 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. DODD. Mr. President, I just received word on what we are now debating. I make a parliamentary inquiry.

Am I correct that this is a Frist amendment to this bill?

The PRESIDING OFFICER. That is correct. The majority leader offered the amendment.

Mr. DODD. The Frist amendment is amending the Voting Rights Act; is that correct? It would make the preclearance and minority language provisions of the Voting Rights Act permanent; is that correct?

The PRESIDING OFFICER. That is the Chair's understanding.

Mr. DODD. I thank the Chair very much for that.

First let me express my gratitude to the majority leader for having a strong interest in this. As someone who for the last several years, since the election of 2000, has spent a great deal of time on the conduct of Federal elections, I worked closely with MITCH MCCONNELL and KIT BOND of Missouri and Congressman BOB NEY of Ohio, who chairs the House committee and has jurisdiction over Federal elections over in the other Chamber, along with a number of other people. There were a lot of people involved in this, but we were able to put together the HAVA Act, the Help America Vote Act. It is in the view of many the first civil rights legislation of the 21st century. Some have called it the most significant legislation affecting the right to vote since the Voting Rights Act of 1965.

Certainly, one of the issues we looked at and discussed rather briefly was the issue of the reauthorization of the Voting Rights Act when it comes to language minorities. But when we were dealing with that bill, we did not vote to make permanent those provisions. And for good reason.

This is a very important part of the Voting Rights Act, these language minority and preclearance provisions. It is hardly the place, I suggest, with all due respect to those who are interested in this, as a floor amendment to any bill here. We are on a bill addressing the issue of guns, and rather suddenly we are asked to permanently change one of the most profoundly important laws in our nation.

Just to cite one example to my colleagues, if we adopt this today—there is a group very much in the news at this very hour. And that is the people of Haiti. Now, there is a substantial population in the State of Florida of people who are formerly from Haiti, Haitian Americans. If this language is adopted, some have raised concerns that it could have the effect of making it more difficult for Americans of Haitian background, who do not speak English as a first language, to obtain the voting information and technologies to which they might otherwise be entitled and which they might require in order to cast a ballot. The same concern has been raised about Americans of other backgrounds, as well, for whom English is not a first language.

I don't think there is a single Member in this Chamber who wants to vote today on a provision that could make it more difficult, if not impossible, for thousands if not tens of thousands of citizens, in effect, to vote. But we are told by those who deal in this issue every day that this amendment could have that effect. If we adopt this amendment in an hour's debate here, rather than after the kind of thoughtful analysis that should go into this, it could actually result in discrimination against Americans who clearly are language minorities. I am confident that none of us wants to see that happen.

This is hardly the time, place, and manner to make such a profound change in law. Frankly, I don't have a prepared speech. I was just listening to this debate in my office, and having worked on this issue, I know how much time you take to get this right. To come over and have an amendment adopted that could permanently exclude a substantial part of our citizenry from the language minority provisions, I don't think we want to be on record on that today.

These provisions of the Voting Rights Act, by the way, doesn't expire until the year 2007. We have 3 years. I think it is always wise to get something done when you can get it done. But the normal way you proceed is to sit down, work these things out, listen to people, and examine whether or not certain groups qualify or should qualify. But I don't think anyone would exclude from the Voting Rights Act potentially countless people who have come to this country for reasons with which we are all unfortunately too familiar, and who clearly qualify as language minorities.

I, for one, cannot vote for this. I wouldn't want to be on record supporting this. I would like to work with the majority leader and others who would like to figure out how to get this done. I will do it this year.

The Leadership Conference on Civil Rights has stated as much themselves in a letter they sent to the majority leader. It was dated today, to give you some idea of how fast this is moving. They say in their concluding paragraph:

> While we plan to strongly support the reauthorization of these important provisions, we urge you to vote no on the Frist amendment. The reasons are that this is a complicated process that takes some time to make sure you are including those who deserve to be included and excluding those who may no longer or should not be included under the language minority provisions.

They believe it is premature. Their critical analysis of the issues surrounding the preclearance and minority language provisions has not been fully examined and analyzed. I hope no one would suggest otherwise. A floor amendment is hardly the place.

If you hold a vote and exclude multiple language minority groups because you've made this law permanent after a one-hour debate, I would think you would ask your leadership to pause a minute and analyze whether this is correct. If it is correct, should we amend this language? Should we include them? If not, why not? Shouldn't there be a more thoughtful way to proceed on a matter of this import?

There is no other right, in my view, that is as important as the right to vote. It is a right upon which all other rights depend. It is the central ingredient for our democracy—the right of people to vote.

We have understood over the years that there are those who come to our shores and become wonderful Americans who have language barriers. If those people are excluded from the process of engaging in electing Federal officials and electing the leadership of this country, then we are not fulfilling our obligation historically to see to it that this basic, fundamental right is being protected.

I am very much interested in seeing us make permanent, if we can, these language minority and preclearance provisions of the Voting Rights Act. I would like to do it in a way that is far more deliberative than a 1-hour debate on the floor of the Senate dealing with a gun manufacturer bill. This is not the way we ought to be doing business on something as fundamental as the right to vote.

I prefer not to vote no on this. I would prefer this amendment be withdrawn and then resubmit it under proper circumstances so we can have the opportunity to do the analysis necessary to arrive at right conclusions.

I am the only one speaking about this at this particular moment.

I don't know what the time frame is. Is there a limited time of debate? I make an inquiry of the Chair.

Are we going to vote on this matter in a few minutes?

The PRESIDING OFFICER. The Senator's side has 3 minutes 16 seconds remaining. The Senator from Idaho has 12 minutes 52 seconds remaining. The Senate is operating under a unanimous consent agreement according to which 1 hour was allowed for debate of this amendment.

Mr. DODD. Do I understand that at the conclusion of roughly 15 or 16 minutes we will then vote on amending major provisions of the Voting Rights Act?

The PRESIDING OFFICER. After voting on the Cantwell amendment, under the previous order, the Senate will vote on this amendment.

Mr. DODD. Mr. President, I urge colleagues to think twice about this. It is the Voting Rights Act of 1965 that we are talking about. We are talking about amending this act permanently and possibly excluding major ethnic groups in this country permanently. Please. This issue requires more thought than it can be given here. This is not the way to go about changing one of the most important laws ever enacted in our great country. We should not in effect tell our colleagues that they have 15 minutes to decide on whether or not potentially millions of Haitians, Africans, Asians, Hispanics,

and Europeans would be permanently excluded from key protections of the Voting Rights Act when we have 3 more years to make that decision.

To do this on an amendment to a gun manufacturer bill is stunning to me. Why would we take something as critical and important as the Voting Rights Act and throw it on the table without further consideration and thought?

I urge my colleagues in the time they have to please talk to the majority leader and see if we can't pull this back by unanimous consent and let those of us who spend time on these issues sit and work on this. This is no way to be dealing with millions of people in our country who deserve the right to vote and to be protected properly under language minority and preclearance provisions.

I make that plea to my colleagues.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Idaho.

Mr. CRAIG. Mr. President, I think all of us prefer when we deal with certain subjects that all amendments to the underlying subject be germane. That isn't the way the Senate works. Certainly my colleague from Connecticut knows there are other amendments being discussed today that by no stretch of the imagination are germane.

But this is a critical issue. It is timely. It is necessary. We speak to it. That is why the majority leader brought it to the floor. It is critical to our country that we continue to show our openness as we reach out and become inclusive with all of those who as citizens have the right to participate in the electoral process. That is exactly what we are about.

We have one colleague who still wishes to speak. He will be here in moments.

How much time remains?

The PRESIDING OFFICER. The Senator has 11 minutes 57 seconds, and counting.

Mr. CRAIG. Mr. President, I will put us into a quorum call for a few moments anticipating his arrival.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant Journal clerk proceeded to call the roll.

Mr. SPECTER. 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. SPECTER. Mr. President, I join in support of this important amendment for permanent extension of the Voting Rights Act. Voting is fundamental in our democracy. It has yielded enormous returns.

We know of the historical discrimination against minorities, against African Americans.

The essence of a democracy is a free electorate. Voting rights are very important. It ought to be on our books on a permanent basis.

I think it is so fundamental that it doesn't take long to express the underlying reasons for its importance and the fundamental reason why it should be in existence of the law on a permanent basis.

I support this amendment.

In the absence of any other Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant Journal clerk proceeded to call the roll.

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

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

Mr. CRAIG. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. The Senator has 6 minutes 51 seconds.

Mr. CRAIG. I yield the remainder of our time to the Senator from the State of Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I come to the Chamber in a hurry because it has come to my attention that this amendment, which is perhaps in a technical sense not germane to the main bill in the Senate—but I understand there is an agreement that it could be considered and would not be out of order—but my concern is this: The Voting Rights Act of 1965 was an important landmark in the Nation's history. It was passed by the Congress in an attempt to make sure that no person, regardless of race, regardless of color, was denied their right, their fundamental right to vote. This was long overdue, very important, and certainly a result to which we all continue to aspire.

Perhaps Members of the Senate who have, like me, not had a chance to study this amendment in great detail, or perhaps what the ramifications of this amendment are, might be interested to know a few facts; that is, that the Voting Rights Act does not apply to all the States in the Nation. In other words, we are being asked to extend the Voting Rights Act only as it applies to a handful of primarily Southern States.

In 1965, perhaps it made sense to apply the Voting Rights Act to just a handful of States that historically and, yes, tragically, had a history of denying minorities their rights to be American citizens and enjoy the franchise unimpeded by those who would deny them that right. But this is not 1965. This is the year 2004.

If, indeed, this presumption, in essence, that says in order to change the way in which you conduct your elections, before you redistrict your State and electoral districts, you must seek permission from the Department of Justice, if indeed, that is still good policy for the States that are covered by the Voting Rights Act, I submit it is good policy for the Nation as a whole. I doubt in all seriousness that many Members of this body understand what they are being asked to do, which is to extend this act only to a handful of States.

As I say, if it is good policy, I believe it should be extended to the entire Nation. Obviously, we have come a long way in this country since 1965. Some may argue that some States should have a presumption of guilt while others should have a presumption of innocence. But, indeed, I believe there ought to be a uniform policy that applies to the entire Nation when we are talking about something as important as voting rights and when we are talking about something as important as protecting the voting rights of all Americans, including minorities who have, in fact, suffered discrimination in the past.

I raise the question for my colleagues, those who are listening, to ask whether we truly understand what the implications are of this amendment and how it would affect the entire country, and how in practice, if I understand the amendment correctly, it would only apply to a handful of States. There is an agreement under which second-degree amendments are out of order, or I would offer an amendment to apply to the entire Nation, if that were permitted. But under this arrangement, under this agreement, I can merely ask the question for my colleagues to ponder if this policy should apply nationwide and not just to a handful of States, including my State of Texas.

I yield back any remaining time to the Senator from Idaho.

Mr. CRAIG. I thank my colleague from Texas.

I inquire as to the time remaining on both sides.

The PRESIDING OFFICER. The Senator from Idaho has 1 minute 42 seconds, and the Senator from Massachusetts has 1 minute 10 seconds.

Mr. CRAIG. The Senator from Idaho is prepared to yield back. The Senator from Massachusetts is prepared to do so.

Mr. REID. He is not ready yet.

The PRESIDING OFFICER. Does the Senator yield back his time?

Mr. CRAIG. I do not.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. REID. I yield back time on this side.

The PRESIDING OFFICER. The Senator from Nevada yields back remaining time on his side.

Mr. CRAIG. I yield back the remainder of my time. The unanimous consent we are operating under moves us

to two votes, the Cantwell unemployment extension and the Frist voting rights.

Have the yeas and nays been called on both of these amendments?

The PRESIDING OFFICER. The yeas and nays have been ordered on the Cantwell amendment.

Mr. CRAIG. I ask for the yeas and nays on the voting rights amendment.

The PRESIDING OFFICER. The yeas and nays have been requested on the Frist second.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON AMENDMENT NO. 2617

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the motion to waive the Budget Act with respect to the Cantwell amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea.''

The PRESIDING OFFICER (Mr. SMITH). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 58, nays 39, as follows:

[Rollcall Vote No. 18 Leg.]

YEAS—58

Akaka	Dole	Mikulski
Baucus	Dorgan	Murkowski
Bayh	Durbin	Murray
Biden	Feingold	Nelson (FL)
Bingaman	Feinstein	Nelson (NE)
Bond	Graham (FL)	Pryor
Boxer	Harkin	Reed
Breaux	Hollings	Reid
Byrd	Inouye	Rockefeller
Cantwell	Jeffords	Sarbanes
Carper	Johnson	Schumer
Chafee	Kennedy	Smith
Clinton	Kohl	Snowe
Collins	Landrieu	Specter
Conrad	Lautenberg	Stabenow
Corzine	Leahy	Talent
Daschle	Levin	Voinovich
Dayton	Lieberman	Wyden
DeWine	Lincoln	
Dodd	McCain	

NAYS—39

Alexander	Domenici	Lott
Allard	Ensign	Lugar
Allen	Enzi	McConnell
Bennett	Fitzgerald	Miller
Brownback	Frist	Nickles
Bunning	Graham (SC)	Roberts
Burns	Grassley	Santorum
Chambliss	Gregg	Sessions
Cochran	Hagel	Shelby
Coleman	Hatch	Stevens
Cornyn	Hutchison	Sununu
Craig	Inhofe	Thomas
Crapo	Kyl	Warner

NOT VOTING—3

Campbell	Edwards	Kerry

The PRESIDING OFFICER. On this vote, the ayes are 58, the nays are 39. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained, and the amendment falls.

Mr. CRAIG. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Ms. CANTWELL. Mr. President, while there were 58 votes—a majority voted for this amendment—we will come back to address this again and again because we are going to see job growth is not happening at the pace people believe. While we have postponed it today, thinking the UI trust fund is not being used as part of our deficit, the UI trust fund should go to these unemployed workers. We will be back to debate this issue again.

I yield the floor.

AMENDMENT NO. 2626 WITHDRAWN

Mr. FRIST. Mr. President, I ask unanimous consent that my amendment No. 2626, which was to be considered next, be withdrawn.

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

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank the majority leader for his superb statement, and I also thank the Senator from Kentucky for his comments in support of the extension of the Voting Rights Act. He made an eloquent statement and sent a message which I know is well received across this country. As a member of the Judiciary Committee, I want to work with him and the Senator from Kentucky to try to achieve what he wants, and that is the permanent extension of the Voting Rights Act. We will work closely with him to try to get it done in a timely way.

I thank him very much for focusing attention on this issue. I am grateful to him for his leadership.

Mr. President, on a final point, I draw the attention of the Senate to this vote on unemployment compensation. A wide majority, a broad majority of Republicans and Democrats in the Senate voted for extension of unemployment benefits. I commend the Senator from Washington for her leadership on this issue. I know she believes, as I do, that this is not the end of the fight but just one of the innings of fight. I thank her for her leadership.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, briefly, I also thank the majority leader and others for agreeing to vitiate the vote on the Voting Rights Act. I underscore the comments made by the senior Senator from Massachusetts to work with the majority leader and others interested in getting this done. It can be done rather simply. We do need to build a record on the issue. That is exactly the way to go.

I commend the majority leader for moving on this. We do not want to wait until the year 2007. I thank him.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. We will move on now, under our unanimous consent request, to a Mikulski amendment, a Frist amendment, a Corzine amendment, a Frist amendment, and a Bingaman amendment. At this moment, I do not think we are quite ready to move on, so 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. Without objection, it is so ordered.

Mr. REID. Mr. President, I have spoken to the manager of the bill for the majority and spoken to the majority leader. It is their intention, and I think it is a good idea, to have Senator MIKULSKI finish her amendment. She has 40 minutes. Following that, there would be an amendment offered by the majority. When we complete the debate on those two matters, we would vote on those two matters. We would, in fact, have two votes, and they would be stacked. Following that, we would again look at the schedule and see where we are.

The PRESIDING OFFICER. The Senator from Maryland.

AMENDMENT NO. 2627

Ms. MIKULSKI. Mr. President, I have an amendment concerning the DC sniper victims, and I send it to the desk on behalf of myself, Senators SARBANES, LAUTENBERG, CORZINE, and CLINTON.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maryland [Ms. MIKULSKI], for herself, Mr. SARBANES, Mr. LAUTENBERG, Mr. CORZINE, and Mrs. CLINTON, proposes an amendment numbered 2627.

Ms. MIKULSKI. 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 as follows:

(Purpose: To exempt lawsuits involving a shooting victim of John Allen Muhammad or Lee Boyd Malvo from the definition of qualified civil liability action)

On page 8, line 22, strike ''or''.

On page 9, line 2, strike the period and insert ''; or''.

On page 9, between lines 2 and 3, insert the following:

''(vi) an action involving a shooting victim of John Allen Muhammad or Lee Boyd Malvo.''.

Ms. MIKULSKI. Mr. President, I rise on behalf of my Maryland constituents and other neighbors across the Potomac to offer an amendment on behalf of the sniper victims. My colleagues might remember that over 1 year ago, the citizens of Maryland, Virginia, and the District of Columbia were terrorized by snipers. Soccer games were cancelled. People were afraid to buy gas

and terrified to go into a Home Depot. What was happening was that 10 innocent people were killed while they were mowing their lawn or getting gas or while a new bride was going shopping at Home Depot to gussy up her home, or one was a bus driver getting ready to do his duty. These families have experienced tremendous loss, and the Nation mourned with them.

We so thank our law enforcement agencies for helping us catch the snipers and the judicial system that is working to try them, but now we also need to make sure that we protect the victims and the victims' families.

I bring to the attention of my colleagues that the legislation Congress is considering now could inflict further pain on the families. It could slam the courthouse door on the families of the sniper victims and on all Americans who believe they are harmed by negligent actions related to guns. It gives gun dealers and manufacturers a free pass, and it will prevent families and survivors from holding irresponsible stores accountable if they are negligent.

It actually would prohibit these families from going to court to seek redress, for it would actually prohibit them from letting a jury of their peers decide if a gun store or a manufacturer was negligent.

If this legislation passes, one could still go to court over a toy gun but not a real gun. I think that is wrong.

My amendment is to make sure the sniper victims and their families have a right to go to court. Before I tell my colleagues about those families, let me tell my colleagues what my amendment will do. My amendment protects the legal rights of the families. It allows current and future cases by sniper victims and their families to proceed.

Currently, one case is pending in Washington State court. It creates an exemption to the text of S. 1805 for all cases involving a victim of John Allen Muhammad or Lee Boyd Malvo. This is a very narrowly drawn bill. It does not exempt any other cases. It does not impact on any of the legal standards of the bill, and it does not prevent a court from dismissing a case if there is no negligence.

What it does is create an exemption only, and I emphasize ''only,'' for cases involving a victim of John Allen Muhammad or Lee Boyd Malvo. This is the Maryland-DC-Virginia sniper case.

I in no way want to create any ambiguity in this bill or create a loophole in this bill. But this is a very serious matter. I am here in behalf of those families.

Conrad Johnson, who was the sniper's last victim, I remember hearing the news when he was shot at a bus stop in Montgomery County. He was killed by the sniper just as he was getting ready to get on his route. He was so beloved in that community that 2,000 people came to his funeral. He drove this route for so many years. They loved him. Thirty members of his family gathered at the hospital after he was shot. He was always finding ways to take care of his family and his community. Conrad Johnson was one of the many Marylanders whose families are still grieving because of this reign of terror that gripped their State. Five Maryland families lost their loved ones in the sniper's first 24 hours.

Today I stand here for the rights of those families, to have their day in court: the rights of Jim Martin's family; he was shot when he stopped to buy groceries for his church program; James ''Sonny'' Buchanan, a landscape architect who was soon to be married; or the husband and the 7-year-old son of Sarah Ramos, who was shot 25 minutes later as she sat on a bench waiting for a ride to go to her babysitting job; also for the little boy named Iran Brown, who was shot in the chest as he was dropped off to go into middle school. Thanks to a guardian angel, it was his aunt, a nurse, who was with him that day when he was dropped off so she could sweep him up and be with him as he lay hemorrhaging in the hospital. Thank God, for the genius of American medicine that little boy is alive.

Family after family has endured incredible pain. Also, there are other cases that are pending. These families have been through so much they can never recover their tremendous loss. We owe it to them to make sure they have their day in court. That is why my amendment is offered to protect them, and that is why it is in such plain and simple language. It is limited to victims of John Muhammad and Lee Boyd Malvo. I don't need any legal experts to interpret this amendment. No judge has to decide if the case fits one exemption or another. That is because, under my amendment, any case involving them must proceed.

This is very serious. When we look at the matter, there is evidence that indicates the snipers bought something called a Bushmaster from the Bull's Eye Shooter Supply in Tacoma, WA. The Bull's Eye Shooter Supply Company had lost the assault rifle used by the sniper victim. In 3 years, it managed to lose 237 other guns. Imagine a gunshop that not only couldn't find records on this gun, it had lost 237 guns.

I am not going to prejudge cases, but I am going to point fingers. Something was terribly, terribly wrong at this place.

When we look at this, Bull's Eye could not account for 238 guns. Bull's Eye's missing gun rate was greater than 99 percent of all Federal arms licenses. Eighty percent of all dealers that sell at least 50 firearms a year can provide records to account for every one of them. Why couldn't that happen there?

There is item after item about this case. When you look at Malvo and look at Muhammad, what you find is the snipers obtained a one-shot, one-kill assault weapon that was from the Bull's Eye Shooter.

When we look at their records, we find that Muhammad was under a domestic violence protective order and Malvo was both a juvenile and an illegal alien.

How did they get their hands on these guns? That is for law enforcement to decide. That is how our legal process should follow its regular order, to seek redress. But this points out a set of terrible situations that led to the death of these 10 people in our region. This is why I am offering this amendment. After the deaths of these wonderful people, their families should have redress in court. The boy who was shot in his chest and is still recovering, though at school, should have redress.

I am going to be very clear that in this bill we do not create ambiguity, confusion, or something that would derail this. I urge the Senate to adopt my amendment and to allow the cases affecting this particular group of people to be able to proceed without prejudice or without any unintended consequences of this legislation.

I yield the floor and reserve such time as I have.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG. Does the Senator have other speakers?

Ms. MIKULSKI. The Senator does have other speakers.

Mr. CRAIG. Do you wish to proceed with them?

Ms. MIKULSKI. I yield to the Senator from Illinois, an outspoken advocate on this issue.

Mr. DURBIN. I thank the Senator from Maryland.

Those of us working in Washington, DC, remember this sniper incident. Not only do I work here but my daughter lives here with my son-in-law and grandson, and they live in one of the suburbs represented by the Senator from Maryland.

I can tell you when these two snipers were moving around the area, ordinary families were living in fear. They had a sniper rifle and they were killing innocent people. Some 13 were killed and 6 were injured. Here are the photos of a few of the victims.

After this terrible sniper incident, we learned there was a gun dealer who could not even account for the gun that was used to kill these innocent people. So the survivors, as well as the victims' families, came forward and said they wanted to hold that gun dealer accountable in court for irresponsible and reckless conduct in selling firearms, in allowing them to get into the hands of these snipers. That is reasonable for the family to do. It is something I support.

But make no mistake, this bill, S. 1805, slams the courthouse door on these victims and their families. The Senator from Maryland, Ms. MIKULSKI, is standing here, pleading with those who bring the bill forward to keep in mind the sniper victims and their families and give them a chance to have their day in court. If the court decides

they don't have a right to recovery, so be it. But should we pass a law to say these families do not even have a chance to go after the reckless misconduct of these gun dealers that resulted in the deaths of their loved ones? That is what this bill is all about. The Senator from Maryland has dramatized it in terms that everyone who works in this Capitol will understand.

There was a time when you couldn't go home from work, from this building, for fear of being shot in the street. It happened over and over and over again. Why in the world would the Senate pass a bill to insulate this reckless gun dealer from his civil liability for selling these guns?

I thank the Senator for her leadership.

Ms. MIKULSKI. I yield such time as he may consume to the Senator from Rhode Island.

Mr. REED. Mr. President, Senator MIKULSKI is here, doing something that is, unfortunately, necessary because the underlying legislation would cause currently pending suits on behalf of the families and the estates of these victims of the snipers to be thrown out of court. That is not only unfortunate but it is unconscionable.

There are arguments that this legislation is crafted so these suits go forward. But that is not the case at all. The two salient facts in the sniper shootings with respect to this legislation are, first, the sniper, Malvo, claims he shoplifted the gun. The storeowner claims that he was unaware of these weapons being missing until he was contacted after the shooting by the ATF.

As a result, none of the appropriate exemptions from the preemption to sue would be applicable in this particular situation.

There are two particular exemptions that are often pointed to. One talks about the negligent entrustment, which is a theory of law, and negligence per se. None would apply because it requires the defendant to have knowledge of a violation of the statute or knowledge that something untoward would happen. Under the facts as we know them, the defendant alleges he was unaware of the missing weapons.

In addition, the other exemption would be if there was a violation of Federal and State statute and that violation was the proximate cause, almost direct or substantial cause of the harm caused to the plaintiff.

That, too, can be substantiated. We have a situation where this statute not only does not cover this situation and would require these cases be thrown out of court, but it raises the extraordinary question about what other cases there might be in the future that would cry out for justice, to bring a suit and demand some type of compensation because of negligence caused by a gun dealer or manufacturer or trade association. They, too, would fall. That would be as compelling as these cases of the Washington area sniper victims.

I commend Senator MIKULSKI for standing up for these families. They are good people. This is a cutout of these cases from law and allowing them to go forward. But it just begs the question of how many other worthy cases will be frustrated by this legislation, if we pass it. I, of course, urge that we do not pass the legislation. But I certainly urge the amendment proposed by Senator MIKULSKI be agreed to.

I yield my time.

Mr. CRAIG. Mr. President, may I inquire as to the time?

The PRESIDING OFFICER. The Senator from Idaho has 20 minutes, and the Senator from Maryland has 5 minutes.

Mr. CRAIG. Mr. President, I will use some of my time at this moment.

At the outset, let me say Senator MIKULSKI and I are best of friends. We appreciate our friendship, and we work closely on a variety of pieces of legislation. There is nothing I would do nor is there anything S. 1805 will do to damage the argument and passion and concern Senator MIKULSKI has put before us today with her amendment. If you believe in the underlying bill, S. 1805, there is a problem, and the problem is Senator MIKULSKI carves out a very big exception and guts the bill in the underlying principle. Let me talk about that principle.

I ask the Senator to go with me to page 7 of the bill and to look at section 4 of the bill. Let us talk about that in relation to the phenomenal tragedy that hit this city and the families she is discussing.

Not only did her friends and neighbors hunker down in fear, but so did we as John Lee Malvo and John Allen Muhammad terrorized the neighborhoods in Maryland and Virginia.

Here is the problem. What are the facts? The Senator said I am not going to try the case on the floor, but I am going to point fingers. I am not going to try the case on the floor, but I am going to point fingers.

We probably have reasonable cause to point fingers at Bull's Eye in Tacoma, WA. Something went wrong up there. There are over 300 guns missing. Lee Malvo himself said, I stole the Bushmaster I used in the sniper incidents in Virginia and in Maryland. ''I stole the gun.'' He said so. It is on the record. Already he sets up an interesting scenario.

As a result of that, the BATF pulled the license of the gun dealer and recommended felony charges be brought by the Justice Department. This case is maturing at this moment.

What does our bill do? It tries to very narrowly create an environment and an exception.

Let us go to that bill and to page 7. Let me read starting on page 6 of the bill because I think it is important. Many Senators have ignored this in the rhetoric of the day. They shouldn't ignore it.

> In general, the term ''qualified civil liability action'' means a civil action brought by any person against a manufacturer or seller of a qualified product or a trade association for damages resulting from the criminal or unlawful misuse of a qualified product by a person or a third party but shall not include—

In other words, the exceptions under which the Malvo and Muhammad case can be tried in which those parties the Senator is talking about contain compensation are the following.

> No. 1, an action brought against the transactor convicted under section 924 of title 18 United States Code or a comparable or identical State felony law by a party directly harmed by the conduct for which the transferee is convicted.

Parties harmed. In other words, did the transferee, the gun dealer, malfunction? Did he break the law? There is a strong appearance that he might have.

> No. 2, an action brought against a seller for negligent entrustment or negligent per se.
>
> No. 3, an action in which a manufacturer or a seller of a qualified product knowingly and willingly violated State and Federal statute applicable to the sale or marketing of a product and the violation was a proximate cause for the harm and for which the relief is sought.
>
> No. 4, an action for breach of contract or warranty in connection with—

And then we go on to deal with basically product liability.

My point is quite simple. I believe we are protecting those families. I would not write the kind of law that is being suggested would be written. What I am concerned about are lawsuits in which we are trying to hold accountable the innocent party—in this case potentially a manufacturer of a product—unless there is criminal intent, or unless they have broken the law.

Mr. DURBIN. Mr. President, will the Senator yield?

Mr. CRAIG. I can't yield. My time is limited. I am sorry. The Senator has had time. Let me continue.

That is the sense of the argument we are dealing with here. Negligent entrustment:

> In subparagraph (a)(2), the term ''negligent entrustment'' means the supplying of a qualified product by a supplier for use by another person when the supplier knows or should know—

That is very important.

> —the person to whom the product is supplied is likely to and does use the product in a manner involving unreasonable risk of physical injury to the person or to others.

What are we trying to do here?

Again, I have said time and time again over the last 24 hours it is a very narrow exception, but to entrust us to a century of tort law that says innocent parties are not guilty nor should they be swept into lawsuits if they have met certain standards of the law—in this case, licensed gun dealers and manufacturers.

Did the folks up at Bull's Eye in Tacoma meet those standards? We don't know. But I will tell you the BATF pulled their Federal firearms license. There is an investigation underway. If they lost that many firearms and they didn't notice it and they didn't report

it, I am not an attorney, but I have to assume they have a big violation on their hands. If Malvo walks in and pulls a Bushmaster from off the rack and walks out with it and that is not detected, they have a problem on their hands. I believe they have a problem on their hands, and they are not exempt.

The argument is—and some have used it—they do not even make it to the courthouse. That is not a valid statement.

This is a basis from which you argue before the court and a knowledgeable, and I hope trusting, judge will take these evaluations in hand and make the determination that this is not a frivolous or a junk lawsuit; that there is basis, and the reason there is basis is because there has been a clear violation of Federal law.

If there has not been a violation of Federal law, even though many of us can certainly have great concern about the families involved, do we continue to suggest that we go out and harass through the courts legal, law-abiding citizens and producers of a legal product in this country simply because it fits the passion of the day or the politics of the moment? I think not. I don't think the Senator from Maryland wants to do that. It is clear if you carve out this exception, you gut the bill because you are saying no, no. We are saying we are giving you all of these exceptions very clearly in the law. I read them to you. They are in the law. It is section 4. That is what we are dealing with. It is a very important part of it.

We think it is the right thing to do at this time. I believe a majority of my colleagues in the Senate agree with that. The reason they agree is for the very reason we have been very specific and clear to adhere to Federal law but to make sure we are not just going to the court for the purpose of expanding the sweep that one might like to take because they do not like guns or they do not like the current law or they want to control them in different ways.

The Federal law is there. It is clear. It is present. The investigation is underway. We cannot try that case here. But I do agree with the Senator from Maryland, we cannot try to, but we can point fingers.

Our bill, S. 1805, sets up a very clear case in which these lawsuits can be effectively argued and a decision made whether there was a rupturing of Federal law or whether we do have law-abiding practitioners in the business of the manufacturing and sale of firearms in this country. That has to be and it must remain the basis of the argument and the basis of this law. The amendment the Senator offers goes directly in the opposite, to carve out special exceptions within the law now and into the future.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I have two legal opinions, one from Lloyd Cutler, a very distinguished American lawyer who has served as White House counsel to a President, who says that S. 1805 contains language that would require the dismissal of the Johnson case. I have another legal opinion from Boise, Schiller & Flexner who essentially say the exceptions would only preserve civil claims brought under other kinds of law. Other than that, what they are saying is this would preempt their ability to bring this case.

The opinions clearly state that section 4 on page 7 articulated by my esteemed colleague does not hold water. It does not protect the victims of Malvo and Muhammad because it is in such plain English limited to those cases by the name of the perpetrator and predator. This does not create a loophole.

Talk about loophole, talk about the gun shield loophole, talk about all the other loopholes in the gun bills. My amendment does not create a loophole.

The legal opinions show there is ambiguity in S. 1805 and that section 4 could preempt the ability of these families to bring this case.

The distinguished Senator from Idaho has his opinion. I have my two legal opinions that show that there is confusion and honest disagreement about the bill. That is why the Mikulski amendment is necessary, to clear up the ambiguity on the matter of these cases committed by Malvo and Muhammad.

His point and my legal opinions prove the necessity of the amendment, to clear up the confusion, end the ambiguity, protect these victims and the families and their right to pursue.

I yield to the Senator from Illinois, a distinguished lawyer himself, to further amplify this argument.

Mr. DURBIN. I thank the Senator from Maryland.

I say to the Senator from Idaho who stood up here and said he did not believe the survivors of the DC sniper shooting had a right to go to court and therefore he was going to oppose the Senator's amendment, I guess that is clearly his point of view, but he said just the opposite. He said he reads this law to allow the victims and their families of the DC sniper to go court against the dealer.

If that is his opinion, then he ought to accept the amendment from the Senator from Maryland because that is all she is asking for.

If you do not believe the victims of the DC sniper should have a day in court against the dealer to determine whether or not he is guilty of wrongdoing, then just say it. But if you believe that these sniper victims and their families should have a day in court, for goodness' sake, accept the amendment of the Senator from Maryland. If you do not, it really tells the story of your bill.

If your bill is going to stop the families and victims of the DC snipers from holding a gun dealer guilty for irresponsible, reckless misconduct, frankly, that is another good reason for us to defeat the bill. Let us stand behind the innocent victims of the DC snipers.

Talk about people who hate guns. I do not hate guns but I hate snipers who shoot children and innocent people on the street and I hate the people who sell them guns irresponsibly. I think they ought to be held accountable. That is all the Senator from Maryland is asking.

Ms. MIKULSKI. Continuing my argument, there is ambiguity and there is honest disagreement. I know the Senator from Idaho might bring us a CRS opinion saying the cases might survive. My colleague from Rhode Island has an earlier CRS opinion that says the opposite. The point is, there is ambiguity both in the law and in opinions about the law.

My amendment is a simple, straightforward way to clear up the ambiguity and let these cases move forward.

The PRESIDING OFFICER. The Senators are reminded to address each other in the third person.

The Senator from Idaho has 10 minutes 27 seconds remained.

Ms. MIKULSKI. Parliamentary inquiry: Did I do something wrong?

The PRESIDING OFFICER. The Senator from Illinois referred to the Senator from Idaho in the first person.

Mr. DURBIN. I beg your pardon.

Parliamentary inquiry: I referred to the Senator from Idaho on the floor; is that improper?

The PRESIDING OFFICER. The Senator several times during his talk used the pronoun ''you.''

Mr. DURBIN. I apologize for using the pronoun ''you.'' I will never do it again.

Mr. CRAIG. Mr. President, may I inquire as to the time remaining on both sides of the Mikulski amendment?

The PRESIDING OFFICER. Ten minutes 20 seconds for the Senator from Idaho and 14 seconds for the Senator from Maryland.

Mr. CRAIG. With 14 seconds remaining for the Senator from Maryland to argue, this is her amendment, and under the unanimous consent I will then offer the Frist-Craig amendment. As we know, then they will be stood up to be voted on, Frist-Craig first, Mikulski second.

If the Senator would like to make any concluding remarks about her amendment, I would certainly welcome that. She then controls 20 minutes of the 40 that would be on my amendment and the debate could go on.

Ms. MIKULSKI. Excuse me, Senator. The Frist-Craig amendment is on what topic, sir?

Mr. CRAIG. On your topic.

Ms. MIKULSKI. What is the Frist-Craig amendment?

Mr. CRAIG. I have not offered it yet.

Ms. MIKULSKI. You want to conclude debate on this amendment.

Mr. CRAIG. Then we set yours aside for the Frist-Craig debate on the same subject matter and then stand these up for votes.

Ms. MIKULSKI. I have no objection to that.

Mr. CRAIG. With that, I assume all time is yielded back.

The PRESIDING OFFICER. All time is yielded back.

AMENDMENT NO. 2628

Mr. CRAIG. I ask that the Mikulski amendment be set aside for the purpose of introduction of an amendment on behalf of Majority Leader FRIST and myself.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAIG], for Mr. FRIST, for himself and Mr. CRAIG, proposes an amendment numbered 2628.

Mr. CRAIG. 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 as follows:

(Purpose: To exempt any lawsuit involving a shooting victim of John Allen Muhammad or John Lee Malvo from the definition of qualified civil liability action that meets certain requirements)

On page 8, line 22, strike ''or''.

On page 9, line 2, strike the period at the end and insert ''; or ''.

On page 9, between lines 2 and 3, insert the following:

(vi) an action involving a shooting victim of John Allen Muhammad or John Lee Malvo that meets 1 of the requirements under clauses (i) through (v).

Mr. DASCHLE. Reserving the right to object, I will not object, but I am told we have not had the opportunity to see the text of these amendments. If we are going to work in good faith, it is very important that on all of these alternative amendments the text be provided if they are available and certainly before they are offered.

Mr. CRAIG. If the minority leader will yield, it is my fault. I apologize. We will place ourselves in a quorum until they have copies. It is brief and to the point and easy to understand for everyone.

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. CRAIG. 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. CRAIG. Mr. President, I apologize once again to the Senator from Maryland that the stand-beside amendment I offer in conjunction with hers was not delivered to her. We have a stand-beside Frist-Craig amendment to the Corzine amendment, which may follow immediately. We are copying that now to make sure Senator CORZINE and the other side has a copy of it.

My amendment, as you can see, is really very simple, but it is also extremely important. It is simple in this respect: 55 cosponsors of S. 1805 have cosponsored S. 1805 because of its narrowness, of its cleanliness in the fact that we do not clutter up a lot of laws and we create one very limited but very important exemption, and that is junk lawsuits filed by a third party cannot reach through and suggest that someone who produces a legal product can be held liable for that product unless they have broken the law or a person selling that product is not held liable for that product unless they have broken the law.

My amendment says, in essence, if an action involving a shooting victim of John Allen Muhammad or John Lee Malvo meets any of the exceptions of S. 1805, the action will not be barred by this bill.

Again, what are those exceptions? Well, I have read them earlier. Let me repeat them. They are very clearly outlined in section 4 of the bill, and what we say is:

The term ''qualified civil liability action'' means a civil action brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages resulting from the criminal or unlawful misuse of a qualified product by the person or a third party.

In other words, if that third party is a guy who breaks the law, but the seller and the manufacturer are not, then the judge looks at that and makes that determination and says no.

But here in the case in Maryland and in Virginia, if it is found that:

an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted—

''Transferee,'' in this case, in my opinion, at least, is Bull's Eye. They are the ones responsible for that firearm. They are the ones that would have sold it legally. In this case it was stolen from their shop. It appears to have gone unreported.

Secondly:

an action brought against a seller for negligent entrustment or negligence per se. . . .

So we have not swept that away nor will we sweep that away. In fact, I believe we strengthen it, and so does the Congressional Research Service. While there may be a difference of opinion on that, I think what is significant is that Senator DASCHLE and I agree. We teamed up together to strengthen this and to clarify it. Quoting the Congressional Research Service, our amendment:

would strike ''knowingly and willfully'' in the preceding sentence, potentially increasing the likelihood that this exception to the general immunity afforded under the bill would be applicable in any given case.

In this case, it probably strengthens the position we are dealing with here, as the Senator from Maryland and I visit about it.

The third exception that clearly could be applicable, and that my amendment says if found is applicable, in the Muhammad and Malvo case:

an action in which a manufacturer or seller of a qualified product violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought.

In other words, relief for these families who were the victims of John Muhammad and John Lee Malvo.

I believe it is a clear, clean amendment. I don't think it is ambiguous at all. But it does argue one premise in the law that always must be argued, and that is, did Bull's Eye break the law? Well, we are investigating that now. Did the manufacturer of the Bushmaster in any way violate the law? That is probably getting investigated, too, although even the Brady Center doesn't impugn in any way that the manufacturer was involved in this. Those are the facts.

In other words, what I am suggesting by this amendment, what I believe is still clear in 1805, is that we are not exempting the victims of the sniper shootings of DC and the Virginia and Maryland area. It is not our intent to do so. It is our intent to allow them to go to court. It is our intent to allow them to argue this before a judge. It is our intent to allow a judge to make a decision based on these exceptions and now the clearly respelled out exceptions in the Frist-Craig amendment as to whether, based on this law, there can be compensation to these families from, in this instance, a dealer and a manufacturer. That is the essence of it.

I don't believe the courthouse door is locked. All attorneys are entitled to their own opinions. Everybody reads the law a bit differently. So is my opinion stronger than your opinion? I know what my intent is. I know what Senator DASCHLE's intent is. I know our intent is not to lock the courthouse door. We believe we don't. And it has been thoroughly checked by numerous lawyers. We think our amendment is sound.

I am going to ask the Senate not to gut the underlying 1805 but to vote for the Frist-Craig amendment which will not only strengthen the amendment, strengthen the position but, I believe, fulfill the concern and the arguments of the Senator from Maryland.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, the Senator from Idaho points to every exception because he can't point to one exception that will clearly establish the right of these plaintiffs to go forward to make their case. The way this legislation is structured, first, the qualified civil liability action may not be brought in any Federal or State court. You are thrown out of court unless you can get yourself back in by an exemption. In these cases, you are dismissed. You are already in court but you are out the door. The intent is very clear. It is to stop individuals from suing dealers, manufacturers, and trade associations.

What about these exemptions? The first exemption deals with the transferor or convicted. There have been no charges in Bull's Eye, no conviction. What happens? The case is already dismissed. Is there language the Senator from Idaho will apply reinstating the case automatically?

The second is a possibility that is negligent entrustment or negligence per se. All of these require knowledge on the part of the defendant. The facts of Bull's Eye clearly suggest there is no evidence or none so far proven that the owner knew the gun was shoplifted and, in fact, he alleges he was not aware of any missing weapons until he was confronted by the ATF after the crime. This does not apply.

Finally, there is the violation of a Federal or State statute. The Senator from Idaho often talks about, well, if there is a violation of Federal and State statute, that, of course, allows a person to go forward with this case.

But there are two parts of this test. State or Federal statute violated, and that violation causes proximately, substantially the injury. In effect, what would have to be shown for any type of liability to adhere to the Bull's Eye case under this arrangement is that he was aware of the missing weapons more than 48 hours before he was confronted by the ATF, and he consciously disregarded his obligation to report not just a missing weapon but the particular weapon that was taken by Malvo. None of these exceptions apply to Bull's Eye or, if they apply, it is a very tortured reach to make the application.

Then this amendment simply says: Well, if you fall under the statute, you get to use the statute. This is a circular, is a kind way to describe what this is. You could substitute anybody's name in the United States. It doesn't have to be John Allen Muhammad or John Lee Malvo. It could be the victim of any criminal today walking around the streets of America with a handgun. Because if you are injured by that individual with a handgun and you fall into these categories, you get to go to court.

But this is an easy amendment because very few people, if any, will qualify under these criteria. That is the whole point of this carefully worded, excruciatingly arcane approach to shutting people out of court. That is what this is about.

Essentially you can't have it both ways. You can't stand up here and claim you are protecting the industry from frivolous suits but every suit we bring up is a possible worthy and meritorious suit. Well, of course, that will get into court. Of course, it is one of the exceptions. You don't get it both ways.

You get it one way in this bill. Innocent people injured by the negligence of dealers, of manufacturers lose. And they win.

We are not just giving out Federal firearms licenses, if this legislation passes. We are giving a license to be negligent and reckless—grossly negligent and grossly reckless. That is what a Federal firearms license means, if this legislation passes.

I yield the floor and retain the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. REED. I yield 5 minutes to the Senator from New Jersey.

Mr. LAUTENBERG. I thank the Senator for yielding the time to me. I associate myself with the amendment that was initially introduced by my colleague from Maryland, Senator MIKULSKI. I rise to raise questions about that which is currently now being offered by the Senator from Idaho.

There is no doubt about the appropriateness of the amendment, as it was presented by the Senator from Maryland, because it was her constituents, seven of them, who were shot by the sniper, six of whom died.

For over a month in the fall of 2001, John Muhammad and John Lee Malvo terrorized the Washington metropolitan area through a series of vicious sniper attacks on innocent men, women, and children. In the area, Americans were afraid to walk outside, afraid to pump gas outside, school activities were moved to enclosed areas. Everyone was a target.

As it turned out, there was ample reason to be frightened. From the trunk of Muhammad's car, the snipers used a Bushmaster assault weapon to shoot 13 people in Washington, DC, Maryland, and Virginia. Ten of the 13 died. We have heard the names of those such as Linda Franklin, 47-year-old FBI analyst, standing with her husband in the Home Depot parking lot in Virginia. She was killed. Another was Pascal Charlot, a 72-year-old retired carpenter standing on a street corner, shot and killed. Another victim was Iran Brown, a 13-year-old boy who had just been dropped off at school.

My fellow Senators now prepare to tell mothers and victims throughout the United States that they don't have a right to file a civil lawsuit against individuals and businesses that helped cause this tragic event.

We had a debate on the floor yesterday. There was a question, a semantic question, about whether or not the Bull's Eye store was really closed. One of my staff people called the number and they said: Yes, we are open until 7 o'clock. Do you want anything—this is my edition: if you want anything shipped out, we will get you guns.

So we argued about whether or not they were really closed or who had the license or what. Those are extraneous things having no significance in the debate.

We see the same thing replicated here. If you meet certain conditions, you are still able to bring suit. But if one of the several conditions is present, then you can't bring suit.

Why don't we tell it like it is? And that is, by whatever stretch of the imagination you want to bring, these people, the victims of the sniper attacks, are unable to bring a suit. There is no doubt about it. We can discuss language all you want, but it is the intent.

Throw another obstacle in the way for these victims to get some justice, some sense of what it is that took place that was wrong and how we can help prevent it in the future.

To hear these discussions immersed in language changes—I suppose if you study it closely enough, you will find punctuation changes. Bull's Eye claimed they didn't have any record of sale. They cannot explain how the snipers obtained the assault weapon. I have not heard any condemnation of their poor practices; that 237 weapons were lost. What a shame. If any normal store lost items that cost this much, they would be in a state of panic. Apparently, these guys did not care that much, but we still want to prevent those who have been victimized by their poor behavior from getting compensation that is justly theirs under normal circumstances.

Why we have to take away people's rights is something, frankly, I do not understand. I hope the public at large begins to raise questions: What is this? Do you mean if I am injured in an automobile accident and the automobile manufacturer has been negligent, that they did not protect the gas tank properly, so it exploded when it was hit in the back, I shouldn't be able to get compensation for that small error? It may have burned you alive. Or if there was such a casual structure of behavior with a pharmaceutical company, and they put the wrong tablets in a bottle, or if someone there, in a moment of madness, put the wrong tablets in a bottle and a person becomes ill or dies, they shouldn't be able to bring an action? This strikes me as something that the citizenry, who is expecting us to take care of them, is unable to comprehend.

This debate goes on and there is always another trick, another maneuver to try and interrupt the flow of what we would consider normal justice. I hope we will defeat the amendment because it adds nothing to the compromise that we have to arrive at to get the kind of voting pattern—the record that says, yes, we made sure the people who suffer these terrible damages have a right to compensation or to a review by the court to decide that issue.

I hope we will defeat the Frist-Craig amendment and get on to the Mikulski amendment, which approaches the problem directly. These people have been severely injured by the actions of the snipers who got the gun illegally, inappropriately, improperly—call it what you will.

I yield back the remaining time.

Mr. REED. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. The Senator has 8 minutes 22 seconds.

Who yields time?

Mr. CRAIG. Mr. President, may I inquire as to the amount of time I have remaining?

The PRESIDING OFFICER. The Senator has 13 minutes remaining.

Mr. CRAIG. Mr. President, I will use a limited amount of that time. If the Senator from Maryland wishes to close out the debate, I will make my closing statement, and we can move to a vote quickly.

Let me address what the Senator from New Jersey said a moment ago and direct his attention to subsection (v) of section 4. He talked about a car not functioning properly and somebody being injured. That is called product liability. It says:

(v) an action for physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended. . . .

Please read the bill when you make those kinds of statements because if the Senator had, that would have been, in my opinion, improper. We are not talking product liability.

Mr. LAUTENBERG. Is the question being referred to me directly?

Mr. CRAIG. No, I am only responding.

The PRESIDING OFFICER. The Senator from Idaho has the floor.

Mr. CRAIG. The Senator knows I am only responding to a comment he made. I am simply suggesting that for the next few moments he might wish to read that subsection. Here we are not dealing with product liability. It appeared the Bushmaster tragically operated very well. What is at hand is, Are the people at Bull's Eye involved in wrongdoing? That is the question at hand. And should we go after them?

We are carving that out in a way so that the victims can go after them if they are found guilty of a Federal violation. Let me read what CRS suggests the Daschle-Craig amendment does:

In the case at hand—

They are referring to the DC snipers—

it has been asserted that the firearm—

And we can only say ''asserted'' at this moment because it is under investigation—

it has been asserted that the firearm used in the D.C.-area sniper shootings ''disappeared'' from Bull's Eye's place of business ''[o]n or about August or September of 2002,'' and was not reported as missing until November 5, 2002. Pursuant to 18 U.S.C. 923(g)(6) a licensee—

That is Bull's Eye—

is required to report the theft or loss of a firearm within 48 hours after the theft or loss is discovered. Thus, in the event that it is established that Bull's Eye was aware that the firearm was missing from its inventory more than 48 hours prior to November 5, 2002, the amendment would appear to lend further support to the application of the exception to immunity under 4(5). . . .

My point is quite simple: If the evidence is there—and I believe the Senator from New Jersey yesterday referenced the presence of Lee Malvo on a video. I was unaware of that. If that is true, that is apparently more evidence. But once again, here we are with a jumble of facts that we really do not know because we were not the investigators; we were not on the scene. We are taking this from newspaper reports.

What I am saying is if the Bull's Eye shop is in violation of the law, then the Frist-Craig amendment or the underlying S. 1805 clearly does protect all of these victims so they have their day in court. The courthouse door is not shut, would not be shut, will not be shut by S. 1805 or the amendment at hand.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, before giving all the remaining time to Senator MIKULSKI, I would like to make one point. In the CRS report to which the Senator referred, essentially he failed to note a footnote that says essentially that it does not appear that any evidence has been produced of actual violations of these provisions by Bull's Eye in the case at hand.

If you assume they violated the law, then, of course, the exemption applies. The facts we know now suggest they knew nothing about the disappearance of the weapons, and this legislation will bar the individuals from court.

I add one simple point. Even if we are slightly in doubt debating this issue, we should support Senator MIKULSKI's amendment which puts them in court.

I yield the remaining time to Senator MIKULSKI.

Ms. MIKULSKI. Mr. President, this amendment does nothing. It keeps the status quo of the bill, S. 1805. It restates what the bill says. It says that the sniper cases have to fit in to one of the exceptions that are described in section 4, paragraph 5. That is what it already says.

The legal experts that I have consulted and have consulted with the Brady organization believe that the cases do not fit. I understand that, under the amendment of the Senator from Idaho, the sniper cases will likely be dismissed. I am going to talk about the legal experts, but again the mere fact that we are having such intense debate shows the ambiguity and confusion, which is why the Mikulski amendment is needed.

Now I will go to the opinion of Boies, Schiller & Flexner, a distinguished law firm. What they tell us is, according to the terms of S. 1805, it would foreclose and require the immediate dismissal of any State or Federal qualified civil liability action which the statute defines to include a civil action brought by any person against the manufacturer or seller for damages resulting from the criminal or unlawful use. They are saying it is going to be dismissed.

They then say when one goes to all of the prohibitions, they believe that because of the way it is drafted, particularly the items in the exception, that it expressly disclaims any intention to create causes of actions or remedies. The above-described exceptions would only preserve civil claims brought under otherwise applicable State or Federal law. Other than that, the proposed legislation would preempt as a matter of Federal law the State or Federal lawsuits against irresponsible sellers, manufacturers, or so on.

What they are saying is this would require an immediate dismissal of the sniper victims' claims. We cannot do this. According to the legal experts, close examination of the exceptions enumerated in section 4 of the proposed immunity, which they are trying to shoehorn in—they are trying to shoehorn Malvo in; they are trying to shoehorn Muhammad in to these exceptions. These exceptions reveal that none would appear to preserve the claims brought by the victims of the sniper attacks and their families against the parties responsible for permitting the snipers to obtain these murder weapons.

In fact, they go on to say:

In fact, the passage of S. 1805 would likely compel the judge in the sniper case immediately to dismiss those claims.

They refer then to section (5)(A) and there are paragraphs. That proposed legislation would prove those provisions contain only the exceptions that even conceivably apply to the snipers' case.

I could go on. This is a 13-page legal opinion. It is not appropriate for me to read the whole opinion, but the statutory violation exception embodied in paragraph (5)(A) will not save the snipers victims' claims.

The plain language of section (5)(A)(iii) would appear to dictate the same result in the sniper case.

Despite the above-discussed evidence of the Bull's Eye numerous failings as a gun dealer, there is no reason to believe that the plaintiffs in the sniper case will be allowed to show that Bull's Eye violated any State or Federal statute. . . .Indeed, after his arrest, Malvo admitted that he shoplifted the weapon from Bull's Eye in the summer of 2002. Although the plaintiffs claim that Bull's Eye's lax security practices permitted Malvo to acquire the weapon, . . .

Again, we are not trying the case here but, yes, he stole the gun. There are 237 guns missing from that same gunshop. Something was pretty sloppy there. Somebody was pretty negligent there. Something was terribly wrong that 238 people could steal guns, including a juvenile illegal alien who was obviously walking around a gunshop if he shoplifted it.

What we are talking about is the statutory violation exception embodied in (5)(A) would totally blow the snipers victims' claims.

Again, it is being tried in the courts, and I want it to be tried in the courts. Maybe the kid did not shoplift it, but somehow or another in that gunshop in Tacoma, WA, with 238 guns missing, something went terribly wrong. They should have their day in court to at least raise whether there was these issues of negligence.

I really do believe the Frist-Craig amendment would gut their ability to move ahead. It is trying to shoehorn into these exceptions and yet at the same time these very exceptions would prohibit them from bringing their claim. I really ask on behalf of these families to be able to do this.

Also, in another section, the negligent entrustment/negligence per se exceptions embodied in paragraph (5)(A)(iii) will not save them. As an initial matter, these exceptions are limited to a seller, and it goes on and on. What it says in a nutshell is that it would preclude them from moving forward.

For the information of my colleagues, this legal opinion letter was printed in yesterday's RECORD.

I also acknowledge that the Senator from Idaho has a different view than this legal opinion but that is the point of the amendment. I have a legal opinion. He has his expertise and the CRS opinion.

I think it is the opinion of the American people, that when someone brings a whole community to a paralyzing halt, when people have been ghoulishly and grimly shot down in a deliberate, predatory, and cruel manner that in this country one ought to at least be able to go to court to seek some redress. All I am doing is preserving their right to do so.

When we say we want to stand up for America, I am standing not only for these victims but I am standing up to keep the courthouse door open to them, and that is really what the rule of law should mean in the United States of America.

I yield the floor.

Mr. LAUTENBERG. I would like to ask the Senator from Maryland a question.

The PRESIDING OFFICER. The Senator from Maryland has 25 seconds remaining.

Mr. LAUTENBERG. I ask the Senator from Maryland, is there anything that is in the Craig amendment that changes the ability of these victims to sue?

There are conditions, are there not, that he places in there that make them jump through another hoop in order to be able to sue?

Ms. MIKULSKI. Yes, it gives a whole set of other obstacles.

Mr. LAUTENBERG. They may have not met these conditions but they still have had the damage and the tragedy that befell them?

Ms. MIKULSKI. Yes, and they have also filed suits. What we are concerned with is this bill will preempt those suits. They will be thrown out. They will be dismissed and the families will face yet another injustice at the hands of the Congress.

Mr. LAUTENBERG. I thank the Senator.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Idaho.

Mr. CRAIG. Mr. President, I have 8 minutes remaining. I will try not to use it and will yield it back so we can get to the votes on these two amendments.

The Senator from Maryland talked about an American principle, and I agree with her. There is an American principle that says everyone should have their day in court, and she is right. There is a second American principle that says that law-abiding citizens who do law-abiding things should not be dragged into court for frivolous purposes or junk lawsuits. That is the other American principle. It is as old as tort law itself. The responsibility is tied to the individual, unless the individual under law is found totally negligent.

She and I have agreed the case cannot be tried here because we simply do not know the facts. We know a little bit about it. We know bits and pieces about it but we have not seen the BATF's report. We have not seen the kind of investigation that has gone on. I agree with the Senator; everyone should have their day in court. I do not know how some are saying that S. 1805 does not even allow them to get to court.

It allows them to argue before a judge the basis of the law, and the judge will make the determination. I suggest that that is called ''in court'' and that is exactly what my amendment does. That is what S. 1805 does. It is very clear.

The Senator might be suggesting that this is just one small group. No, no, this is not one small group. This happens to be a tragically large group, by all of our estimation in Virginia and Maryland, but once this is decided how will this precedent be used by others?

She talks about gutting the opportunity. I suggest her amendment guts S. 1805. Proponents of the amendment claim that it provides an exception for a small group, but any carve-out that is made part of this legislation would have the Government turned on its own principles of equity and justice insofar as the amendment would designate a particular group of people, though sympathetic—and all of us agree to that—different in the eyes of the law than others and justice so far as it would be required to hold remote other responsibilities for the independent actions of two men.

That is the essence of the two amendments. They are very clear before us. It is time we vote on these issues. The Senator from New Jersey is now in the Chamber with his amendment.

Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 5 minutes 45 seconds remaining.

Mr. CRAIG. I yield the remainder of my time. I ask for the yeas and nays on the two amendments.

The PRESIDING OFFICER. Is there objection to asking for the yeas and nays on both amendments at once?

Without objection, it is so ordered.

Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. CRAIG. It is my understanding that, under the agreement, the Frist-Craig amendment would go first and the Mikulski amendment would follow.

VOTE ON AMENDMENT NO. 2628

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2628. The yeas and nays have been ordered. The clerk will call the roll.

The senior Journal clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) and the Senator from Alaska (Ms. MURKOWSKI) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay''.

The PRESIDING OFFICER (Mr. CHAMBLISS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 59, nays 37, as follows:

[Rollcall Vote No. 19 Leg.]

YEAS—59

Alexander	Domenici	Miller
Allard	Dorgan	Nelson (FL)
Allen	Ensign	Nelson (NE)
Baucus	Enzi	Nickles
Bayh	Frist	Pryor
Bennett	Graham (SC)	Reid
Bond	Grassley	Roberts
Breaux	Gregg	Rockefeller
Brownback	Hagel	Santorum
Bunning	Hatch	Sessions
Burns	Hutchison	Shelby
Chambliss	Inhofe	Smith
Cochran	Johnson	Snowe
Coleman	Kyl	Specter
Collins	Landrieu	Stevens
Cornyn	Lincoln	Sununu
Craig	Lott	Talent
Crapo	Lugar	Thomas
Daschle	McCain	Voinovich
Dole	McConnell	

NAYS—37

Akaka	Dodd	Leahy
Biden	Durbin	Levin
Bingaman	Feingold	Lieberman
Boxer	Feinstein	Mikulski
Byrd	Fitzgerald	Murray
Cantwell	Graham (FL)	Reed
Carper	Harkin	Sarbanes
Chafee	Hollings	Schumer
Clinton	Inouye	Stabenow
Conrad	Jeffords	Warner
Corzine	Kennedy	Wyden
Dayton	Kohl	
DeWine	Lautenberg	

NOT VOTING—4

Campbell	Kerry
Edwards	Murkowski

The amendment (No. 2628) was agreed to.

Mr. CRAIG. I move to reconsider the vote.

Mr. BOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2627

The PRESIDING OFFICER. There are now 2 minutes of debate on the Mikulski amendment, evenly divided, to

be followed by a vote. And the yeas and nays have already been ordered.

The Senator from Maryland.

Ms. MIKULSKI. Mr. President, my amendment, I believe, is far superior to the amendment the Senate just adopted. It is a simple, straightforward amendment. It exempts from the bill all cases related to those committed by the despicable predators John Malvo and John Muhammad. This is a very specific, very limited exemption. I urge the Senators to consider it.

If we really want to honor the victims of the sniper cases, please give them the opportunity to pursue their cases in court. We have a substantial legal opinion from an eminent scholar such as Lloyd Cutler, who says if this bill passes, and passes with Frist-Craig, the victims' cases will be thrown out of court absolutely or, at the very least, be left in great ambiguity.

Please, let us do justice to the victims and at least give them the opportunity to seek justice.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I say to my colleagues, you have just voted for the Frist-Craig amendment. If you now vote for the Mikulski amendment, you have totally reversed your vote. The Mikulski amendment guts the underlying bill, S. 1805, carves out a substantial exception. If you are supportive of S. 1805, then you vote no.

But do we protect the right of the victims for their day in court? We absolutely do. There are four major exceptions in which we say, if these parties are found guilty, if there was a negligent gun dealer, if there was a negligent manufacturer—and that is a fact and it is proven—then their day in court is there, as it should be.

But we do not allow frivolous third-party lawsuits. That is the underlying premise of the bill. Again, if you voted for Frist-Craig, I would ask you to vote against Mikulski.

I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the Mikulski amendment. The yeas and nays have previously been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''aye''.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 40, nays 56, as follows:

[Rollcall Vote No. 20 Leg.]

YEAS—40

Akaka	DeWine	Levin
Bayh	Dodd	Lieberman
Biden	Durbin	Mikulski
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Byrd	Graham (FL)	Reed
Cantwell	Harkin	Rockefeller
Carper	Hollings	Sarbanes
Chafee	Inouye	Schumer
Clinton	Jeffords	Stabenow
Conrad	Kennedy	Warner
Corzine	Kohl	Wyden
Daschle	Lautenberg	
Dayton	Leahy	

NAYS—56

Alexander	Dorgan	McConnell
Allard	Ensign	Miller
Allen	Enzi	Nelson (NE)
Baucus	Fitzgerald	Nickles
Bennett	Frist	Pryor
Bond	Graham (SC)	Reid
Breaux	Grassley	Roberts
Brownback	Gregg	Santorum
Bunning	Hagel	Sessions
Burns	Hatch	Shelby
Chambliss	Hutchison	Smith
Cochran	Inhofe	Snowe
Coleman	Johnson	Specter
Collins	Kyl	Stevens
Cornyn	Landrieu	Sununu
Craig	Lincoln	Talent
Crapo	Lott	Thomas
Dole	Lugar	Voinovich
Domenici	McCain	

NOT VOTING—4

Campbell	Kerry
Edwards	Murkowski

The amendment (No. 2627) was rejected.

Mr. REID. I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The next order of business is an amendment by the Senator from New Jersey with 30 minutes of debate equally divided.

AMENDMENT NO. 2629

Mr. CORZINE. Mr. President, on behalf of myself, Senator LAUTENBERG, Senator MIKULSKI, Senator KENNEDY, Senator CLINTON, and Senator BOXER, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. CORZINE], for himself, Mr. LAUTENBERG, Ms. MIKULSKI, Mr. KENNEDY, Mrs. CLINTON, and Mrs. BOXER proposes an amendment numbered 2629.

Mr. CORZINE. 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 as follows:

(Purpose: To protect the rights of law enforcement officers who are victimized by crime to secure compensation from those who participate in the arming of criminals)

On page 11, after line 19, insert the following:

SEC. 5. LAW ENFORCEMENT EXCEPTION.

Notwithstanding any other provision of this Act, nothing in this Act shall be construed as limiting the right of an officer or employee of any Federal, State, or local law enforcement agency to recover damages authorized under Federal or State law.

Mr. CORZINE. Mr. President, I strongly oppose the underlying legislation before the Senate which waives liability for gun dealers and manufacturers. In my view, this legislation strips away the legal rights of victims of gun violence and shields wrongdoers from accountability. It provides special exemptions for the narrowest of special interests, and it would make our country less safe.

The bill uses a variety of complicated legal concepts, narrowly drawn exemptions, to shield irresponsible gun dealers and manufacturers from accountability. When we get beyond the legalese and Washington speak, the bottom line is the bill will limit the legal rights of gun violence victims.

I think that is wrong. In my view, no victim of gun violence should be denied their day in court. Each should be allowed an opportunity—a chance—to make their case. That is why I believe this whole bill is a mistake.

That said, I am a realist. I recognize the majority of my colleagues, based on the cosponsorship, disagree. On Tuesday, this legislation will likely be approved. That is why my amendment is so important and needs to be dealt with.

My hope is we can at least reach an agreement that even if we are going to strip away the rights for most Americans, we will not take away the rights from the men and women who serve as our Nation's law enforcement officers, the protectors of the peace, the people who serve on our streets, in our neighborhoods, our first responders.

I know all my colleagues appreciate the tremendous service and risk our law enforcement on our streets provides to our communities, so I hope they will share my interest in protecting their rights.

The importance of protecting the rights of our police officers was brought home to me and, I am sure, Senator LAUTENBERG through a case of two police officers in the State of New Jersey: New Jersey Police Detective David Lemongello and Officer Ken McGuire.

In 2001, they were seriously injured when a career criminal shot them while they were working undercover. This criminal was prohibited from purchasing a firearm but he obtained his gun illegally from a trafficker. As it turns out, the trafficker also was prohibited from buying weapons and had used a so-called straw purchaser to make multiple gun purchases from a store in West Virginia.

The cash sale for thousands of dollars was so obviously suspicious that the dealer apparently felt guilty. On the very same day, but after he took the money and after the guns walked out the door, the dealer called into the ATF and identified him. But that was

after the guns were gone. Unfortunately, at the time of the sale the dealer apparently thought it was more important to make a profit than to protect the lives of innocent victims.

Sure enough, Officers Lemongello and McGuire paid a severe price for that pawnshop's negligence. They suffered a serious injury and came very close to losing their lives. Their families suffered from their loss and both of them lost their careers and are no longer able to serve as policemen.

I will read a direct statement from one of these officers, Ken McGuire, because I think it expresses better than I can just how outrageous it would be for the Senate to strip them of their rights. This is some of what Officer McGuire said:

During a stake-out, Detective Lemongello and I were shot by a felon. I ended up getting into a gunfight with the criminal in a snowy backyard. That has changed my life forever. I was shot through the right femur, and it blew apart my femur and also caused extensive damage to my leg. I was also shot through my stomach, and it hit the mesenteric artery. I lost 17 units of blood that night. . . . Because of the injuries I suffered from that shooting, I will never be a police officer again.

That is the same for Officer Lemongello.

He goes on to say:

I've heard some people say, ''Well, criminals can just get guns,'' as if there is nothing anybody can do to stop them from getting guns. Well, guns don't fall from the sky, or grow from trees, this one didn't either. The man who shot us got the gun because of an irresponsible gun dealer in West Virginia . . . who sold 12 handguns to a straw purchaser who gave them to a gun trafficker. What legitimate reason would two people have to buy 12 handguns? . . . Why wouldn't the gun dealer even ask the purchaser: Why would you need 12 guns? Why? Did I mention the purchasers paid for all of this in cash? If there is any doubt of the destination of these guns, which was northern New Jersey, months earlier I arrested a suspect with the same gun make and model from the same shipment in town.

Officer McGuire continues:

We have filed a lawsuit in West Virginia to hold the irresponsible dealer accountable. The dealer argued in court that it had no responsibility to use reasonable care in its business, but a judge in West Virginia disagreed. She ruled that we have a legitimate case under West Virginia law, and that a jury should decide whether this dealer acted reasonably.

That's all I want today: my day in court, to exercise my right as an American to present my case before a jury of my peers and let them decide, under the law, whether these gun sellers were reasonable or whether they contributed to my shooting.

Officer McGuire says:

If this bill is passed, Congress will be changing the laws for gun sellers, overruling the West Virginia judge, and taking away our rights. That is shameful.

I think it is, too.

I call on all Senators to do everything in their power to prevent this bill from becoming law.

That was the message from Officer McGuire, but it could have just as easily come from the countless other law enforcement officers who have been injured or killed by guns trafficked by irresponsible gun dealers and manufacturers.

I was talking to Senator DURBIN about a situation in Chicago. There is case after case. How can any of us look into the eyes of any of these officers, such as Officer McGuire, and tell them we are going to take away their rights? How can we tell David Lemongello he risked his life on behalf of our community, and he almost lost it because of an irresponsible gun dealer, he will be suffering from the attack for the rest of his life but if he wants to go to court, if he wants justice, our answer to him is no?

Remember, the question before the Senate is not whether these two police officers, or any police officer, has a good case. It is simply whether they have a right to make their case. It is whether they have a right to try to convince a jury that a gun dealer acted irresponsibly and whether they deserve compensation as a result.

I do not call this a frivolous lawsuit. I consider this a right for a law enforcement officer to have a right to make their case in court before a jury. This bill would deny them that day in court. Not only would it strip these two heroes of their legal rights, it would do so retroactively.

I know we are going to hear about narrowly defined exceptions that will not allow for it. I do not think law enforcement officers should be limited in their ability to make their case before a jury. As far as I am concerned, it is an affront to these officers and an insult to every police officer who puts his or her life on the line for the community, and it sends precisely the wrong message when we are supposed to be enhancing homeland security and reinforcing the risks that people are taking to protect our families and our communities across this country.

My amendment is very simple. In fact, I will read it word for word:

Notwithstanding any other provision of this Act, nothing in this Act shall be construed as limiting the right of an officer or an employee of any Federal, State or local law enforcement agency to recover damages authorized under Federal or State law.

I suspect we will hear about amendments that draw these narrow lines of exception. Why is it that a law enforcement officer cannot go into a court and get redress if they have been wronged in the illegal sale or the negligent sale of firearms to criminals? I do not get it.

That is the entire amendment. That is what we are working on. In essence, this amendment stands for the proposition that we should not strip police officers of their rights. It says that members of law enforcement who are victims of gun violence should have their day in court—no new rights, nothing guaranteed, just their day in court.

The advocates of this legislation argue that it is necessary to prevent frivolous litigation. I think they are wrong. But does this Senate really believe that law enforcement officers are flooding the courts with frivolous lawsuits? Is that what our law enforcement officers are doing? Do we really believe that men and women who devote their lives to enforcing our laws are trivializing the judicial process, that Congress needs to take away their rights because they are? I do not believe that and I do not believe anybody in this body does.

There is no evidence of it, and even to suggest it seems out of place given the trust that we give to these men and women in our local communities.

Our men and women in uniform put their lives on the line for us every day. The least they should be able to expect from us is that we would not strip away their rights when they suffer from gun violence, and that is what I think we are doing. I hope my colleagues will stand with me and the men and women of law enforcement and support this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. CORZINE. How much time is remaining?

The PRESIDING OFFICER. The Senator from New Jersey has 5 minutes 25 seconds.

Mr. CORZINE. I yield to my colleague from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I thank my colleague and good friend from New Jersey with whom I have worked very closely on many issues. There is not anything that we have done that binds us more closely than this action because we are witnessing it firsthand. We talked to the two officers who were mentioned in Senator CORZINE's commentary.

To me, this whole situation is surreal. The fact is, when there is a photo opportunity with a cop who is in uniform, we can see him chased by six Senators to get a picture taken with him. When there are townhall meetings, Senators will talk about how brave those cops are and that what they do is they put their lives on the line each and every day, and many of their families may be thinking that just maybe they may not see daddy coming back from work.

And here, the hard cold hearts are saying, well, listen, put your back on the line, put yourself on the line, but do not expect that we are going to help you collect any damages. You can be the breadwinner in the family, the only working person in the family. When that person is shot and killed, the incomes rarely continue for a significant period of time with enough income to take care of a family.

What do you tell a family which has a couple of children and a spouse dependent on the wages of that police officer? You tell them, Well, look, just remember one thing. It is like being a pilot in the military. You could go out

and lose your life. The difference is the military takes some care of you. There are insurance programs, other programs. Many of these small police departments don't have the kind of resources to provide on their own for the well-being of those families.

This is an outrage that is being perpetrated on these law enforcement people. It is an outrage. I hope the public understands what we are doing here. We want the people to work in those dangerous jobs, but we don't want to let them on their own go to the courts. That is the process in this country of ours. We will not let them go to court to see if there are any damages. They never repair the damage to the mind. They never repair the damage to the heart. You can't repair the damage to the soul. But we at least ought to be able to say: Listen, if you can bring a suit that shows either the manufacturer or the distributor or the retailer, like the shop in Oregon, was negligent in their handling of the weapon—no safeguards on these weapons—we ought to be able to say to them, if anything happens to you, you can go to court and you can seek damages.

But there is a group here who says no, we want to take away your right to sue. Do you know why? Because the NRA doesn't like it—putting it straight up. The NRA doesn't want that to happen. The NRA writes the legislation, for goodness sake. They don't want it to be available. They don't want these people to have the same rights everybody else has. If you are killed in an airplane crash or a car crash or otherwise, you have a right to go to court.

I have heard the story about product liability. We are not going through that again. We don't worry about product liability. We worry about negligence and recklessness and you are blocked from bringing suit. It is outrageous.

In the year 2003, 148 law enforcement officers across the nation were killed in the line of duty; 52 of those fallen officers were shot to death. I would like it if the managers of the bill who so desperately want this to pass would go to those families and say: You know what, we are sorry. Gosh, Joe was a good guy. We heard about him. He was a Boy Scout leader, all of those things. But that is the nature of the job. So you lost him. Go find another way, Madam Smith, to see if you can support your kids. See if you can get a job. You may have to leave the kids at home because you don't have enough money to take care of them and buy other things.

Every law enforcement officer fatality is a national tragedy. The only place it doesn't ring true is here. They don't want you to have the same rights ordinary citizens have when they are injured. It is incredible to me.

We go through semantic schemes here about: No, it doesn't really mean that. But it does block their right to collect damages if they are injured.

The PRESIDING OFFICER. The time controlled by the Senator from New Jersey has expired. Who seeks time?

Mr. LAUTENBERG. Mr. President, I ask unanimous consent to have printed in the RECORD a list of police officers who object to this bill and feel they are not protected, including an ad run by the Brady Campaign.

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

POLICE ORGANIZATIONS THAT OPPOSE THE IMMUNITY BILL

Major Cities Chiefs Association (represents police executives from over 50 of the largest cities in the United States)
National Black Police Association (NBPA) (nationwide organization of African American Police Associations representing approximately 35,000 individual members)
Hispanic American Police Command Officers Association (HAPCOA) (represents over 1,500 command law enforcement officers from local, state and federal agencies)
Police Foundation (a private, nonprofit research institution supporting innovation in policing)
Michigan State Association of Chiefs of Police
Rhode Island State Association of Chiefs of Police
Chief Randall J. Ammerman, Two Rivers, WI Police Department
Chief Ron Atstupenas, Blackstone, MA Police Department
Chief William Bratton, Los Angeles, CA Police Department
Commander (Ret.) Lloyd Bratz, Cleveland, OH Police Department
Chief (Ret.) Neil K. Brodin, Minneapolis, MN Police Department
Ronald J. Brogan, D.A.R.E. America, Special Agent (Ret.) DEA
Chief Thomas V. Brownell, Amsterdam, NY Police Department
James L. Buchanan, Officer (Ret.) Montgomery County, MD Police Department
Detective Sean Burke, Lawrence, MA Police Department
Chief John H. Cease, Wilmington, NC Police Department
Chief Michael J. Chitwood, Portland, ME Police Department
Superintendent Philip J. Cline, Chicago, IL Police Department
Chief Kenneth V. Collins, Maplewood, MN Police Department
Agent Patrick Clowry, U.S. DOJ
Deputy Javier Custodio, Passaic County Sheriffs Department, NJ
Chief James Deloach, South Bethany, DE Police Department
Chief Gary P. Dias, Rhode Island Division of Sheriffs, East Providence, RI
Chief Jed Dolnick, Jackson, WI Police Department
Chief Martin Duffy, Newton Township, PA Police Department
Officer David Elliott, Scranton, PA Police Department
Captain Richard C. Fahltech, Baltimore City, MD Police Department
Chief David G. Farrington, Burnsville, MN Police Department
Officer Linden Franco, Chicago, IL Police Department
Enriqueta Gallegos, Department Of Homeland Security, U.S. Border Patrol
Officer Doris Garcia, New York City Police Department
Chief Charles Gruber, South Barrington, IL Police Department
Patrick Gulton, Asst. Special Agent in Charge, Treasury Dept., Seattle, WA
Chief (Ret.) Thomas K. Hayselden, Shawnee, KS Police Department
Former Superintendent Terry G. Hillard, Chicago, IL Police Department
Steven Higgins, Director (Ret.) ATF
Officer Otis Hosley, Chicago, IL Police Department
Deputy Chief Victor E. Hugo, Amsterdam, NY Police Department
Chief Ken James, Emeryville, CA Police Department
Chief Calvin Johnson, Dumfries, VA Police Department
Captain Michael Johnson, Philadelphia, PA Police Department
Officer Bernard Kelly, Chicago, IL Police Department
Agent Lavra A. Kelso, U.S. Marshals' Service
Chief R. Gil Kerlikowske, Seattle, WA Police Department
Sergeant Robert Kirchner, Chicago, IL Police Department
Chief Michael F. Knapp, Medina, WA Police Department
Officer Chad Knorr, Amity Township, PA Police Department
Officer Edward Krely, Philadelphia, PA Police Department
Deputy Chief Jeffery A. Kumorek, Gary, IN Police Department
Detective John Kutnour, Overland Park, KS Police Department
Lieutenant Curtis S. Lavarello, Sarasota County, FL, Sheriffs Department
Sheriff Ralph Lopez, Bexar County Sheriffs Office, San Antonio, TX
Chief Cory Lynn, Ketchum, Idaho Police Department
Chief Larry W. Mathieson, Ormond Beach, FL Police Department
Officer J.R. Malveiro, Philadelphia, PA Police Department
Officer Joseph Marker, Philadelphia, PA Police Department
Chief Mark A. Marshall, Smithfield, VA Police Department
Chief Burnham E. Matthews, Alameda, CA Police Department
Captain Michael McCarrick, Philadelphia, PA Police Department
Sergeant Michael McGuire, Essex County, NJ Police Department
Chief Jack McKeever, Lindenhurst, IL Police Department
Chief Roy Meisner, City of Berkeley, CA Police Department
Jill B. Musser, Legal Advisor, Boise, Idaho Police Department
Chief William Musser, Meridian, Idaho Police Department,
James Nestor, NJ Attorney General's Office
Detective Kevin Nolan, Salem, NH Police Department
Gerald Nunziato, Special Agent-In-Charge (Ret.), ATF
Chief Howard O'Neal, Neptune Township, NJ, Police Department
Chief Albert Ortiz, San Antonio, TX Police Department
Chief Richard J. Pennington, Atlanta, GA Police Department
Officer Thomas Pierce, Chicago, IL Police Department
Chief Charles C. Plummer, Alameda County, CA Sheriff's Office
Chief Irvin Portis, Jackson, MI Police Department
Chief Sonya T. Proctor, Bladensburg, MD Police Department
Agent Michael J. Prout, U.S. Marshals' Servvice
Lieutenant Raj Ramnarace, LaCrosse, WI Police Department
Chief Edward Reines, Yauapai-Pescrott Tribal Police, AZ
Jerry Robinson, Acting Deputy Superintendent, Bureau of Investigative Services, Chicago, IL Police Department

Chief Kenneth D. Ridinger, Woodstown, NJ Police Department
Agent Jeffrey Schneider, U.S. Customs and Border Protection
Gerald Schoenle, Director, Erie County Central Police Services, Buffalo, NY
Chief Michael Seibert, Bolivar, MO Police Department
Sergeant Mike Suplicki, K–9 Unit, Passaic County Sheriffs Department, NJ
Detective Captain Edward Swannack, Neptune Township, NJ
Chief Toussaint E. Summers, Jr., Herndon, VA Police Department
Chief William F. Taylor, Rice University Policy Department, Houston, TX
Chief Vincent Vespia, South Kingstown, RI Police Department
Chief (Ret.) Joseph J. Vince, Jr., Crime Gun Analysis Branch, ATF
Chief Garnett F. Watson, Jr., Gary, IN Police Department
Hubert Williams, President, Police Foundation, Washington, DC

POLICE CHIEFS URGE U.S. SENATE: DON'T PROTECT GUN DEALERS WHO ARM KILLERS

BIG-CITY POLICE CHIEFS JOIN L.A. CHIEF BILL BRATTON TO DEMAND ACCOUNTABILITY FOR RECKLESS GUN DEALERS

America's top cops have joined forces to oppose an outrageous bill now being pushed through the U.S. Senate. Incredibly, it would reward reckless gun dealers with immunity from legal challenges.

This legislation is the highest priority of the National Rifle Association.

Police are already battling a tidal wave of illegal guns. This legislation would make this problem worse—and make cops' lives even more dangerous. That's why the Major Cities Chiefs Association and other law enforcement groups have joined Chief Bratton to forcefully oppose this dangerous bill.

A cop's worst nightmare: Bull's Eye and the D.C. area snipers

Just 1% of gun dealers supply 57% of the guns used in crimes. Consider, for example, Bull's Eye Shooter Supply of Tacoma, Washington. Bull's Eye ''lost'' the assault rifle used by the D.C. area snipers to murder 12 people. In three years it managed to ''lose 237 other guns, as well. In all it supplied guns traced to at least 52 crimes. If the Senate caves and this bill passes, dealers like Bull's Eye will get off scot-free and the NRA will win a victory for its extremist agenda.

Stand with America's Police: Go to our website: STOPtheNRA.com

Polls show that 2 out of 3 Americans want irresponsible gun merchants such as the dealer that armed the D.C. area snipers held accountable. But we must make our voices heard—or the NRA's money and lobbying will prevail. Go to www.STOPtheNRA.com and sign our petition so we can send your name to the senators who support this outrageous bill.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I will be brief and yield back the remainder of my time. Of course, our amendment will be set aside. I will offer a Frist-Craig amendment. I hope we can limit the time on that. All are encouraging we vote sooner rather than later.

I must say, one of the strengths of the underlying bill, S. 1805, is it adopted the same rules for all plaintiffs, no matter how sympathetic or how unsympathetic; no matter how notorious or how mundane the circumstances of their victimization. It creates the kind of legal standards in this country we believe all people should stand under.

The Senator from New Jersey is a man who creates law. The picture beside him is of a man who enforces law. We have obvious and open respect for both, and we should in this country, because we are a country of laws. That gentleman you talked about so eloquently who is pictured beside you is a man who puts on the uniform every day and goes in harm's way. There is no doubt about it. There is not a Senator on this floor who doesn't respect men and women in uniform, whether they be civil police in this country or are men and women in the armed services.

At the same time, that man enforces law. His life oftentimes is put in much more jeopardy by plea-bargaining the criminal back onto the street day after day in urban America, and they have to go out and rearrest them and rearrest them again. Tragically enough, those criminals go out and steal guns. Sometimes they buy them. And sometimes they lie when they buy them. But most of them are stopped by background checks today. That officer has to face them again.

We understand that principle. That is the history of America. That is the history of law enforcement. The great tragedy today in law is criminal law, in my opinion, that we keep kicking them back to the streets instead of doing the time for the crime and causing that gentleman to have to go out and face them once again because they are a repeat, repeat, repeat offender.

What S. 1805 attempts to establish is plaintiffs' rights should be dependent on settled principles of law, not emotion and not sympathy. If a lawsuit has enough merit under traditional tort standards to be allowed by the bill, we believe that cause of action should be available to all plaintiffs, regardless of their occupation or their employer or whether particularly an attacker had harmed them. In other words, we are not suggesting there be carve-outs and special exemptions.

But clearly, and I can argue and the Senator has already said, I would come back to those five very key exceptions we have placed in S. 1805. I am not going to repeat those. I have repeated them several times tonight. They are in the bill. They are in the bill a majority of the Senators here support, Democrat and Republican. Why do they? Because they bring stability to the law. They create clear standards. They don't say that a law-abiding citizen producing a lawful product is somehow liable if someone takes it and misuses it; that the person who misuses it is the person who ought to be liable. That person ought to be the criminal, if so found guilty. That is a premise of the law and it is an important premise of the law.

I hope my colleagues tonight will oppose the Corzine amendment. It guts the underlying bill. I doubt the Senator from New Jersey planned to vote for S. 1805. I can't view this as a friendly amendment. I don't think it is intended to be. I think it is intended to tear down the fundamental structure built under S. 1805, to establish solid principles, clear understandings, not to allow junk lawsuits to move through, but to allow that gentleman pictured beside you his day in court. Because the courthouse door is not locked. The opportunity to argue before the judge still remains so that suit can be filed, so that case can move on if the principles of the law are met and the standards meet the test.

With that, I yield back the remainder of my time and ask the Corzine amendment be laid aside.

AMENDMENT NO. 2630

Mr. CRAIG. I send to the desk the Frist amendment.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAIG], for Mr. FRIST for himself and Mr. CRAIG, proposes an amendment numbered 2630.

Mr. CRAIG. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To protect the rights of law enforcement officers who are victimized by crime to secure compensation from those who participate in the arming of criminals)

On page 9, between lines 21 and 22, insert the following:

(E) LAW ENFORCEMENT EXCEPTION.—Nothing in this Act shall be construed to limit the right of an officer or employee of any Federal, State, or local law enforcement agency to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).

Mr. CRAIG. I will be brief. I think our colleagues wish that of us tonight. This amendment is not unlike the amendment the Senate accepted a few moments ago in relation to the Mikulski amendment. Let me read it. It is every bit as simple and straightforward as the amendment of the Senator from New Jersey:

Law enforcement exception—Nothing in this Act shall be construed to limit the right of an officer or employee of any Federal, State, or local law enforcement agency to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clause (i) through (v) of subparagraph (A).

Of course, I have read that subparagraph and all of those exceptions to you time and time again over the last several days.

We believe it is clear-cut. We believe that creates the stability within the law. It sets in motion something very important; that is, the old principle of tort law—that it is the individual who is guilty for their actions and they should not be trying to reach through layers upon layers of acts to find somebody who produced a quality product and say you are guilty because you produced it and, therefore, you ought

to pay because somebody misused and damaged or took someone's life. We have never done that as a country, and we shouldn't. We have found negligence, and we should where it exists, where there has been willingness, where there has been a violation of law that is found. People ought to pay the price if they don't play by the rules.

In the gun community, I know how important this right is in America, and with this right goes phenomenal responsibility.

This Senate, time and time again, down through the decades has established very specifically those responsibilities because we view this as an extremely valuable right.

I say to the Senator from New Jersey that I am not going to keep that policeman out of the courthouse. I and Americans respect him and his profession too much to say you cannot go after redress, but you must find that the laws that you enforce are the same laws that you respect and must live by.

I retain the remainder of my time.

The PRESIDING OFFICER. Who seeks time? The Senator from Illinois.

Mr. DURBIN. Mr. President, who controls time in opposition to the Craig amendment?

The PRESIDING OFFICER. The minority manager controls the time. That would be the Senator from Rhode Island.

Mr. REED. Mr. President, I yield 5 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 5 minutes.

Mr. DURBIN. I thank my colleague from Rhode Island, and I thank the Presiding Officer.

The Senator from Idaho says when he wrote this bill, he did it without emotion and without sympathy. Clearly, if he is going to oppose this amendment offered by the Senator from New Jersey, then he is doing it without sympathy for the 54 law enforcement officers who are killed each year in the line of duty with guns. That is what the Senator said.

Mr. CRAIG. Mr. President, will the Senator yield?

Mr. DURBIN. Of course I will not because you would not yield when you had the floor.

Mr. CRAIG. Fine. I will take my time.

Mr. DURBIN. I will say this to the Senator from Idaho: It is hard for me to imagine, to believe that you believe that a lawsuit brought by that police officer or his family for being shot in the line of duty is a junk lawsuit as you have characterized these over and over again. The Senator from Idaho should join me in the city of Chicago where I have visited officers of that police force shot in the line of duty who are quadriplegic for the rest of their lives because a gang banger shot them in the line of duty. And you tell that officer and his family—the Senator from Idaho should tell that officer and his family—that if they are going to seek redress from a gun dealer who sold those guns to the gang bangers, that that lawsuit for that officer and his family is a junk lawsuit—a junk lawsuit. Please.

How in the world can we in the Senate stand here and pronounce our admiration and respect for the men and women in uniform who protect us every single day, and then when they are stricken in the line of duty, when they are shot defending us, tell them when they want to go against the gun dealers who put these junk guns on the street, these Saturday night specials through straw purchasers and gun traffickers, that that lawsuit brought by that officer and his family is a junk lawsuit that you want to stop with this legislation?

That troubles me. It troubles me because, frankly, I think we understand if we are going to ask anyone in our community to risk their lives every single day for us by wearing that badge and that uniform, we owe them something more than words. We should be standing by them when they, frankly, give their lives and risk their lives for us every single day.

The choice we have with the Corzine amendment is a clear choice: Stand by the police or stand by the gun dealers. The Senator from Idaho says we need to stand by the gun dealers; that this is a jobs bill. We need to stand by the gun manufacturers; this is a jobs bill. What about the men and women in uniform and our law enforcement agencies across America? What about their jobs? Are they worth standing by or standing by their families?

I say to those who are going to oppose the Corzine amendment that if you have a problem in your neighborhood and there is crime in the neighborhood, don't call 9–1–1. No, dial up your local gun dealer because if you dial 9–1–1, you are going to get one of these policemen who just might get hurt and file a junk lawsuit. You had better dial up that gun dealer. Call the gun dealer and ask him to please come out and protect your family.

I cannot imagine that we are going to allow this to occur. The Frist-Craig amendment is meaningless when it says whatever the bill said originally it applies to law enforcement officials. It doesn't do a thing for them.

The Corzine amendment does. It says we are going to stand behind the police. If he is shot in the line of duty, we will stand by him and his family to go after the wrongdoer and the gun dealer who is selling those guns to the gang bangers and street killers, the cop killers on the street.

If you want to vote for the Frist-Craig amendment in this underlying bill, frankly, we are turning our back on those men and women who are risking their lives every single day for us.

I thank the Senator from New Jersey for this amendment. We should be offering this amendment not only for law enforcement officials but for firefighters, medical responders, and every single person in America who puts their life on the line for us every single day and risk death by firearms because this underlying bill is saying to them, if you are hurt and you sue, you are filing a junk lawsuit.

Mr. CRAIG. Mr. President, may I ask how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Idaho has 12 minutes 28 seconds. The Senator from Rhode Island has 9 minutes 49 seconds.

Mr. CRAIG. Mr. President, I yield to Senator SESSIONS.

I am not going to respond to the Senator from Illinois only to say that he impugned my heart. He suggested I was a person without sympathy. I have never done that to him. I believe he is a person of goodwill who comes here to represent the citizens of the State of Illinois.

When I talk about sympathy, I talk about the impartiality of law. He is an attorney and I am not. He knows that the law is impartial and it is clear.

So I must tell you that I grit my teeth a little bit when he suggests that this Senator has no passion or concern for the loss of life. That is a step too far.

Let me yield 5 minutes to Senator SESSIONS.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 5 minutes.

Mr. SESSIONS. Mr. President, I was a prosecutor for a number of years. Some of my best friends are police officers. I try to meet with them when I am in my State. I met with 11 or 12 of them in Cherokee on the Georgia line last week. They are not telling me that if they are shot or one of their fellow officers are shot they want to sue the gun manufacturers. None of them have ever suggested that to me. They believe that criminals with guns ought to be prosecuted aggressively and go to jail for it when they catch them. They ought to be punished. And if they shoot and kill a police officer, they want to see them go to jail or be executed. A lot of people who are opposing this legislation oppose the death penalty for those who kill police officers.

The point of this is very simple. In American law, from our ancient traditions, wrongdoers are the people who ought to be sued. If a terrorist comes in here and shoots a policeman, a cold-blooded criminal shoots any American citizen, you should sue the person who shot you. That is what we are all about. That is what the law has been about.

Now we are in a situation in which the law has been politicized and used to carry out an agenda. To say that a gun dealer or a gun manufacturer that has complied with all the extensive regulations for the sale of firearms, has done everything right, that somehow they should be the ones to be sued if a criminal in an intervening action obtains a weapon from another person perhaps and commits a crime with it and shoots someone, that is not what

American law is about. It is an abuse of the liability system in America. It is consistent with current law and our traditions. It is why, to date, none of these lawsuits against gun manufacturers has been successful and why few are successful against gun dealers.

However, if a gun manufacturer or if a gun dealer, in particular, sells a weapon contrary to the complex and detailed regulations the Federal Government, State, and cities required, that person can be not only sued for damages, that person can be prosecuted.

When I was a Federal prosecutor, I prosecuted criminals who used guns; I prosecuted gun dealers who sold guns illegally. They have to get an ID from the purchaser. They make him sign an affidavit that he is not a felon. They do a gun check. They have to be a resident of the State, as I recall. They cannot be a drug addict. If they know there is an impropriety and sell the gun anyway, they can be responsible and be sued for it and should be—and should be prosecuted, for that matter.

What we need to focus on in America today is that the Constitution of this country allows the American people to keep and bear arms. Those who do not agree, get over it. That is where the American people are. That is what the Constitution says. That is what the rules are. If you want to offer legislation to put further controls on the right of an individual in America to keep and bear arms, put it out here and let's debate it and see if it has enough votes to win.

This idea of mayors, attorneys general, district attorneys, and governmental officials filing lawsuits against gun manufacturers who complied with the law, to try to make them responsible in an end run effort to carry out an antigun agenda in some of our big, liberal cities in America—they do not understand where most Americans are about hunting and guns—is improper. It is not the way we ought to go about this business.

The Senator from Idaho is correct; this liability question is one we need to deal with. There is a concerted effort in America to utilize the legal system in some of our liberal courts to try to knock down the right to manufacture and sell guns. It is protected by Federal law. It is controlled by Federal law. It is mandated by Federal law. People who comply with the law should not be sued. If they do not comply, they should be sued and prosecuted.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, let me make two or three quick points and then yield to Senator LAUTENBERG and then to Senator CORZINE.

First, a neutral assessment of this legislation suggests strongly that it is not just frivolous lawsuits that are going to be barred by this legislation; there are going to be many meritorious lawsuits. We already know about these suits. We know about Officer McGuire; we know about the victims of the Washington snipers. Those individuals will be barred from courts. Those are not frivolous suits.

Again, there has been discussion about junk cases. I believe there will be a lot of junk guns on the streets because essentially what this legislation does is this. When a Federal firearms dealer gets his license, he also gets a license to be negligent. He can follow the rules but he can be negligent. There is no Federal legislation or State legislation, in many cases, that requires the storage at a facility of weapons, so you can leave them lying around. That is what they apparently did at Bull's Eye.

That is negligence, and that negligence harmed several individuals. And this particular law, if adopted, will prevent people from exercising their rights for compensation based upon that activity.

All this discussion leads to the inescapable belief on my part that the proponents want it both ways. They stand here and decry the attack on the industry, the gun industry besieged by lawsuits, and then turn and say: Of course, Officer Lemongello will get to court and Officer McGuire will get to court and the sniper victims will get to court. They cannot have it both ways.

The law is not impartial. The law is what we make it. We are making a law today that favors, in an unprecedented fashion, the gun industry, gun dealers, and the National Rifle Association. That is our making. It is not some cosmic event taking place and suddenly we have the law. We are telling them, be negligent, be irresponsible, be reckless, do not worry about it, we have taken care of you.

What do we say to the victims of the crimes? Tough luck. You were in the wrong place, officer. You were in the wrong place, Conrad Johnson, starting your bus up early in the morning. Your family will never get a nickel from the companies or individuals who were negligent.

I yield 3 minutes to the Senator from New Jersey.

Mr. REED. How much time do we have?

The PRESIDING OFFICER. The Senator has 7 minutes.

Mr. REED. I yield 3 minutes to the Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I ask to have the Presiding Officer call attention to the fact when I have 30 seconds remaining.

We listen to the same rhetoric, decry the risk that our law enforcement people take when they go out to work and how we really respect them—except that we do not want to give them the same environment that every ordinary citizen in this country has.

We hear about the fact that if you get the criminals off the streets and they do not come out again, and then they go back again, what does it have to do with whether or not we block the suit from law enforcement personnel who have been injured, who have families who want redress for them having been killed at work? It has nothing to do with it.

That is the whole thing. It is an obfuscation of what this bill is about. This bill does not change a bit with this amendment. It just reinforces what the bill says, and that is, take away people's rights to sue, people's rights for redress. Whether it is an errant gun manufacturer, a dealer, a distributor, an errant airline, or an errant car manufacturer, people should have the right to sue.

There have been opinions thrown around that, unfortunately, do not match that of a distinguished attorney such as David Boies who says this bill will cause a dismissal of the suit of Lemongello and McGuire immediately. The proposed immunity legislation would require the immediate dismissal of these claims.

I ask unanimous consent to have printed in the RECORD what the office of David Boies, one of the most prominent criminal attorneys in the country, has confirmed.

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

Lemongello v. Will Company, No. Civ.A. 02–C–2952, 2003 WL 21488208 (W. Va. Cir. Ct. Mar. 19, 2003). New Jersey Police Detective David Lemongello and Officer Kenneth McGuire were seriously injured in January 2001 when they were shot by a career criminal while performing undercover police work. Even though the shooter was a person prohibited by law from purchasing a firearm, he obtained his weapon, a nine millimeter semi-automatic Ruger handgun, illegally from a gun trafficker. The trafficker, in turn, was also prohibited from buying weapons due to a prior felony, so he used an accomplice (a so-called ''straw purchaser'') to make multiple gun purchases from defendant Will Jewelry & Loan, in West Virginia. In their lawsuit against Will Jewelry & Loan and others, the officers allege that the gun dealer acted negligently in selling the straw purchaser twelve guns (including the Ruger used in the shooting of the two officers) that had been selected in person by the gun trafficker and paid for in a single cash transaction. The circumstances of that sale were so suspect that the defendant dealer reported it to the AFT—but only after the purchase price had been collected and the guns had left the store. The officers' suit further charges gun manufacturer Sturm Ruger & Company with negligently failing to monitor and train its distributors and dealers and negligently failing to prevent them from engaging in straw and multiple firearm sales. Although a West Virginia trial court has held that the plaintiffs have stated valid negligence and public nuisance claims under state law, the proposed immunity legislation would require the immediate dismissal of those claims. Notwithstanding the plaintiffs' claims that the defendants failed to exercise reasonable care in their sales of firearms, neither the dealer nor the manufacturer violated any statutory prohibition in selling the guns. Nor could the plaintiffs contend that their case falls within the ''negligent entrustment'' exception to the proposed immunity legislation because the gun dealer supplied the firearm to a straw purchaser—not to someone whom the seller knew or should have known was likely to, and did, use the

product in a manner involving unreasonable risk of physical injury to the person or others.

The PRESIDING OFFICER. The Senator has 30 seconds remaining.

Mr. LAUTENBERG. Many police officers and police chiefs wrote in their opposition to this bill, law enforcement personnel from various police departments around the country, including Chief William Musser of Meridian, OH, Police Department. He writes that he is opposed to this. We have officers from other States as well, including Chief Cory Lynn from Ketchum, ID, Police Department, in opposition to this legislation.

This letter was printed in the RECORD of yesterday.

The PRESIDING OFFICER. Who seeks time?

Mr. REED. Mr. President, I yield the remaining time to the Senator from New Jersey, Mr. CORZINE.

The PRESIDING OFFICER. The Senator is recognized for 3½ minutes.

Mr. CORZINE. Mr. President, the issue before the Senate is pretty clear. This is a simple principle: Will we protect law enforcement officers such as Officer Lemongello from losing their rights under this bill or won't we?

The fact is, the narrow drawing of these exemptions is going to take cases like I identified in my opening remarks—such as buying guns in West Virginia from a negligent dealer, who admitted, themselves, on the same day they had a problem; and it went into the courts—and we are going to take away their rights to sue. This will not fit under those legal constraints.

The amendment is clear and straightforward. It says that nothing in this legislation will limit the legal rights of law enforcement personnel. All my amendment does is open that up. There are no conditions. There are no caveats. It is clear. It is simple. My amendment does not add any new rights. It just guarantees that officers will not lose any.

I am emotional about these individuals who put their lives on the line all the time. I accept that others feel the same way. But we should not be taking away the rights of these individuals to get into a court and not only pursue the person who perpetrated the crime, but if someone has facilitated that crime, because they have been negligent, that ought to be also someone who is subject to the law.

I think we are doing just the opposite. The Frist-Craig amendment is completely meaningless in this context because it is exactly the same language that is already in the bill. It is transparent and does not change a thing.

This officer will not be able to get into a court of law. This officer will lose his right to sue. That is not right. It is not right for the other 52 American police officers who lost their lives in 2002 or 2003, and the many, many who have been injured.

I don't understand why we don't want to give them the rights they deserve under our Constitution. This is not about whether you have a right to bear arms. This is not about the second amendment. This is about having the right, when there is negligence and criminal behavior, to go into a court of law and protect yourself.

We are doing it for law enforcement—for law enforcement—not just generally. These are not frivolous suits. These are people who know the law. They are not bringing up frivolous suits, and I do not think I am hearing that. So if we are not going to have frivolous lawsuits, which is the argument we are trying to make, we need this legislation.

Why are we taking away the right to sue from law enforcement across this country? I ask my colleagues to stand with me. I think we are undermining the safety and the security and the principles and the rights of law enforcement. I think the Senate ought to be standing with law enforcement to make sure they are protected. If we vote no against my amendment, we are doing the opposite. I hope we will stand strong and stand firmly with law enforcement because that is what we need to do if we say we appreciate what they are doing for our families and our communities.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who seeks time?

The Senator from Idaho.

Mr. CRAIG. Mr. President, I understand the opposition has yielded back all their time.

The PRESIDING OFFICER. That is correct.

Mr. CRAIG. I will be as brief as possible. The hour is late.

I know the Senator from New Jersey speaks with a good heart, and I appreciate that. I think we all do. He mentioned two important words just in the last of his closing debate. He mentioned the word ''criminal,'' criminal action, the right to sue, and he mentioned ''negligence'' and the right to sue. Then he said: We block that policeman from the courthouse door.

I must ask him to return to page 7 of the bill, exception one and exception two:

> an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted. . . .

He is talking about criminal action. That action is deemed as a criminal act in the law.

How about negligence? Well, it is the next one down.

It is No. 2:

> an action brought against a seller for negligent entrustment or negligence per se. . . .

Let me tell you what the FOP says. I think we all know what the FOP is. That is the Fraternal Order of Police, some 311,000 strong. They oppose the Corzine amendment. We have just visited with them. They called us and they said: Why? Because they do not believe it accomplishes what they would like accomplished, and they like the underlying law.

I think it is fundamentally important that we try to build clean principles within the law. I would have to agree with the Senator from New Jersey that policeman is not going to file or have his attorneys file a junk lawsuit. The Senator is absolutely right. But 31 apparently have been filed, some are under appeals, and 21 of them have been thrown out of court by judges who said: Go away, because that is what this lawsuit is.

Now, oftentimes the municipality and/or the individuals and/or the county will file it in the name of a fallen officer. I can understand the emotion. I think we all feel it. But the judge said the law is the law and there was no basis, and he threw them out. Yet it cost the industry—the law-abiding industry—hundreds of millions of dollars. It is beginning to weaken many of our legitimate, legal gun manufacturers, that oftentimes build the firearm that officer carries on his side to protect himself and his fellow officers in the commission of their responsibilities.

We should not be doing that as a country. But clearly we must insist that the law be clear, unambiguous, and that the officer have his day in court if he is harmed by a criminal or by someone who has acted in a criminal way, someone who has violated the law, someone, through negligence, has somehow caused a firearm to get into the hands of a criminal.

Then the case is brought, and S. 1805 does not block that.

I yield back the remainder of my time, and I ask for the yeas and nays on the Frist-Craig amendment and the Corzine amendment.

The PRESIDING OFFICER. Is the Senator seeking the yeas and nays on both amendments with one show of hands?

Mr. CRAIG. If there is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered. The yeas and nays are requested.

Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 2630. The clerk will call the roll.

The assistant journal clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from New Mexico (Mr. DOMENICI), and the Senator from Alaska (Ms. MURKOWSKI) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 60, nays 34, as follows:

[Rollcall Vote No. 21 Leg.]

YEAS—60

Alexander	Dayton	McConnell
Allard	Dole	Miller
Allen	Dorgan	Nelson (FL)
Baucus	Ensign	Nelson (NE)
Bayh	Enzi	Nickles
Bennett	Frist	Pryor
Bond	Graham (SC)	Reid
Breaux	Grassley	Roberts
Brownback	Gregg	Rockefeller
Bunning	Hagel	Santorum
Burns	Hatch	Sessions
Chambliss	Hutchison	Shelby
Cochran	Inhofe	Smith
Coleman	Johnson	Snowe
Collins	Kyl	Specter
Conrad	Landrieu	Stevens
Cornyn	Lincoln	Sununu
Craig	Lott	Talent
Crapo	Lugar	Thomas
Daschle	McCain	Voinovich

NAYS—34

Akaka	Durbin	Levin
Biden	Feingold	Lieberman
Bingaman	Feinstein	Mikulski
Boxer	Fitzgerald	Murray
Byrd	Graham (FL)	Reed
Cantwell	Harkin	Sarbanes
Carper	Hollings	Schumer
Chafee	Inouye	Stabenow
Clinton	Jeffords	Warner
Corzine	Kohl	Wyden
DeWine	Lautenberg	
Dodd	Leahy	

NOT VOTING—6

Campbell	Edwards	Kerry
Domenici	Kennedy	Murkowski

The amendment (No. 2630) was agreed to.

Mr. CRAIG. Mr. President, I move to reconsider the vote.

Mr. WYDEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2629

The PRESIDING OFFICER. The next order of business is consideration of the Corzine amendment. There are 2 minutes equally divided to be followed by a vote. The yeas and nays have already been ordered.

Who yields time?

The Senator from New Jersey.

Mr. CORZINE. Mr. President, my amendment is very simple. In fact, I will read it:

Notwithstanding any other provision of this Act, nothing in this Act shall be construed as limiting the right of an officer or employee of any Federal, State or local law enforcement agency to recover damages authorized under Federal or State law.

This is a police officer who was shot, injured, and is no longer able to work in New Jersey. Fifty-two were killed in 2002 by guns in the hands of criminals, sold negligently—people should have the ability to go to court and get redress. These are not junk lawsuits, not frivolous lawsuits.

Law enforcement officers ought to have the ability to protect their rights in court. They should have their day in court. That is what this amendment does, and the narrow definitions that are allowed for in the underlying bill will keep Officers McGuire and Lemongello out of court.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Idaho.

Mr. CRAIG. Mr. President, I ask my colleagues to vote against the Corzine amendment. I ask it on behalf of the Fraternal Order of Police, some 311,000 strong, who oppose this amendment, who oppose a special carve-out in a law that is meant to treat all fairly and equitably. This amendment would gut the underlying bill, S. 1805, and I ask my colleagues to oppose it and vote against it.

I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2629. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from New Mexico (Mr. DOMENICI), and the Senator from Alaska (Ms. MURKOWSKI) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea''.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 38, nays 56, as follows:

[Rollcall Vote No. 22 Leg.]

YEAS—38

Akaka	Dayton	Leahy
Bayh	DeWine	Levin
Biden	Dodd	Lieberman
Bingaman	Durbin	Mikulski
Boxer	Feingold	Murray
Byrd	Feinstein	Nelson (FL)
Cantwell	Graham (FL)	Reed
Carper	Harkin	Sarbanes
Chafee	Hollings	Schumer
Clinton	Inouye	Stabenow
Conrad	Jeffords	Warner
Corzine	Kohl	Wyden
Daschle	Lautenberg	

NAYS—56

Alexander	Dole	Lott
Allard	Dorgan	Lugar
Allen	Ensign	McCain
Baucus	Enzi	McConnell
Bennett	Fitzgerald	Miller
Bond	Frist	Nelson (NE)
Breaux	Graham (SC)	Nickles
Brownback	Grassley	Pryor
Bunning	Gregg	Reid
Burns	Hagel	Roberts
Chambliss	Hatch	Rockefeller
Cochran	Hutchison	Santorum
Coleman	Inhofe	Sessions
Collins	Johnson	Shelby
Cornyn	Kyl	Smith
Craig	Landrieu	Snowe
Crapo	Lincoln	Specter
Stevens	Sununu	Thomas
	Talent	Voinovich

NOT VOTING—6

Campbell	Edwards	Kerry
Domenici	Kennedy	Murkowski

The amendment (No. 2629) was rejected.

Mr. CRAIG. Mr. President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRAIG. Mr. President, we have worked a long day and through what this time last night was appearing to be a very complicated unanimous consent. But I think it flowed well today. All of our colleagues worked hard, and we have been able to meet all but one vote we had on that unanimous consent.

It is my understanding that it is possible Senator BINGAMAN will offer his amendment in the morning.

Mr. REID. Mr. President, if my friend will yield, on our side, Senator DAYTON will be here in the morning to offer his amendment. Following that, Senator LEVIN will offer an amendment. Senator BINGAMAN wishes to offer his amendment on Monday.

I also say to my friend that Senator REED has told me he will come tomorrow or Monday to start laying the groundwork for his amendment and the amendment with Senator FEINSTEIN. The votes on those amendments will occur Tuesday morning. When they get the floor, they can talk about their amendments either tomorrow or Monday.

Mr. CRAIG. Mr. President, I thank the Senator from Nevada for his cooperation in working with us to facilitate this bill today, to move it in a timely way and get the votes necessary throughout the day. He has worked hard, along with all of us, to get that accomplished. We have had several votes.

Let me also thank, midway through this, my staff and certainly the staff of the Judiciary Committee and others who worked to make sure we had the information in a timely way to move forward.

It is my understanding this is the last vote of the day.

Mr. REID. Mr. President, I rise in support of this most important legislation. In fact, I am a cosponsor of this bill, which is sponsored by Senators CRAIG and BAUCUS.

This legislation protects firearm and ammunition manufacturers from lawsuits related to deliberate and illegal misuse of their products. Even more important, it protects the rights of Americans who choose to legally purchase and use their products.

As a gun owner since I was a young boy, I strongly support the constitutional right of law-abiding citizens to keep and bear arms. This constitutional right of responsible individuals should not be compromised or jeopardized by a small handful who use firearms to commit crimes.

In my native State of Nevada, many people own firearms and the vast majority of them use their guns responsibly and safely. It is their right to do so, guaranteed in the United States Constitution. It is not some privilege granted at the whim of Congress or any other part of government. So I will work on a bipartisan basis to protect and safeguard that right.

I will work to pass this bill, and I think we have the votes to pass it.

Toward the end of last year, we tried to consider this bill in the United States Senate. Unfortunately, we didn't have enough time left in the first session of this Congress to consider this bill in a fair manner.

Now the time has come to pass this bill.

We will now debate and vote on the amendments that Senators want to offer to this bill, and then we will pass it. And when we do, we will be standing up for the Constitution and the rights of every American citizen.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant Journal clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

SECOND NOTICE OF PROPOSED PROCEDURAL RULEMAKING

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached statement from the Office of Compliance be entered into the RECORD today pursuant to section 303(b) of the Congressional Accountability Act of 1995 (2 U.S.C. 1384(b)).

OFFICE OF COMPLIANCE

The Congressional Accountability Act of 1995: Second Notice of Proposed Amendments to the Procedural Rules.

Introductory statement:

On September 4, 2003, a Notice of Proposed Amendments to the Procedural Rules of the Office of Compliance was published in the Congressional Record at S11110, and H7944. As specified by the Congressional Accountability Act of 1995 (''Act'') at Section 303(b) (2 U.S.C.1384(b)), a 30 day period for comments from interested parties ensued. In response, the Office received a number of comments regarding the proposed amendments.

At the request of a commenter, for good reason shown, the Board of Directors extended the 30 day comment period until October 20, 2003. The extension of the comment period was published in the Congressional Record on October 2, 2003 at H9209 and S12361.

On October 15, 2003, an announcement that the Board of Directors intended to hold a hearing on December 2, 2003 regarding the proposed procedural rule amendments was published in the Congressional Record at H9475 and S12599. On November 21, 2003, a Notice of the cancellation of the December 2, 2003 hearing was published in the Congressional Record at S15394 and H12304.

The Board of Directors of the Office of Compliance has determined to issue this Second Notice of Proposed Amendment to the Procedural Rules, which includes changes to the initial proposed amendments, together with a brief discussion of each proposed amendment. As set forth in greater detail herein below, interested parties are being afforded another opportunity to comment on these proposed amendments.

The complete existing Procedural Rules of the Office of Compliance may be found on the Office's web site: www.compliance.gov.

How to submit comments:

Comments regarding the proposed amendments to the Rules of Procedure of the Office of Compliance set forth in this NOTICE are invited for a period of thirty (30) days following the date of the appearance of this NOTICE in the Congressional Record. In addition to being posted on the Office of Compliance's section 508 compliant web site (www.compliance.gov), this NOTICE is also available in the following alternative formats: Large Print, Braille. Requests for this NOTICE in an alternative format should be made to: Bill Thompson, Executive Director, or Alma Candelaria, Deputy Executive Director, Office of Compliance, at 202–724–9250 (voice) or 202–426–1912 (TDD).

Submission of comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA–200, Washington, D.C. 20540–1999. It is requested, but not required, that an electronic version of any comments be provided on an accompanying computer disk. Comments may also be submitted by facsimile to the Executive Director at 202–426–1913 (a non-toll-free number.) Those wishing to receive confirmation of the receipt of their comments are requested to provide a self-addressed, stamped post card with their submission.

Copies of submitted comments will be available for review on the Office's web site at www.compliance.gov, and at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540–1999, on Monday through Friday (non-Federal holidays) between the hours of 9:30 a.m. and 4:30 p.m.

Supplementary Information: The Congressional Accountability Act of 1995 (CAA), PL 104–1, was enacted into law on January 23, 1995. The CAA applies the rights and protections of 11 federal labor and employment statutes to covered employees and employing offices within the Legislative Branch of Government. Section 301 of the CAA (2 U.S.C. 1381) establishes the Office of Compliance as an independent office within that Branch. Section 303 (2 U.S.C. 1383) directs that the Executive Director, as the Chief Operating Officer of the agency, adopt rules of procedure governing the Office of Compliance, subject to approval by the Board of Directors of the Office of Compliance. The rules of procedure generally establish the process by which alleged violations of the laws made applicable to the Legislative Branch under the CAA will be considered and resolved. The rules include procedures for counseling, mediation, and election between filing an administrative complaint with the Office of Compliance or filing a civil action in U.S. District Court. The rules also include the procedures for processing Occupational Safety and Health investigations and enforcement, as well as the process for the conduct of administrative hearings held as the result of the filing of an administrative complaint under all of the statutes applied by the Act, and for appeals of a decision by a hearing officer to the Board of Directors of the Office of Compliance, and for the filing of an appeal of a decision by the Board of Directors to the United States Court of Appeals for the Federal Circuit. The rules also contain other matters of general applicability to the dispute resolution process and to the operation of the Office of Compliance.

These proposed amendments to the Rules of Procedure are the result of the experience of the Office in processing disputes under the CAA during the period since the original adoption of these rules in 1995.

How to read the proposed amendments:

The text of the proposed amendments shows [deletions within brackets], *and added text in italic*. Textual additions which have been made for the first time in this second notice of the proposed amendments ***are shown as italicized bold.*** Textual deletions which have been made for the first time in this second notice of the proposed amendments [[are bracketed with double brackets.]] Only subsections of the rules which include proposed amendments are reproduced in this notice. The insertion of a series of small dots (. . . . .) indicates additional, unamended text within a section has not been reproduced in this document. The insertion of a series of stars (* * * * *) indicates that the unamended text of entire sections of the Rules have not been reproduced in this document. For the text of other portions of the Rules which are not proposed to be amended, please access the Office of Compliance web site at www.compliance.gov.

PROPOSED PROCEDURAL RULE AMENDMENTS

PART I—OFFICE OF COMPLIANCE

Office of Compliance Rules of Procedure

As Amended—February 12, 1998 (Subpart A, section 1.02, ''Definitions''), and as proposed to be amended in 2004.

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§1.03 Filing and Computation of Time.

(a) Method of Filing. Documents may be filed in person or by mail, including express, overnight and other expedited delivery. *When specifically authorized by the Executive Director,* ***or by the Board of Directors in the case of an appeal to the Board,*** *any document may also be filed by electronic transmittal in a designated format.* Requests for counseling under section 2.03, requests for mediation under section 2.04 and complaints under section 5.01 of these rules may also be filed by facsimile (FAX) transmission. . . . .

Discussion: The electronic filing option is in addition to existing filing procedures, and represents the decision of this agency to begin to explore the process of migration toward electronic filing. In response to comments, the Board has added Board of Directors authorization authority to ensure that the Executive Director cannot unilaterally assume Board authority regarding a matter pending before the Board. Because of limits in available technology, it will remain necessary to designate a particular format for electronic transmittal. Requiring a designated format does not impose an undue burden, since electronic filing is not required. Stipulating a web address and system for confirmation of receipt of electronic transmittal is not appropriate for a formal rule, since all documents will not necessarily be filed at the same address, and not all filing requires proof of receipt. Not including such information also better safeguards the security of document filing.

(d) Service or filing of documents by certified mail, return receipt requested. Whenever these rules permit or require service or filing of documents by certified mail, return receipt requested, such documents may also be served or filed by express mail or other forms of expedited delivery in which proof of [[delivery to]] ***date of receipt by*** *the addressee is provided.*

Discussion: Section 1.03(a)(2)(i) permits ''other expedited delivery'' of documents being filed for which proof of delivery is not required. However, there is no similar provision with regard to certified mail, return receipt requested. Such a service method is specifically required in Sections 2.03(1), 2.04(i), and 5.01(e). Particularly in view of the lengthened time required to process mail through the U.S. Postal Service since 9–11, the Board has determined that additional flexibility in the use of other mail delivery services is also needed as an alternative to certified mail, return receipt requested.

* * * * *

1.05 Designation of Representative.

AMENDMENT DELETED (a) An employee, other charging individual or party, a witness, a labor organization, an employing office, an entity alleged to be responsible for correcting a violation wishing to be represented by another individual must file with the Office a written notice of designation of representative. The representative may be, but is not required to be, an attorney. [[*During the period of counseling and mediation, upon the request of a party, if the Executive Director concludes that a representative of an employee, of a charging party, of a labor organization, of an employing office, or of an entity alleged to be responsible for correcting a violation has a conflict of interest, the Executive Director may, after giving the representative an opportunity to respond, disqualify the representative. In that event, the period for counseling or mediation may be extended by the Executive Director for a reasonable time to afford the party an opportunity to obtain another representative.*]]

Discussion: Upon further consideration, the Board has deleted this proposed amendment. The Board does not agree with the assertion by a commenter that the current version of this rule is in excess of the authority of this Board under the Act.

* * * * *

2.03 Counseling.

(a) Initiating a Proceeding; Formal Request for Counseling. In order to initiate a proceeding under these rules, an employee shall [formally] *file a written* request *for* counseling [from] *with* the Office regarding an alleged violation of the Act, as referred to in section 2.01(a) above. All [formal] requests for counseling shall be confidential, unless the employee agrees to waive his or her right to confidentiality under section 2.03(e)(2), below.

Discussion: The purpose of this amendment is to delete the undefined term ''formal'', and require simply that the request be made in written form. Several commenters suggested that institution of a requirement that the counseling request be in writing would constitute a ''waiver'' of the statutory requirement of absolute confidentiality in counseling mandated by section 416(a) of the Act. Requiring a written counseling request does not constitute or suggest a ''waiver'' of confidentiality in any way. Such a waiver may only occur when ''the Office and a covered employee . . . agree to notify the employing office of the allegations.'' 2 U.S.C. 1416(a). The process for such a waiver is set out in the existing Procedural Rules at section 2.03(e)(2), which requires a written waiver form. A written request for counseling is an entirely different document.

. . . . .

(c) When, How, and Where to Request Counseling. A [formal] request for counseling *must be in writing, and* [: (1)] shall be [made] *filed with the Office of Compliance at Room LA–200, 110 Second Street, S.E., Washington, D.C. 20540–1999; [[telephone 202–724–9250;]] FAX 202–426–1913; TDD 202–426–1912*, not later than 180 days after the alleged violation of the Act.[; (2) may be made to the Office in person, by telephone, or by written request; (3) shall be directed to: Office of Compliance, Adams Building, Room LA–200, 110 Second Street, S.E., Washington, D.C. 20540–1999; telephone 202–724–9250; FAX 202–426–1913; TDD 202–426–1912.]

Discussion: This amendment conforms to the requirement that a written request for counseling must be filed with the Office.

. . . . .

(l) Conclusion of the Counseling Period and Notice. The Executive Director shall notify the employee in writing of the end of the counseling period, by certified mail, return receipt requested, *or by personal delivery* ***evidenced by a written receipt.*** The Executive Director, as part of the notification of the end of the counseling period, shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the Office a request for mediation within 15 days after receipt by the employee of the notice of the end of the counseling period.

Discussion: This amendment reflects the provision of flexibility to the Office in providing notice. In response to comments, we have added the requirement for appropriate documentation in the case of personal delivery. A suggestion that a copy of the end of counseling notice be served on ''opposing counsel'' would cause a violation of the confidentiality requirement for counseling required by section 416(a) of the Act, and would contradict the non-adversarial nature of counseling.

. . . . .

(m) Employees of the Office of the Architect of the Capitol and the Capitol Police.

(1) Where an employee of the Office of the Architect of the Capitol or of the Capitol Police requests counseling under the Act and

these rules, the Executive Director may recommend that the employee use the grievance procedures of the Architect of the Capitol or the Capitol Police. The term 'grievance procedures' refers to internal procedures of the Architect of the Capitol and the Capitol Police that can provide a resolution of the matter(s) about which counseling was requested. Pursuant to section 401 of the Act and by agreement with the Architect of the Capitol and the Capitol Police Board, when the Executive Director makes such a recommendation, the following procedures shall apply:

. . . . .

(ii) After having contacted the Office and having utilized the grievance procedures of the Architect of the Capitol or of the Capitol Police Board, the employee may notify the Office that he or she wishes to return to the procedures under these rules: (A) within [10] *60* days after the expiration of the period recommended by the Executive Director, if the matter has not [[been resolved]] ***resulted in a final decision***; or (B) within 20 days after service of a final decision resulting from the grievance procedures of the Architect of the Capitol or the Capitol Police Board.

(iii) The period during which the matter is pending in the internal grievance procedure shall not count against the time available for counseling or mediation under the Act. If the grievance is resolved to the employee's satisfaction, ***the employee shall so notify the Office within 20 days after the employee has received service of the final decision resulting from the grievance procedure.*** [[or i]] ***I****f* no request to return to the procedures under these rules is received within [[the applicable time period]] ***60 days after the expiration of the period recommended by the Executive Director***, the Office will [[consider the case to be closed in its official files]] ***issue a Notice of End of Counseling, as specified in section 2.04(i) of these Rules.***

Discussion: The amendment reflects the Board's conclusion that controversies referred to agency grievance procedures may be close to disposition at or near the end of the stipulated referral period. In such circumstances, the requirement for a return by the employee to the Office's procedures within 10 days can actually have the effect of disrupting the completion of the grievance process. Therefore, the Board proposes an extension of that time frame to 60 days. The time during which a controversy has been referred to an agency grievance proceeding assumes that there will have been joinder of issues between the employee and the employing office. Certainly, there can be no doubt that the employing office has been placed on notice of the existence of the controversy. The amended proposal ensures that the employee will not be penalized by reason of an employing office's failure to process a grievance in a timely manner by stipulating that the Office will issue an end of counseling Notice to the parties 60 days after the end of the referral period. A commenter's suggestion that the referral time frame unlawfully extends counseling beyond the 30 day maximum period ignores section 401 of the Act, which specifically stipulates that all time during which a matter is referred to the grievance procedures of the Architect of the Capitol or the Capitol Police ''shall not count against the time available for counseling or mediation.'' Issuing a Notice of End of Counseling is preferable to administrative closure of a case, since the closure may penalize an employee who is still waiting for the employing office to issue a final decision.

* * * * *

2.04 Mediation.

. . . . .

(e) Duration and Extension.

(1) The mediation period shall be 30 days beginning on the date the request for mediation is received, unless the Office grants an extension.

(2) The Office may extend the mediation period upon the joint *written* request of the parties ***or of the appointed mediator on behalf of the parties*** *to the attention of the Executive Director*. The request [may be oral or] *shall be* written and [shall be noted and] filed with the Office no later than the last day of the mediation period. The request shall set forth the joint nature of the request and the reasons therefor, and specify when the parties expect to conclude their discussions. Request for additional extensions may be made in the same manner. Approval of any extensions shall be within the sole discretion of the Office.

Discussion: The amendment assures that an adequate record of such a request be made. In response to comments, the Board has added language allowing the assigned mediator to submit the request on behalf of the parties.

. . . . .

(i) Conclusion of the Mediation Period and Notice. If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the Office shall provide the employee, and the employing office, and their representatives, with written notice that the mediation period has concluded. The written notice to the employee will be sent by certified mail, return receipt requested, *or will be [hand]* ***personally*** *delivered,* ***evidenced by a written receipt***, and it will also notify the employee of his or her right to elect to file a complaint with the Office in accordance with section 5.01 of these rules or to file a civil action pursuant to section 408 of the Act and section 2.06 of these rules.

Discussion: The purpose of this amendment is to reflect the provision of the flexibility of personal delivery. In response to comments, the Board has also formalized the requirement that proof of delivery be evidenced by a written receipt.

* * * * *

2.06 Filing of Civil Action.

. . . . .

(c) Communication Regarding Civil Actions Filed with District Court. [(1)] The party filing any civil action with the United States District Court pursuant to sections 404(2) and 408 of the Act [should simultaneously provide a copy of the complaint] ***shall provide a written notice*** *to the Office* ***that the party has filed a civil action, specifying the district court in which the civil action was filed and the case number.***

Discussion: The Office has the responsibility to be aware of judicial applications and interpretations of the Act. In this regard, see also proposed rule 9.06. In response to comments, the Board has replaced the proposed requirement that a copy of the complaint be provided, with a notice of filing of a civil action. The Office also intends to include notice of this requirement in its Notice of End of Mediation.

AMENDMENT DELETED: [[(2) No party to any civil action referenced in paragraph (1) shall request information from the Office regarding the proceedings which took place pursuant to sections 402 or 403 related to said civil action, unless said party notifies the other party(ies) to the civil action of the request to the Office. The Office will determine whether the release of such information is appropriate under the Act and the Rules of Procedure.]]

Discussion: Upon further consideration, the Board has deleted this proposed amendment.

* * * * *

§4.16 Comments on Occupational Safety and Health Reports. [[The General Counsel will provide to responsible employing office(s) a copy of any report issued for general distribution not less than seven days prior to the date scheduled for its issuance. If a responsible employing office wishes to have its written comments appended to the report, it shall submit such comments to the General Counsel no later than 48 hours prior to the scheduled issuance date. The General Counsel shall either include the written comments without alteration as an appendix to the report, or immediately decline the request for their inclusion. If the General Counsel declines to include the submitted comments, the employing office(s) may submit said denial to the Board of Directors which, in its sole discretion, shall review the matter and issue a final and non-appealable decision solely regarding inclusion of the employing office(s) comments prior to the issuance of the report. Submissions to the Board of Directors in this regard shall be made expeditiously and without regard to the requirements of subpart H of these rules. In no event shall the General Counsel be required by the Board to postpone the issuance of a report for more than five days.]] ***With respect to any report authorized under section 215(c)(1) or 215(e)(2) of the Act that is intended by the General Counsel for general public distribution, the General Counsel shall, before making such general public distribution, first transmit a copy thereof to the responsible employing office(s), together with a notification that the employing office(s) has 10 days within which to submit any written comments that it wishes to be appended in their entirety as an appendix to the report. In the event the General Counsel declines to append to the report timely submitted comments of an employing office, the General Counsel shall not issue the report for general public distribution, and will promptly notify that office in writing of the basis for such declination. Upon written request to the Board of Directors submitted by the employing office within 10 days of the date of notification of declination by the General Counsel, with a copy thereof served on the General Counsel, the Board of Directors shall promptly review the matter, including any submission filed by the General Counsel within 10 days of the employing office's request, and issue a final and non-appealable decision determining the issue of inclusion of the employing office's comments prior to the general public distribution of the report. In no event shall the General Counsel be required by the Board to delay issuance of a report covered by this procedure for more than 15 days after the employing office's request for review is submitted to the Board of Directors.***

Discussion: The proposed amendment, as reworded, provides a mechanism for employing office comments to be appended to reports issued by the General Counsel regarding Occupational Safety and Health inspections. The Board has amended the proposal to clarify further the categories of OSH reports resulting from inspection requests. The Board has extended the time periods within which the dispute resolution procedure takes place. The Board has also added a requirement that any General Counsel declination must be provided in writing to the employing office.

* * * * *

§ 5.03 Dismissal, Summary Judgment, and Withdrawal of Complaints.

. . . . .

(d) Summary Judgment. A Hearing Officer may, after notice and an opportunity ***for the parties to address the question of summary judgment,*** *[[to respond,]] issue summary judgment on some or all of the complaint.*

([d]*e*) Appeal. A [dismissal] *final decision* by the Hearing Officer made under section

5.03(a)–(c) or 7.16 of these rules may be subject to appeal before the Board if the aggrieved party files a timely petition for review under section 8.01. ***A final decision under section 5.03(a)–(c) which does not resolve all of the claims or issues in the case(s) before the Hearing Officer may not be appealed to the Board in advance of a final decision entered under section 7.16 of these rules, except as authorized pursuant to section 7.13 of these rules.***

([e]*f*) . . . . .

([f]*g*) . . . . .

Discussion: Hearing Officers have plenary authority to conduct hearings and make final decisions, including summary judgment, pursuant to section 405 of the Act. The amendments more adequately reflect the existing authority of Hearing Officers. In response to a comment, the Board has included the requirement that the parties be given the opportunity to address the issue. The Board has also addressed the circumstance of a partial disposition of a case.

* * * * *

§ 7.02 Sanctions

(a) The Hearing Officer may impose sanctions on a party's representative [[for inappropriate or unprofessional conduct]] ***necessary to regulate the course of the hearing.***

(b) The Hearing Officer may impose sanctions upon the parties under, but not limited to, the circumstances set forth in this section.

([a]*1*) Failure to Comply with an Order. When a party fails to comply with an order (including an order for the taking of a deposition, for the production of evidence within the party's control, or for production of witnesses), the Hearing Officer may:

([1]*a*) . . . . .

([2]*b*) . . . . .

([3]*c*) . . . . .

([4]*d*) . . . . .

Discussion: In response to comments, and upon further consideration, the Board has amended this proposal to better reflect existing statutory authority. Section 556(c)(5) of the Administrative Procedure Act, referenced in section 405(d)(3) of the Act, specifically authorizes a presiding official to ''regulate the course of the hearing''. The amendment authorizes a Hearing Officer to carry out that responsibility when required by a representative's conduct.

* * * * *

§ 8.01 Appeal to the Board.

. . . . .

(b)(1) Unless otherwise ordered by the Board, within 21 days following the filing of a petition for review to the Board, the appellant shall file and serve a supporting brief in accordance with section 9.01 of these rules. That brief shall identify with particularity those findings or conclusions in the decision and order that are challenged and shall refer specifically to the portions of the record and the provisions of statutes or rules that are alleged to support each assertion made on appeal.

(2) Unless otherwise ordered by the Board, within 21 days following the service of the appellant's brief, the opposing party may file and serve a reply brief.

(3) Upon ***written*** *delegation by the Board, the Executive Director is authorized to determine any request for extensions of time to file any* ***post-petition for review*** *document or submission with the Board* ***in any case in which the Executive Director has not rendered a determination on the merits.*** *Such delegation shall continue until revoked by the Board.*

. . . . .

Discussion: The amendment authorizes the Executive Director to perform the ministerial act of granting extensions of time in which to file documents when specifically authorized to do so by the Board. In response to comments, the Board has required written delegation of authority, and has limited that delegation to submissions after a petition for review has been filed. The Board has also prohibited such a delegation in any case in which the Executive Director has issued a determination on the merits in the underlying proceeding.

* * * * *

§ 9.01 Filing, Service and Size Limitations of Motions, Briefs, Responses and other Documents.

(a) Filing with the Office; Number. One original and three copies of all motions, briefs, responses, and other documents must be filed, whenever required, with the Office or Hearing Officer. However, when a party aggrieved by the decision of a Hearing Officer *or other* ***matter or*** *determination reviewable by the Board* files an appeal with the Board, one original and seven copies of both any appeal brief and any responses must be filed with the Office. *The Officer, Hearing Officer, or Board may also [[require]]* ***request*** *a party to submit an electronic version of any submission on a disk in a designated format.*

. . . . .

Discussion: The addition of ''other matter or determination reviewable by the Board'' is intended to address: collective bargaining representation decisions made pursuant to Part 2422 of the Office of Compliance Rules regarding labor-management relations, negotiability determinations made pursuant to Part 2424 of the same Rules, review of arbitration awards under Part 2425 of the same Rules, determination of bargaining consultation rights under Part 2426 of the same Rules, requests for general statements of policy or guidance under Part 2427 of the same Rules, enforcement of standards of conduct decisions and orders by the Assistant Secretary of Labor for Labor Management Relations pursuant to Part 2428 of the same Rules, and determinations regarding collective bargaining impasses pursuant to Part 2470 of the same Rules. The term ''matter'' was included by the Board on further consideration, because some of the procedures referenced in the labor-management relations Rules are addressed to the Board in the first instance. Submission by electronic version is in addition to the existing methods for filing submissions. This addition reflects the decision of this agency to begin exploring the process of migration toward electronic filing. Because of limits in available technology, it remains necessary to designate a particular format for electronic disk transmittal. In response to comments, the Board has amended the proposal to allow for a ''request'' rather than a requirement. The availability of submissions on disk, particularly of lengthy documents, can save the Office time and expense in handling such documents.

* * * * *

§ 9.03 Attorney's fees and costs.

(a) Request. No later than 20 days after the entry of a Hearing Officer's decision under section 7.16 or after service of a Board decision by the Office, the complainant, if he or she is a prevailing party, may submit to the Hearing Officer who heard the case initially a motion for the award of reasonable attorney's fees and costs, following the form specified in paragraph (b) below. *All motions for attorney's fees and costs shall be submitted to the Hearing Officer.* [The Board or t] *T*he Hearing Officer, after giving the respondent an opportunity to reply, shall rule on the motion.

. . . . .

Discussion: This amendment clarifies the rules to exclude the filing of motions for attorney's fees with the Board of Directors.

* * * * *

§ 9.05 Informal Resolutions and Settlement Agreements.

. . . . .

(b) Formal Settlement Agreement. The parties may agree formally to settle all or part of a disputed matter in accordance with section 414 of the Act. In that event, the agreement shall be in writing and submitted to the Executive Director for review and approval. *If the Executive Director does not approve the settlement, such disapproval shall be in writing, shall set forth the grounds therefor, and shall render the settlement ineffective.*

(c) Requirements for a Formal Settlement Agreement. A formal settlement agreement requires the signature of all parties on the agreement document before the agreement can be submitted to the Executive Director. A formal settlement agreement cannot be rescinded after the signatures of all parties have been affixed to the agreement, unless by written revocation of the agreement voluntarily signed by all parties, or as otherwise [[required]] ***permitted*** *by law.*

(d) Violation of a Formal Settlement Agreement. If a party should allege that a formal settlement agreement has been violated, the issue shall be determined by reference to the formal dispute resolution procedures of the agreement. If the particular formal settlement agreement does not have a stipulated method for dispute resolution of an alleged violation of the agreement, the following dispute resolution procedure shall be deemed to be a part of each formal settlement agreement approved by the Executive Director pursuant to section 414 of the Act: Any complaint regarding a violation of a formal settlement agreement may be filed with the Executive Director no later than 60 days after the party to the agreement becomes aware of the alleged violation. Such complaints may be referred by the Executive Director to a Hearing Officer for a final and binding decision. The procedures for hearing and determining such complaints shall be governed by subparts F, G, and H of these rules.

Discussion: The Board disagrees with comments that assert the Office has no statutory authority to settle disputes regarding the alleged violation of settlement agreements. Under section 414 of the Act, the Executive Director is clearly given plenary authority to approve all settlement agreements under the Act entered into at any stage of the administrative or judicial process. No settlement agreement can ''become effective'' unless and until such approval has been given. The Office is concerned that many settlement agreements do not include provisions for disposition of controversies regarding alleged violations of the agreement. Rather than consider initiating a practice of withholding approval of settlement agreements which do not include provisions setting forth dispute resolution procedures, the Office is providing all parties, by notice and rule, the option to include their own dispute resolution provisions, or default to the dispute resolution procedure stipulated in this proposed Rule when they enter into a settlement agreement. The word ''permitted'' was inserted in place of ''required'' as a clarification, since in this context a rescission of an approved agreement would rarely, if ever, be required by operation of law.

[[§ 9.06 Destruction of Closed Files. Closed case files regarding counseling, mediation, hearing, and/or appeal ***to the Board of Directors*** *may be destroyed during the calendar year in which the fifth anniversary of the closure date occurs, or during the calendar year in which the fifth anniversary of the conclusion of all adversarial*

proceedings in relation thereto occurs, whichever period ends later.]]

Discussion: The Executive Director and the Board of Directors have been made aware that the Office of Compliance appears to be an agency covered by the requirements of the Federal Records Act (found at Title 44 of the U.S. Code). The Records Act requires that an agency consult with the Archivist of the United States regarding any record destruction program. Therefore, the Executive Director and the Board are withdrawing this proposal at this time, and will issue a new Notice regarding this subject matter after the requirements of the Federal Records Act have been satisfied.

***§ 9.0[7]6** Payment**s** [[of]] **required pursuant to** Decisions, Awards, or Settlements under section 415(a) of the Act. Whenever a decision or award pursuant to sections 405(g), 406(e), 407, or 408 of the Act, or an approved settlement pursuant to section 414 of the Act, require the payment of funds pursuant to section 415(a) of the Act, the decision, award, or settlement shall be submitted to the Executive Director to be processed by the Office for requisition from the account of the Office of Compliance in the Department of the Treasury, and payment.*

Discussion: This proposed rule reflects the existing procedure for processing payments under section 415(a) of the Act. Since section 415 does not authorize automatic stays of judgments or awards pending appeal, parties are advised to seek such a stay from the appropriate forum. Adding an automatic stay of payment until all appeals have been exhausted would require an amendment of the Act.

*§ 9.0[6]***7 Revocation, Amendment or Waiver of Rules.**

. . . . .

AGRICULTURE SECURITY: PROTECTING AMERICA'S FOOD FROM FARM TO FORK

Mr. AKAKA. Mr. President, I rise today to call attention to the urgent need to prepare America against an attack on our agriculture. The Nation's agriculture industry is crucial to our prosperity. Yet it does not receive the protection it needs. Our food supply system is vulnerable to accidental or intentional contamination that would damage our economy, and, most importantly, could cost lives.

There is no need to question whether animal-borne diseases can actually threaten the United States. Look to last December's mad cow disease outbreak: only one cow was found to be infected, and yet the U.S. beef industry was thrown into a tailspin from which it still has not recovered. As a result: American cattle prices fell by 20 percent; some predict beef exports will fall by 90 percent from 2003 to 2004; and more than 40 foreign countries have instituted bans on American beef, most of which will not be lifted in the near future. This fallout resulted from the infection of only two cows.

In the beginning of February, a version of the avian influenza, a disease sweeping through Southeast Asian poultry that has killed at least 22 people to date, was discovered on two Delaware chicken farms. It also surfaced in New Jersey and Pennsylvania, and a far more contagious strain was later reported in Texas. While the two strains found in these States carry no know risk to humans, this discovery illustrates how easily an animal-borne disease can break out in the United States. Only four farms and one live chicken market have tested positive for the disease. Yet this discovery resulted in the slaughter of over 92,000 chickens in the U.S. to date and a ban on American poultry exports in a number of Asian countries and the European Union.

We should learn two things from these recent outbreaks: No. 1, the cost to the agriculture community for even a small outbreak is high, and, No. 2, we must be prepared for the unexpected.

While the emergence of mad cow and the avian flu in American agriculture has been detrimental, it has not come close to causing the amount of damage a larger outbreak could create.

Imagine if either of these diseases spread across the Nation instead of being contained to just a few farms.

Or worse, imagine if the strain of the avian flu that is currently claiming human lives in Asia was found in the United States.

In these scenarios, the outbreak would have been far more difficult to contain and much more costly to our Nation.

A 1994 Department of Agriculture study said that if a foreign animal disease became entrenched in the United States, it would cost the agriculture industry at least $5.4 billion. A 2002 report by the National Defense University predicted that this figure would be three to fives times greater today. On a smaller scale, an outbreak that only penetrated 10 farms could have as much as a $2 billion economic impact.

Earlier this month, the President released Homeland Security Presidential Directive 9, HSPD–9, aimed at addressing many of these concerns. HSPD–9 is a great first step. It signals the administration is aware of the vulnerability in our agriculture sector and considers this to be a homeland security priority.

Under HSPD–9, the President directed the Department of Homeland Security to ensure the execution of a number of much needed security measures, including the following: Develop surveillance and monitoring systems for animal and plant disease and the food supply that provide early detection of poisonous agents; develop nationwide laboratory networks for food, veterinary, and plant health that ensures communication and coordination between related facilities; and develop a National Veterinary Stockpile that contains enough vaccine and antiviral products to respond to the most damaging animal diseases.

But the President's initiative does not go far enough because it fails to address a number of serious shortcomings with the current governmental response to agriculture security, such as: Lack of communication between Federal agencies; insufficient coordination with, and funding for, State and local officials; inadequate international collaboration; and the impeding nature of some State and local laws to effective response plans.

To address these many concerns, I introduced two bills, S. 427, the Agriculture Security Assistance Act, and S. 430, the Agriculture Security Preparedness Act, to increase the coordination in confronting the threat to America's agriculture industry and provide the needed resources. My legislation provides for more targeted State and local funding and a better-coordinated Federal system.

The Agriculture Security Assistance Act would assist States and communities in responding to threats to the agriculture industry by authorizing funds for: Animal health professionals to participate in community emergency planning activities to assist farmers in strengthening their defenses against a terrorist threat; a biosecurity grant program for farmers and ranchers to provide needed funding to better secure their properties; and the use of sophisticated remote sensing and computer modeling approaches to agricultural diseases.

The Agriculture Security Preparedness Act would enable better interagency coordination within the Federal Government by: Establishing senior level liaisons in the Departments of Homeland Security, DHS, and Health and Human Services to coordinate with the Department of Agriculture, USDA, and all other relevant agencies on agricultural disease emergency management and response; requiring DHS and USDA to work with the Department of Transportation to address the risks associated with transporting animals, plants, and people between and around farms; requiring the Attorney General to conduct a review of relevant Federal, State, and local laws to determine if they facilitate or impede agricultural security; and directing the State Department to enter into mutual assistance agreements with foreign governments to facilitate the share of resources and knowledge of foreign animal diseases.

Over 30 Federal agencies have jurisdiction over some part of the response process in the event of a breach of agricultural security. In a report on the United State's preparedness for responding to animal-borne diseases issued in August 2003, Trust for America's Health, a nonprofit, nonpartisan organization founded to raise the profile of public health issues, stated that, ''The U.S. is left with a myriad of bureaucratic jurisdictions that respond to various aspects of the diseases, with little coordination and no clear plan for communicating with the public about the health threats posed by animal-borne diseases.'' Protecting America's agriculture and its citizens requires Federal agencies to know who is responsible for what portion of the prevention and response to an attack on our agriculture.

State and local officials, and the communities they serve, are the front

lines of defense for American agriculture. Without adequate resources, both in terms of funding and advice, these defenses will fail. While the presidential directive mandates the creation of a coordinated response plan that would include Federal, State, and local partners, it falls short of supplying the State and local officials with the necessary funding and guidance to better protect their jurisdiction. Surprisingly, the administration proposes huge cuts in fiscal year 2005 to homeland security grants for the States.

We have witnessed the impact a small, unintentional outbreak of mad cow disease had on our country. We cannot wait for a far more damaging and widespread attack on our agriculture system. While I commend the President's initiative in this area, further action is needed. I urge my colleagues to support this overdue legislation to protect America's breadbasket.

GAO HUMAN CAPITAL REFORM ACT OF 2000

Mr. GRASSLEY. Mr. President, I come before this body to state that I would object to any unanimous consent or other requests to address H.R. 2751, S. 1522, entitled the GAO Human Capital Reform Act of 2003, as amended. The bill would, among other things, allow new authority to the General Accounting Office, GAO, to modify its personnel and workforce practices to allow greater flexibility in determining pay increases, pay retention rules, and other compensation matters. I am objecting to this bill because, at this time, I am evaluating a number of matters involving the operation and management of the General Accounting Office and one or more of its offices.

DEFENSE OF FREEDOM MEDAL WINNER GARY YORK

Mr. JOHNSON. Mr. President, I rise today to publicly recognize Mr. Gary York of Yankton, SD, for receiving the Defense of Freedom Medal.

There was little doubt that active-duty military members killed or injured in a hostile attack would receive the traditional Purple Heart, but the Defense of Freedom Medal marks the first time in United States history that civilians have been formally recognized for wounds received in combat. This medal exemplifies the principles of freedom and defense of the freedoms upon which our country was founded.

Gary is not just a good friend, he is also a dedicated worker. He currently serves as the power plant senior controller at Yankton's Gavin's Point Dam. Answering the President's call to volunteer his time in Iraq, he left for Iraq in September and was overseeing a crew of workers who were rebuilding 400,000 volt power lines running from power plants to switchyards in Baghdad.

While spending Christmas Eve in Iraq, away from his family and friends and the comforts of home, Gary sustained wounds to the head and shoulder while traveling in a convoy near Balad. The convoy was attacked by unknown assailants using small firearms. Two Iraqi security guards traveling with the convoy were killed in the attack.

It is with great honor that I share Mr. York's tremendous accomplishments with my colleagues. He is a true patriot, and America is deeply grateful for his service.

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.

In Council Bluffs, IA, a 15-year-old girl allegedly approached two other girls who were holding hands and assaulted them saying she was ''tired of seeing them hold hands and kissing.'' The girl has been accused of assaulting the girls because of their sexual orientation.

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 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 ADMIRAL (RETIRED) THOMAS MOORER

Mr. SESSIONS. Mr. President, I rise today before the Senate to recognize a great American and one of the finest patriots this Nation, and my home State of Alabama, has ever produced. We are truly saddened by the loss of Retired U.S. Navy Admiral Thomas Moorer, former Chairman of the Joint Chiefs of Staff from July 1970 to June 1974 and former Chief of Naval Operations from 1967 to 1970.

Admiral Moorer's distinguished service in our great Navy spanned 41 remarkable years during which he dutifully stood the watch against our adversaries. He was our 7th Chairman of the Joint Chiefs of Staff and the 18th Chief of Naval Operations. These accomplishments were consistent with his outstanding service record that had placed Admiral Moorer on our front lines throughout his career. Admiral Moorer was serving in Pearl Harbor with Patrol Squadron Twenty-Two on December 7, 1941. He witnessed that ''day of infamy'' and answered with bravery as he was one of the first pilots to get his aircraft airborne after the Japanese attack.

Never shying from battle, he was wounded in aerial combat when his aircraft was shot down near the Australian coastline. Indeed, indicative of the ferocity of the combat, the rescue ship that recovered him was sunk by enemy action the same day as his rescue. Still, he would not quit and went on to receive the Distinguished Flying Cross for valor. He flew through hostile areas with full knowledge of overpowering enemy aircraft superiority flying badly needed supplies into the besieged island of Timor and flying evacuations of the wounded. He also stood watch during the Korean conflict, during the Cuban Missile crisis, during our engagement in Vietnam and during our outreach to China.

Admiral Moorer distinguished himself in many positions including command of our Seventh Fleet, arriving at full Admiral in June 1964 when appointed to Commander in Chief of the Pacific Fleet. He was the first naval officer to command both the Pacific and Atlantic Fleets. Admiral Moorer stood his watch as Chairman of the Joint Chiefs of Staff, the highest position any military officer can achieve, under President Nixon as the Nation extracted itself from our conflict in Vietnam. Writing in White House Years, Dr. Henry Kissinger remarked that Admiral Moorer '' had spent the 1960s in command positions which, while not without their frustrations, did not produce the physical and psychological exhaustion of high-level Washington. A canny bureaucratic infighter, Moorer made no pretense of academic subtlety. If anything, he exaggerated the attitude of an innocent country boy caught up in a jungle of sharpies. What his views lacked in elegance they made up in explicitness. By the time he took office, Vietnam had become a rearguard action. He conducted its heartbreaking phaseout with dignity. No President could have had a more stalwart military advisor.''

He did not waiver. Admiral Moorer strongly disagreed with the Panama Canal giveaway. In fact, he testified before the Senate Armed Services Committee several years ago on this subject. The public had again become concerned about this issue as a Chinese company had won the contract to operate both ends of the canal. Admiral Moorer noted the danger this posed to the movement of our fleet.

As a young Alabamian, I followed Admiral Moorer's career. He was from the small rural community of Mt. Willing. Mt. Willing was on the road to Montgomery from my home in the rural community of Hybart near Camden. I would frequently go through Camden up Highway 21 through Mt. Willing on my way to Huntingdon College in Montgomery where I was a student. I would pass Moorer's grocery operated by a relative, and have the chance to think of the extraordinary accomplishments of this remarkable Admiral from the heart of Alabama. He carried those values with him as can be seen from Dr. Kissinger's comments and those who knew him. Mt. Willing is an old

community. Its post office was established not long after Alabama became a State in 1819.

Admiral Moorer actually attended a one-room schoolhouse. Later, his family moved to Montgomery which is where he graduated from high school. He was the Valedictorian of his class, graduating at the age of 15. Two years later he entered the Naval Academy. During this period his family moved to Eufaula, AL, which is where he met his wonderful life partner, Carrie Foy. Mrs. Moorer, a most delightful person in her own right, was tremendously supportive of Admiral Moorer's career and his beliefs, and remains proud of his exceptional service, as well she should.

It is appropriate that we reflect today on the sacrifices made by this veteran Sailor and great military leader. I am proud of him for serving our great country through challenging times. And I join all of the citizens of Alabama in prayer for one of our own, this country boy from Mt. Willing, Alabama who turned top Admiral. His story is one that all Americans can be proud of. We wish him and his family Godspeed and fair winds and following seas as he leaves us for his final watch.

He came from rural America. He was learned of the greatness of America. He was not bombarded by the ''blame America first-crowd.'' Because of his recognized ability, he was selected for the Naval Academy. Because of his record of accomplishment he rose to the highest position a uniformed military officer can achieve—Chairman of the Joint Chiefs of Staff. He delivered for his beloved homeland there just as he did in all his previous positions. These values, taught best in our small towns, sustain us in difficult times. Admiral Moorer, like all the other wonderful Soldiers, Sailors, Airmen and Marines, fully understood that when he put on that uniform, he was prepared to give his life for his country.

ABSTENSION FROM VOTE

Mr. GRAHAM of South Carolina. Mr. President, today the Senate Armed Services Committee met to vote on several military and civilian nominations before the committee. Included on the list of military nominations was that of my own to be Colonel in the United States Air Force Reserve.

While I take my responsibility as a member of this committee which holds oversight authority over the United States military very seriously, I would like to note for the record that I abstained from the voice vote on this subject to avoid the impression of a conflict of interests.

TRIBUTE TO ALMA KRISTOFFERSEN

Mr. LAUTENBERG. Mr. President, today I rise to commend one of the many unsung heroes of our Senate family, Alma Kristoffersen, who will retire tomorrow after 20 years of service as a transcriber and reporting technician for the CONGRESSIONAL RECORD.

I worked in the private sector for more than 30 years before I first came to the Senate. One of the things that struck me about this institution as I came to know it is the dedication, skill, and professionalism shown by the people who work in all capacities here. Senators and committees have their own staff, and we rely on them, to be sure. But we also rely on the hundreds of staffers who make up what I call the ''infrastructure'' of the Senate. For the most part, they go about their business unnoticed and certainly underappreciated. We have to remind ourselves now and then that this place would screech to a halt without their tireless devotion to their jobs and to our Nation.

Alma is a fine example of that tradition. She has many talents, including a strong knowledge of grammar, spelling, and vocabulary; a quick wit; and dry sense of humor. But her most enduring asset is her absolute commitment to teamwork. She is always willing to volunteer for extra duties.

Alma was born in Liverpool, England, and moved to the United States in 1968. She became a citizen in the early 1990s, qualifying for a high security clearance to work on classified material. She and her husband Tom have a son, Alex, who lives in Brooklyn, NY. Alma plans to enjoy all her various hobbies in retirement, including gardening, tennis, travel, and actually being able to attend her book club on week nights.

I know that I speak on behalf of the entire Senate when I say how much I appreciate Alma's service to this institution and to the Nation. Alma's colleagues and friends here in the Senate, particularly in the Office of Official Reporters of Debates, will miss her, but we wish her a long and happy retirement, which she has certainly earned.

ADDITIONAL STATEMENTS

MARATHON COUNTY RESOLUTION RELATING TO BSE

• Mr. KOHL. Mr. President, this weekend members of the National Association of Counties will be meeting in Washington for their annual legislative conference. County officials across the Nation deal with a wide variety of issues that affect the day-to-day lives of our citizens and I want to acknowledge their commitment to public service.

I also want to take this opportunity to share with my fellow Senators a resolution recently adopted by the Marathon, WI County Board of Supervisors relating to Bovine Spongiform Encephalopathy (BSE). Marathon County is in the heart of Wisconsin dairy and beef country and I commend the Board of Supervisors' diligence in this area.

I ask that Marathon County resolution R–6–04 be printed in the RECORD.

RESOLUTION R–6–4

The resolution follows.

Whereas a case of Bovine Spongiform Encephalopathy (BSE) or Mad Cow Disease has been detected in the United States; and

Whereas agriculture is a $40 billion industry in the State of Wisconsin; and

Whereas Marathon County is a leader in Wisconsin agriculture, notably the dairy and beef industry; and

Whereas Marathon County is concerned about the health, safety and economic impacts related to BSE; and

Whereas in 1997 the United States Food and Drug Administration banned the use of protein derived from mammalian tissue in food for ruminant animals to prevent the establishment of BSE; and

Whereas many countries that export livestock and meat to the United States do not have the same standard of safety. Now, therefore be it

Resolved, That the Board of Supervisors of the County of Marathon does hereby resolve and ordain that Federal, State and local agencies continue to judiciously enforce the standards set forth by the Federal Food and Drug Administration; be it further

Resolved, That countries that export livestock or meat to the United States, meet or exceed U.S. standards of care regarding BSE; be it further

Resolved, That livestock or meat from countries which do not meet or exceed the U.S. standard of care be banned from importation to the U.S. to protect the health and safety of our citizens, livestock, and economy. Be it further

Resolved, That this resolution be forwarded to our local, state and federal legislators, as well as the appropriate state and federal agencies and interested consumer and business organizations.•

GULFSTREAM AEROSPACE CORPORATION

• Mr. CHAMBLISS. Mr. President, I rise today to commend a company based in Georgia which, with its partners, has won the prestigious Collier trophy, the aviation equivalent of the Super Bowl, for the second time in 8 years. Gulfstream Aerospace Corporation, a world-renowned maker of business jet aircraft, and the other members of the aircraft development team, which include Honeywell International, Kollsman, Rolls-Royce, and Vought Aircraft Industries, have won the 2003 Collier Trophy for their outstanding contribution to aviation. In 1998, the firm's Gulfstream V jet won the 1997 award for its combination of high technology avionics, speed, and range. This year, the Collier Trophy recognizes the G550 Development Team for the large-cabin, ultra-long range Gulfstream G550 business jet. The aircraft can fly as high as 51,000 feet, at speeds up to Mach .885, and 6.750 nautical miles nonstop. It also has an avionics system which enhances the pilot's ability to fly the aircraft safely.

The trophy, named for American publisher and sport pilot, Robert J. Collier, was established in 1911 to honor those who have made significant achievements in the advancement of aviation. Honorees include many of the great names in aviation, including Orville Wright for an automatic stabilizer, the U.S. Post Service for air

mail, and MAJ E. L. Hoffman, United States Army Air Corps, for the development of a practical parachute.

While I am, of course, proud of the Gulfstream Development Team for winning this award, I am even more proud of the folks down in Savannah, GA, who build these world class aircraft. Without their skill and dedication to superior quality, Gulfstream's G550 aircraft could never have earned this recognition for excellence in aviation.●

COMMENDING WTOC–TV

● Mr. CHAMBLISS. Mr. President, I wish to congratulate an important news organization in the beautiful coastal city of Savannah. WTOC–TV Channel 11 is celebrating its 50th anniversary of television broadcasts. The station was founded as an AM radio station in 1929 by Savannah's Junior Board of Trade. Just as the Junior Board of Trade became Savannah's Jaycees, WTOC evolved into Savannah's first television station, beginning its first broadcasts on Valentine's Day, 1954.

In May 2002, WTOC scored yet another Savannah first by starting the area's first digital high definition broadcasts.

During its 50 years of service to Savannah and coastal Georgia, WTOC has provided news coverage for the community. During these years, its news team has won awards for their coverage of issues, including Emmies and Edward R. Murrow awards for news gathering efforts in 2003.

I commend the station's owners and staff for serving Savannah and its entire community for the past 50 years. I am confident they will continue covering issues and giving back to Savannah in the years to come.●

THE SESQUICENTENNIAL ANNIVERSARY OF THE CITY OF GREEN BAY, WI

● Mr. FEINGOLD. Mr. President, today I commemorate the sesquicentennial of Green Bay, WI, one of the most famous cities in America, and one of Wisconsin's most beloved places.

Green Bay is Wisconsin's oldest European settlement dating back to the explorations of Jean Nicolet in 1634. Early fur traders and explorers used Green Bay and the Fox River as an important access point from the Great Lakes to the Western lands of the New World. Early French settlers called the bay, ''La Baie Verte,'' because of its green waters. In the second half of the 19th century, European immigrants flocked to Green Bay for the good farming soil and ample business opportunities. The paper industry became a vital part of the Green Bay economy and remains the leading employer in the city today. Green Bay became a city when it was incorporated by the Wisconsin Legislature on February 27, 1854. Today, Green Bay stands with a population of over 100,000 people as Wisconsin's third-largest city.

Today visitors can get a taste of Green Bay's long history at the Heritage Hill State Historic Park which offers a rare opportunity to visit one of Wisconsin's oldest wood homes, the Tank Cottage. Green Bay is also home to the National Railroad Museum, home of the world's largest steam locomotive and General Dwight D. Eisenhower's WWII command train.

Green Bay is known to many as Titletown USA as it is home to the world-famous Green Bay Packers, the real ''America's Team.'' In 1919, Curly Lambeau, who worked for a packing plant, organized the original Packers football team. The team's popularity led to the packing plant backing Lambeau in obtaining a franchise in the new professional football league. Early financial problems were overcome by making the team publically owned, an honor that I am proud to say I am now a part of. The rest, as they say, is history. The Packers have gone on to win 12 championships, more than any other pro football team. Green Bay has been the stage for such great games as the 1967 Ice Bowl and such talents as Vince Lombardi, Don Hutson, Bart Starr and Brett Favre. Every year, people from all over the country make a pilgrimage to Green Bay to see the frozen tundra of the beautifully renovated Lambeau Field and visit the Green Bay Packer Hall of Fame.

Green Bay is a city with a distinguished history, a proud tradition of hardworking families and a bright future. Happy birthday, Green Bay. We are looking forward to the next 150 years.●

TRIBUTE TO BILL PARDUE

● Mr. INHOFE. Mr. President, I would like to pay tribute to Bill Pardue, who until recently was the CEO of Lexis Nexis of Dayton, OH, which now owns Dolon Information of Oklahoma City, OK.

I have had the privilege of working with Bill and Lexis Nexis on various initiatives to help secure the homeland, and wanted to say a sincere thank you, on behalf of all Americans to Bill, to Lexis-Nexis, and to the thousands of people who make up that fine company.●

IN REMEMBRANCE OF FREDERICK BOOKER NOE II

● Mr. BUNNING. Mr. President, today I would like to take the opportunity to remember Frederick Booker Noe II of Bardstown, Kentucky, the master distiller of Jim Beam Bourbon. He passed away on Tuesday at age 74 in his home in Bardstown, and will be greatly missed by his surviving family and the Jim Beam Brands Company.

In 1950, Mr. Noe entered the family business, the bourbon that is the namesake of his grandfather, Jim Beam. He directed the production and aging of bourbon at Jim Beam and was named master distiller in 1965. While he oversaw production of Jim Beam Bourbon, production increased and innovations were made that revitalized the bourbon industry forever.

His friends considered him ''larger than life,'' and ''one of the crown jewels of American distilling.'' Jim Beam Brands honored him upon his retirement in 1992 by placing his photo on the bottle labels alongside the family distillers who preceded him. Kentuckians are proud of our bourbon, and we are proud of Mr. Noe's contributions to the industry. He will be greatly missed, and our hearts go out to his family during this time.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and three withdrawals which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT RELATIVE TO EXPANDING THE SCOPE OF THE NATIONAL EMERGENCY AND INVOCATION OF EMERGENCY AUTHORITY RELATING TO THE REGULATION OF THE ANCHORAGE AND MOVEMENT OF VESSELS INTO CUBAN TERRITORIAL WATERS—PM 64

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Pursuant to section 1 of title I of Public Law 65–24, ch. 30, 50 U.S.C. 191, and sections 201 and 301 of the National Emergencies Act, 50 U.S.C. 1601 et seq., I hereby report that I have exercised my statutory authority to continue the national emergency declared in Proclamation 6867 of March 1, 1996, in response to the Cuban government's destruction of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. Additionally, I have exercised my authority to expand the scope of the national emergency as, over the last year, the Cuban government, which is a designated state-sponsor of terrorism, has taken a series of steps to destabilize relations with the United States, including threatening to abrogate the Migration Accords with the United States

and to close the U.S. Interests Section. This conduct has caused a sudden and worsening disturbance of U.S. international relations.

In my proclamation (copy attached), I have authorized and directed the Secretary of Homeland Security to make and issue such rules and regulations that the Secretary may find appropriate to prevent unauthorized U.S. vessels from entering Cuban territorial waters.

I have authorized these rules and regulations as a result of the Cuban government's demonstrated willingness to use reckless force, including deadly force, in the ostensible enforcement of its sovereignty. I have also authorized these rules and regulations in an effort to deny resources to the repressive Cuban government that may be used by that government to support terrorist activities and carry out excessive use of force against innocent victims, including U.S. citizens and other persons residing in the United States, and threaten a disturbance of international relations. Accordingly, I have continued and expanded the national emergency in response to these threats.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 26, 2004.*

REPORT RELATIVE TO EFFORTS TO OBTAIN THE FULLEST POSSIBLE ACCOUNTING OF CAPTURED OR MISSING UNITED STATES PERSONNEL FROM PAST MILITARY CONFLICTS OR COLD WAR INCIDENTS—PM 65

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

Consistent with Condition (3) of the resolution of advice and consent to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia, adopted by the United States Senate on May 8, 2003, and based on the recommendation of the Department of State, I hereby certify to the Congress that each of these governments is cooperating fully with United States efforts to obtain the fullest possible accounting of captured or missing United States personnel from past military conflicts or Cold War incidents, to include:

(A) facilitating full access to relevant archival material; and

(B) identifying individuals who may possess knowledge relative to captured or missing United States personnel, and encouraging such individuals to speak with United States Government officials.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 25, 2004.*

REPORT RELATIVE TO THE INCLUSION OF BULGARIA, ESTONIA, LATVIA, LITHUANIA, ROMANIA, SLOVAKIA, AND SLOVENIA IN NATO—PM 66

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations:

To the Senate of the United States:

Consistent with Condition (1)(A) of the resolution of advice and consent to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia, adopted by the United States Senate on May 8, 2003, and based on the recommendation of the Department of Senate, I hereby certify to the Senate that:

(i) the inclusion of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia in NATO will not have the effect of increasing the overall percentage share of the United States in the common budgets of NATO; and (ii) the inclusion of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia in NATO does not detract from the ability of the United States to meet or to fund its military requirements outside the North Atlantic area.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 25, 2004.*

MESSAGES FROM THE HOUSE

At 12:15 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2751. An act to provide new human capital flexibilities with respect to the GAO, and for other purposes.

H.R. 3690. An act to designate the facility of the United States Postal Service located at 2 West Main Street in Batavia, New York, as the ''Barber Conable Post Office Building.''

At 4:30 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1997. An act to amend title 18, United States Code, and the Uniform Code of Military Justice to protect unborn children from assault and murder, and for other purposes.

At 5:42 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 287. Concurrent resolution recognizing and honoring the life of the late Raul Julia, his dedication to ending world hunger, and his great contributions to the Latino community and the performing arts.

At 8:16 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3850. An act to provide an extension of highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 2751. An act to provide new human capital flexibilities with respect to the GAO, and for other purposes; to the Committee on Governmental Affairs.

H.R. 3690. An act to designate the facility of the United States Postal Service located at 2 West Main Street in Batavia, New York, as the ''Barber Conable Post Office Building''; to the Committee on Governmental Affairs.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 287. Concurrent resolution recognizing and honoring the life of the late Raul Julia, his dedication to ending world hunger, and his great contributions to the Latino community and the performing arts; to the Committee on the Judiciary.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 2137. A bill to authorize the Secretary of Health and Human Services to promulgate regulations for the reimportation of prescription drugs, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–6144. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, a report relative to the emigration laws and policies of Armenia, Azerbaijan, Kazakhstan, Moldova, The Russian Federation, Tajikistan, Ukraine, and Uzbekistan; to the Committee on Finance.

EC–6433. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Special Federal Aviation Regulation No. 36, Development of Major Repair Data; Direct Final Rule; Request for Comments'' (RIN2120–AI09) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6434. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Limitation on Construction or Alteration in the Vicinity of the Private Residence of the President of the United States; Disposition of Comments on Interim Final Rule; Doc. No. FAA–2003–14972'' (RIN2120–AH83) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6435. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule

entitled ''Regulation of Fractional Aircraft Ownership Programs and On Demand Operations; Doc. No. FAA–2001–10047'' (RIN2120–AH06) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6436. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Transport Airplane Fleet Fuel Tank Ignition Source Review; Flammability Reduction, and Maintenance and Inspection Requirements; Doc. No. FAA1999–6411'' (RIN2120–AG62) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6437. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Flightdeck Security on Large Cargo Airplanes; Request for Comments; Doc. No. FAA–2003–15653'' (RIN2120–AH96) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6438. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E and E Airspace; Olive Brance, MS Doc. No. 03–ASO–19'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6439. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Oskaloosa, IA Doc. No. 03–ACE–84'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6440. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Waverly, IA Doc. No. 03–ACE–86'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6441. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Cherokee, IA Doc. No. 03–ACE–89'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6442. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class D Airspace; Hilton Head, SC Correction Amendment Doc. No. 03–ASO–18'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6443. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Removal of Class E Airspace; New Port Richey, FL Doc. No. 03–ASO–22'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6444. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Great Bend, KS Doc. No. 03–ACE–72'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6445. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Philadelphia, PA Doc. No. 03–AEA–06'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6446. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Springfield, MO Doc. No. 03–ACE–100'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6447. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Winterset, IA Doc. No. 03–ACE–87'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6448. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Polson, MT Doc. No. 03–ANM–10'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6449. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Osceola, IA Doc. No. 03–ACE–83'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6450. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Tipton, IA Doc. No. 03–ACE–85'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6451. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Marysville, KS Doc. No. 03–ACE–99'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6452. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Calverton, NY Doc. No. 03–AEA–16'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6453. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Lawrenceville, VA Doc. No. 03–AEA–10'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6454. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Kingman, KS Doc. No. 03–ACE–73'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6455. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Beloit, KS Doc. No. 03–ACE–09'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6456. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Greenfield, IA Doc. No. 03–ACE–88'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6457. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Greenfield, IA Doc. No. 03–ACE–88'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6458. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Manokotak, AK Doc. No. 03–AAL–19'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6459. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Restricted Area 2202C, and the Establishment of Restricted Area 2202D, Big Delta, AK, Doc. No. 03–AAL–07'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6460. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Certification of Airports Doc. No. FAA–200–7479'' (RIN2120–AG96) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6461. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification and Revocation of Federal Airways; AK Doc. No. 02–AAL–9'' (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6462. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Enhanced Flight Vision System; Doc. No. FAA–2003–14449'' (RIN2120–AH78) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6463. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Special Air Traffic Rules; Flight Restrictions in the Vicinity of Niagara Falls; Doc. No. FAA–2002–13235'' (RIN2120–AH57) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6464. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''DOD Commercial Air Carrier Evaluators; Request for Comments; Doc. No. FAA–2003–15571'' (RIN2120–AI00) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6465. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Digital Flight Data Recorder Requirements Changes to Recording Specifications and Additional Exceptions; Correction; Doc. No. FAA–2003–15682'' (RIN2120–AH89) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6466. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Collision Avoidance Systems; Doc. No. FAA–2001–10910'' (RIN2120–AG90) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6467. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Aging Aircraft Safety Doc. No. FAA–1999–5401'' (RIN2120–AE42) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6468. A communication from the Deputy Chief, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board'' (FCC04–11) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6469. A communication from the Attorney Advisor, Federal Highway Administration, transmitting, pursuant to law, the report of a rule entitled ''Contact Administration; Removal of Miscellaneous, Obsolete, or Redundant Regulations'' (RIN2125–AF01) received on February 9, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6470. A communication from the General Counsel, Consumer Product Safety Commission, transmitting, pursuant to law, the report of a rule entitled ''Exemption for Model Rocket Propellant Devices for Use with Rocket-Powered Model Cars'' (RIN3041–AC00) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6471. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Final Rule to Implement Amendment 10 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico'' (RIN0648–AM23) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6472. A communication from the Assistant Administrator for Regulatory Programs, National Marine Fishery Service, transmitting, pursuant to law, the report of a rule entitled ''Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations'' (RIN0648–AQ13) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6473. A communication from the Administrator, Federal Aviation Administration, transmitting, pursuant to law, a report relative to the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; to the Committee on Commerce, Science, and Transportation.

EC–6474. A communication from the Attorney, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Automotive Fuel Economy Manufacturing Incentives for Alternative Fueled Vehicles'' (RIN2127–AI41) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6475. A communication from the Senior Attorney, Research and Special Programs Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Hazardous Materials: Enhancing Hazardous Materials Transportation Security'' (RIN2137–AD79) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6476. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Chemical Weapons Convention Regulations: Electronic Submission of Declarations and Reports through the Web-Data Entry System for Industry'' (RIN0694–AC97) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6477. A communication from the Senior Legal Advisor, International Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Amendment of Parts 2 and 25 to Implement the Global Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission's Rules to Establish Emission Limits for Mobile and Portable Earth Stations Operating in the 1610–1660.5 MHz Band'' (FCC03–283) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6478. A communication from the Deputy Chief, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Rural Health Care Support Mechanism in WC Docket No. 02–60; FCC04–15'' (FCC04–15) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6479. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Park City, Montana)'' (MB Doc. No. 02–79) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6480. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Saluda and Irmo, South Carolina)'' (MB Doc. No. 03–8) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6481. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Portland, Maine)'' (MM Doc. No. 00–133) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6482. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations (Hobbs, New Mexico)'' (MB Doc. No. 03–193) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6483. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Muleshoe, Big Lake, and Turkey, Texas)'' (MB Doc. No. 02–251, 254, and 370) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6484. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Crlotte Amalie, Frederiksted, and Christiansted, Virgin Islands)'' (MM Doc. No. 00–102) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6485. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Hart, Pentwater, and Coopersville, Michigan)'' (MB Doc. No. 02–335) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6486. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Dos Palos, Chualar, and Big Sur, California)'' (MM Doc. No. 01–248) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6487. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Montgomery)'' (MB Doc. No. 03–164) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6488. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Shawnee and Topeka, Kansas)'' (MB Doc. No. 03–26) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6489. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Amherst and Lynchburg, Virginia)'' (MM Doc. No. 96–100) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6490. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(b) and 73.606, Table of Allotments, TV and DTV Broadcast Stations (Knoxville, Tennessee)'' (MB Doc. No.) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6491. A communication from the Senior Legal Advisor to the Chief, Media Bureau,

Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Ketchum, Jerome, and Rupert, Idaho; Coalville, Naples, Huntsville, South Jordan, Tooele, Wellington, Castle Dale, Salina, Parowan, and Payson, Utah)'' (MB Doc. No. 02–14) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6492. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Fargo, North Dakota)'' (MB Doc. No. 03–234) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6493. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.606(b), Table of Allotments, DTV Broadcast Stations (Tupelo, MS)'' (MB Doc. No. 03–221) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROBERTS, from the Select Committee on Intelligence, without amendment:

S. 2136. An original bill to extend the final report date and termination date of the National Commission on Terrorist Attacks Upon the United States, to provide additional funding for the Commission, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WARNER for the Committee on Armed Services.

*Kiron Kanian Skinner, of Pennsylvania, to be a Member of the National Security Education Board for a term of four years.

Marine Corps nomination of Brig. Gen. Douglas V. O'Dell, Jr.

Mr. WARNER. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Air Force nominations beginning Michel L. Bunning and ending Debra M. Niemeyer, which nominations were received by the Senate and appeared in the Congressional Record on October 16, 2003.

Air Force nominations beginning Raan R. Aalgaard and ending Steven R. Zwicker, which nominations were received by the Senate and appeared in the Congressional Record on October 16, 2003.

Air Force nomination of Lindsey O. Graham.

Air Force nominations beginning Donald L. Buege and ending Samuel R. Weinstein, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2004.

Air Force nominations beginning Alan C. Dickerson and ending Camille Phillips, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2004.

Air Force nominations beginning Walter F. Burghardt, Jr. and ending Phillip Y. Yoshimura, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2004.

Air Force nominations beginning Monica M. Allisonceruti and ending Mark J. Yost, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2004.

Air Force nominations beginning Patricia S. Angelilamb and ending Kathleen L. Zygowicz, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2004.

Air Force nominations beginning Michael A. Alday and ending David J. Snell, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2004.

Air Force nomination of Virginia A. Schneider.

Air Force nominations beginning Perry L. Amerine and ending James R. Patterson, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Air Force nominations beginning Stewart J. Hazel and ending William W. Pond, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Air Force nominations beginning William E. Enright, Jr. and ending Michael F. Vanhoomissen, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Air Force nomination of Collen B. Hough.

Air Force nominations beginning Norma L. Allgood and ending Matthew P. * Wicklund, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Air Force nominations beginning Richard C. Batzer and ending Richard I. Vance, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Air Force nominations beginning John A. Alexander and ending John A. Wisnewski, Jr., which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Air Force nominations beginning Todd B. * Abel and ending Gianna R. Zeh, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Air Force nominations beginning Douglas P. * Bethoney and ending Douglas E. * Thomas, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Air Force nominations beginning Adam M. Anderson and ending David J. Zollinger, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Air Force nominations beginning Marya J. Barnes and ending Karyn E. Youngcarignan, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Army nomination of Edward M. Willis.

Army nominations beginning James R. Agar II and ending Noel L. Woodward, which nominations were received by the Senate and appeared in the Congressional Record on February 2, 2004.

Army nominations beginning Jeremy A. Ball and ending Michael C. *Wong, which nominations were received by the Senate and appeared in the Congressional Record on February 5, 2004.

Army nominations beginning David H. Forden and ending Gerald E. Stone, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Marine Corps nominations beginning Randy M. Adair and ending Andrew N. Sullivan, which nominations were received by the Senate and appeared in the Congressional Record on February 2, 2004.

Marine Corps nominations beginning Jose Gonzalez and ending Jeffrey G. Young, which nominations were received by the Senate and appeared in the Congressional Record on February 2, 2004.

Marine Corps nominations beginning Edwin N. Llantos and ending Matthew E. Sutton, which nominations were received by the Senate and appeared in the Congressional Record on February 2, 2004.

Marine Corps nominations beginning Thomas E. Blake and ending James A. Griffiths, which nominations were received by the Senate and appeared in the Congressional Record on February 2, 2004.

Marine Corps nominations beginning Gerald A. Cummings and ending John M. McKeon, which nominations were received by the Senate and appeared in the Congressional Record on February 2, 2004.

Marine Corps nomination of Paul J. Smith.

Marine Corps nominations beginning Richard D. Bedford and ending James D. McCoy, which nominations were received by the Senate and appeared in the Congressional Record on February 2, 2004.

Marine Corps nominations beginning Samuel E. Davis and ending David H. Stephens, which nominations were received by the Senate and appeared in the Congressional Record on February 2, 2004.

Marine Corps nomination of Donald L. Bohannon.

Marine Corps nominations beginning Peter D. Charboneau and ending John A. Taninecz, which nominations were received by the Senate and appeared in the Congressional Record on February 2, 2004.

Marine Corps nominations beginning John M. Bishop and ending Jeffrey W. Smith, which nominations were received by the Senate and appeared in the Congressional Record on February 2, 2004.

Marine Corps nominations beginning Balwindar K. Rawalayvandevoort and ending Troy A. Tyre, which nominations were received by the Senate and appeared in the Congressional Record on February 5, 2004.

Marine Corps nomination of Steve E. Howell.

Marine Corps nomination of Richard K. Rohr.

Marine Corps nomination of William E. Hidle.

Marine Corps nominations beginning Ronald W. Cochran and ending Paul J. Miner, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Marine Corps nomination of Todd P. Ohman.

Marine Corps nominations beginning Michael E. Bean and ending Walton S. Pitchford, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

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 Mr. GRAHAM of South Carolina (for himself, Mr. SESSIONS, and Mr. MCCAIN):

S. 2130. A bill to contain the costs of the medicare prescription drug program under part D of title XVIII of the Social Security Act, and for other purposes; to the Committee on Finance.

By Mr. BURNS (for himself, Mr. WYDEN, and Mrs. BOXER):

S. 2131. A bill to regulate the unauthorized installation of computer software, to require clear disclosure to computer users of certain computer software features that may pose a threat to user privacy, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. FEINGOLD (for himself, Mr. CORZINE, Mrs. CLINTON, Mr. LAUTENBERG, Mr. KENNEDY, Mr. SCHUMER, Mr. DURBIN, Mr. KERRY, Mrs. BOXER, Mr. REID, Mr. DODD, Ms. CANTWELL, Ms. MIKULSKI, and Mr. EDWARDS):

S. 2132. A bill to prohibit racial profiling; to the Committee on the Judiciary.

By Mrs. CLINTON:

S. 2133. A bill to name the Department of Veterans Affairs medical center in the Bronx, New York, as the James J. Peters Department of Veterans Affairs Medical Center; to the Committee on Veterans' Affairs.

By Mrs. FEINSTEIN (for herself, Mr. CAMPBELL, Mr. DOMENICI, and Mr. SMITH):

S. 2134. A bill to authorize the Secretary of Agriculture and the Secretary of the Interior to enter into an agreement or contract with Indian tribes meeting certain criteria to carry out projects to protect Indian forest land; to the Committee on Indian Affairs.

By Mrs. MURRAY (for herself and Ms. CANTWELL):

S. 2135. A bill to amend title XVIII of the Social Security Act to improve the provision of items and services provided to Medicare beneficiaries residing in rural areas; to the Committee on Finance.

By Mr. ROBERTS:

S. 2136. An original bill to extend the final report date and termination date of the National Commission on Terrorist Attacks Upon the United States, to provide additional funding for the Commission, and for other purposes; from the Select Committee on Intelligence; placed on the calendar.

By Mr. DORGAN (for himself, Ms. SNOWE, Ms. STABENOW, Mr. MCCAIN, and Mr. DASCHLE):

S. 2137. A bill to authorize the Secretary of Health and Human Services to promulgate regulations for the reimportation of prescription drugs, and for other purposes; read the first time.

By Mr. GRAHAM of South Carolina:

S. 2138. A bill to protect the rights of American consumers to diagnose, service, and repair motor vehicles purchased in the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mrs. CLINTON:

S. 2139. A bill to provide coverage under the Energy Employees Occupational Illness Compensation Program for individuals employed at atomic weapons employer facilities during periods of residual contamination; to the Committee on Health, Education, Labor, and Pensions.

By Ms. CANTWELL (for herself and Mrs. MURRAY):

S. 2140. A bill to expand the boundary of the Mount Rainier National Park; to the Committee on Energy and Natural Resources.

By Mr. LUGAR:

S. 2141. A bill to amend the Farm Security and Rural Investment Act of 2002 to enhance the ability to produce fruits and vegetables on soybean base acres; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT (for himself and Mr. DODD):

S. Con. Res. 93. A concurrent resolution authorizing the use of the rotunda of the Capitol by the Joint Congressional Committee on Inaugural Ceremonies; considered and agreed to.

By Mr. LOTT (for himself and Mr. DODD):

S. Con. Res. 94. A concurrent resolution establishing the Joint Congressional Committee on Inaugural Ceremonies; considered and agreed to.

ADDITIONAL COSPONSORS

S. 983

At the request of Mr. CHAFEE, the names of the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Connecticut (Mr. DODD) were added as cosponsors 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. 985

At the request of Mr. DODD, the names of the Senator from Mississippi (Mr. LOTT) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. 985, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas, and for other purposes.

S. 1120

At the request of Mr. BAUCUS, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 1120, a bill to establish an Office of Trade Adjustment Assistance, and for other purposes.

S. 1170

At the request of Mr. WYDEN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1170, a bill to designate certain conduct by sports agents relating to signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

S. 1180

At the request of Mr. SANTORUM, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 1180, a bill to amend the Internal Revenue Code of 1986 to modify the work opportunity credit and the welfare-to-work credit.

S. 1189

At the request of Mr. DURBIN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1189, a bill to ensure an appropriate balance between resources and accountability under the No Child Left Behind Act of 2001.

S. 1298

At the request of Mr. AKAKA, the name of the Senator from Maine (Ms. SNOWE) 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 non-ambulatory livestock, and for other purposes.

S. 1780

At the request of Mr. BIDEN, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 1780, a bill to amend the Controlled Substances Act to clarify the definition of anabolic steroids and to provide for research and education activities relating to steroids and steroid precursors.

S. 1873

At the request of Mr. AKAKA, his name was added as a cosponsor of S. 1873, a bill to require employees at a call center who either initiate or receive telephone calls to disclose the physical location of such employees, and for other purposes.

S. 1902

At the request of Mr. REED, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1902, a bill to establish a National Commission on Digestive Diseases.

S. 2032

At the request of Mrs. BOXER, the names of the Senator from Washington (Mrs. MURRAY) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. 2032, a bill to provide assistance and security for women and children in Afghanistan and for other purposes.

S. 2039

At the request of Mr. WYDEN, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 2039, a bill to waive time limitations specified by law in order to allow the Medal of Honor to be awarded posthumously to Rex T. Barber of Terrebonne, Oregon, for acts of valor during World War II in attacking and shooting down the enemy aircraft transporting Japanese Admiral Isoroku Yamamoto.

S. 2053

At the request of Mr. WYDEN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 2053, a bill to reduce the costs of prescription drugs for medicare beneficiaries, and for other purposes.

S. 2057

At the request of Mr. DAYTON, the names of the Senator from New Jersey

(Mr. CORZINE), the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Ms. LANDRIEU), the Senator from Michigan (Mr. LEVIN) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 2057, a bill to require the Secretary of Defense to reimburse members of the United States Armed Forces for certain transportation expenses incurred by the members in connection with leave under the Central Command Rest and Recuperation Leave Program before the program was expanded to include domestic travel.

S. 2076

At the request of Mr. BAUCUS, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 2076, a bill to amend title XI of the Social Security Act to provide direct congressional access to the office of the Chief Actuary in the Centers for Medicare & Medicaid Services.

S. 2084

At the request of Mr. ALEXANDER, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2084, a bill to revive and extend the Internet Tax Freedom Act for 2 years, and for other purposes.

S. 2090

At the request of Mr. DASCHLE, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2090, a bill to amend the Worker Adjustment and Retraining Notification Act to provide protections for employees relating to the offshoring of jobs.

S.J. RES. 26

At the request of Mr. ALLARD, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S.J. Res. 26, a joint resolution proposing an amendment to the Constitution of the United States relating to marriage.

S.J. RES. 28

At the request of Mr. CAMPBELL, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S.J. Res. 28, a joint resolution recognizing the 60th anniversary of the Allied landing at Normandy during World War II.

S. CON. RES. 81

At the request of Mrs. FEINSTEIN, the names of the Senator from Oklahoma (Mr. INHOFE) and the Senator from Oklahoma (Mr. NICKLES) were added as cosponsors 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.

S. CON. RES. 88

At the request of Mr. SARBANES, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. Con. Res. 88, a concurrent resolution expressing the sense of Congress that there should continue to be parity between the adjustments in the pay of members of the uniformed services and the adjustments in the pay of civilian employees of the United States.

S. CON. RES. 90

At the request of Mr. LEVIN, the names of the Senator from Michigan (Ms. STABENOW) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of S. Con. Res. 90, a concurrent resolution expressing the Sense of the Congress regarding negotiating, in the United States-Thailand Free Trade Agreement, access to the United States automobile industry.

S. RES. 298

At the request of Mr. CAMPBELL, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. Res. 298, a resolution designating May 2004 as ''National Cystic Fibrosis Awareness Month''.

AMENDMENT NO. 2617

At the request of Ms. CANTWELL, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from Michigan (Mr. LEVIN), the Senator from New York (Mr. SCHUMER), the Senator from Washington (Mrs. MURRAY), the Senator from New York (Mrs. CLINTON), the Senator from Rhode Island (Mr. REED), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Oregon (Mr. SMITH), the Senator from Delaware (Mr. BIDEN), the Senator from Indiana (Mr. BAYH), the Senator from Vermont (Mr. LEAHY) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of amendment No. 2617 proposed to S. 1805, a bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others.

At the request of Mr. BYRD, his name was added as a cosponsor of amendment No. 2617 proposed to S. 1805, supra.

At the request of Mrs. FEINSTEIN, her name was added as a cosponsor of amendment No. 2617 proposed to S. 1805, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BURNS (for himself, Mr. WYDEN, and Mrs. BOXER):

S. 2131. A bill to regulate the unauthorized installation of computer software, to require clear disclosure to computer users of certain computer software features that may pose a threat to user privacy, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. WYDEN. Mr. President, my good friend Senator BURNS and I have pioneered a number of legislative efforts aimed at protecting ordinary computer users from the tricks and schemes of those who would abuse the open and interconnected nature of the Internet. From online privacy to spam, we have sought to establish some basic, commonsense rules to address sleazy, intrusive, and anti-consumer practices that have arisen in the new world of the Internet. In each case, our goal has not been to stifle or restrict legitimate and innovative modes of e-commerce, but rather to promote them by reining in unfair and annoying behavior that undermines consumer confidence and use of the Internet.

Today, we continue on that path by introducing the ''SPY BLOCK'' Act, together with our colleague Senator BOXER.

This legislation will put the brakes on the growing problem of software being installed secretly on people's computers, for purposes they might object to if given the chance. Sometimes, the problem is a ''drive-by download,'' where the consumer's mere visit to a website or decision to click on an advertisement secretly triggers the downloading of software onto the consumer's machine. Or, it can be a ''double whammy download,'' where the consumer's voluntary download of one software program also triggers the inadvertent download of a second software program which, although it may serve a very different purpose, has been bundled together with the first one.

Once installed, the unwanted software operates in the background, performing functions that ordinary computer users cannot detect. As a result, the computer user may never even know the software is there, let alone what it is doing. And to add insult to injury, software that spreads in this fashion often is designed to be nearly impossible to uninstall.

What might such software do, once it is installed? The legislation we are introducing today identifies several possible functions that pose concerns. First, some software, often referred to as ''spyware,'' collects information about the computer user and transmits that information over the Internet to the spyware's author. Second, software sometimes referred to as ''adware'' causes pop-up ads to appear on the user's computer, perhaps based on the user's apparent interests or on the websites he or she visits. Third, some software essentially hijacks the computer's processing and communications capability to forward spam, viruses, or other messages, all without the user's knowledge. Finally, some software changes user settings—for example, overriding the user's intended choice of homepage.

If a computer user truly understands what the software is going to do and knowingly consents to it, that's fine. The issue really comes down to user knowledge and control. Too often, software like this allows a third party to wrest control of some of the computer's functions and commandeer

them for the third party's own purposes. The software is essentially a parasite—it attaches itself without consent to the host computer and taps into the host's resources, making use of them for its own selfish purposes. Our bill would make such unauthorized practices clearly unlawful.

How common is all this? There is little hard data, but one report last year estimated that 20 million people have downloaded software that serves them targeted advertising. I have to suspect that many of these downloads did not involve informed consent. It has also been widely reported that many of the most popular peer-to-peer file sharing software programs come packaged with other software that is not clearly disclosed to the user. So the number of affected users is likely very high.

The bill we are introducing today would, for the first time, establish a clear legal principle that you cannot cause software to be installed on somebody else's computer without that person's knowledge and consent. This general notice and consent requirement could be satisfied by something as simple as an on-screen dialogue box telling the user that clicking ''ok'' will trigger the download of, say, a particular game program. In addition, the bill says that software must be capable of being uninstalled without resorting to extraordinary and highly technical procedures.

Beyond these general requirements, the legislation calls for certain types of software features—those performing the four functions I discussed a moment ago—to be specifically and separately brought to the user's attention prior to installation. For example, if a software program has a spyware feature designed to collect and transmit information about the user, the user would need to be provided with sufficient notice based on criteria set forth in the bill. That notice would need to explain the types of information that would be collected and the purposes for which the information would be used. Following this notice, the user would have the option of granting or withholding consent. In the absence of such notice and consent, it would be unlawful to download the software onto the user's computer, or subsequently to use the software to gather information about that user.

The bill contains some exceptions, for example, for pre-installed software and software features that are necessary to make basic features like e-mail or Internet browsing function properly. Enforcement under the bill would be by the Federal Trade Commission and state Attorneys General.

I recognize that the bill we introduce today may benefit from further attention and input on the particular wording of the definitions, on the types of software or software features that should be listed in the exceptions, and so forth. Senator BURNS, Senator BOXER, and I are open to further discussion about fine tuning the scope of the bill, so that we don't create a regime that ends up being impractical or imposing undue burdens on legitimate and useful software. This is the starting point, not the end point.

It is important, however, to get this process moving. I believe it's time to send a clear message that unauthorized and privacy-compromising spyware, adware, and other software are unlawful and punishable. I urge my colleagues to join Senators BURNS, BOXER, and myself in supporting this bill.

Mr. BURNS. Mr. President, I rise in support of a measure that I introduce today, with the support of my colleague, Senator WYDEN. We worked closely on the CAN SPAM bill together, and after four years of effort finally saw its successful passage last year. I am pleased to work with Senator WYDEN again on another critical issue which is potentially of even greater concern than junk email given its invasive nature—that of spyware. I also appreciate the support of another of my colleagues on the Senate Commerce Committee, Senator BOXER. Together, we have crafted legislation aimed at ending the insidious operation of spyware, the SPYBLOCK Act of 2004. By introducing this legislation today, we take the first step in giving consumers the control to stop this deceitful practice.

Spyware refers to software that is downloaded onto users' computers without their knowledge or consent. This sneaky software is then often used to track the movements of consumers online or even to steal passwords. The porous gaps spyware creates in a computer's security may be difficult to close. For example, one popular peer-to-peer file sharing network routinely installs spyware to track users' information and retrieves targeted banner ads and popups. As noted by a recent article in PC Magazine these file-sharing networks may be free, but at the cost of privacy, not money. Of the 60 million users, few know they are being watched. Of those who do discover spyware, uninstalling it may prove more difficult than other software programs. Some spyware includes tricklers, which reinstall the files as you delete them. Users may think they are getting rid of the problem, but the reality of the situation is far different.

The creators of spyware have engineered the technology so that once it is installed on a computer, it is difficult and sometimes impossible to remove and in some cases requires the entire hard drive to be erased to get rid of this poisonous product. Such drastic measures must be taken, because often spyware tells the installer what websites a user visits, steals passwords or other sensitive documents on a personal computer, and also redirects Internet traffic through certain web sites.

One of the most disturbing aspects about the spyware problem is that so few consumers are even aware of it. Bearing this factor in mind, the SPYBLOCK bill relies on a commonsense approach which prohibits the installation of software on consumers' computers without notice, consent and reasonable ''uninstall'' procedures.

The notice and consent approach which SPYBLOCK takes would end the practice of so-called ''drive-by downloads'' which some bad actors use to secretly download programs onto users' computers without their knowledge. Under SPYBLOCK, software providers must give consumers clear and conspicuous notice that a software program will be downloaded to their computers and requires user consent. This simple provision could be fulfilled by clicking ''yes'' on a dialog box, for example.

SPYBLOCK also requires notice and consent for other types of software. In the case of ''Adware,'' providers are required to tell consumers what types of ads will pop up on users' screens and with what frequency. Consent is required for software that modifies user settings or uses ''distributed computing'' methods to utilize the processing power of individual computers to create larger networks. Finally, software providers must allow for their programs to be easily ''uninstalled'' by users after they are downloaded. As with the CAN–SPAM law, enforcement authority would be given to the Federal Trade Commission. States attorneys general could take action against the purveyors of spyware.

Clearly, it is time to call the bad actors to account. It is impossible to understand how any of the individuals or companies using spyware believe tracking Internet usage, stealing passwords, and hijacking the processors of someone else's computer, all without their knowledge, is justifiable.

Working closely with my colleagues Senator WYDEN and Senator BOXER, I am confident we can make major progress on this critical legislation, before spyware infects a critical mass of computers and renders them useless. Just trying to keep up with the latest anti-spyware software poses a tremendous cost to businesses, let alone individuals who have to spend their time online worried about the next spyware infestation. Again, I would like to thank Senators WYDEN and BOXER for their hard work on this vital issue, and I urge my colleagues to support this measure. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2131

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Controlling Invasive and Unauthorized Software Act''.

SEC. 2. UNAUTHORIZED INSTALLATION OF COMPUTER SOFTWARE.

(a) NOTICE, CHOICE, AND UNINSTALL PROCEDURES.—It is unlawful for any person who is

not the user of a protected computer to install computer software on that computer, or to authorize, permit, or cause the installation of computer software on that computer, unless—

(1) the user of the computer has received notice that satisfies the requirements of section 3;

(2) the user of the computer has granted consent that satisfies the requirements of section 3; and

(3) the computer software's uninstall procedures satisfy the requirements of section 3.

(b) RED HERRING PROHIBITION.—It is unlawful for any person who is not the user of a protected computer to install computer software on that computer, or to authorize, permit, or cause the installation of computer software on that computer, if the design or operation of the computer software is intended, or may reasonably be expected, to confuse or mislead the user of the computer concerning the identity of the person or service responsible for the functions performed or content displayed by such computer software.

SEC. 3. NOTICE, CONSENT, AND UNINSTALL REQUIREMENTS.

(a) NOTICE.—For purposes of section 2(a)(1), notice to the user of a computer shall—

(1) include a clear notification, displayed on the screen until the user either grants or denies consent to installation, of the name and general nature of the computer software that will be installed if the user grants consent; and

(2) include a separate disclosure, with respect to each information collection, advertising, distributed computing, and settings modification feature contained in the computer software, that—

(A) remains displayed on the screen until the user either grants or denies consent to that feature;

(B) in the case of an information collection feature, provides a clear description of—

(i) the type of personal or network information to be collected and transmitted by the computer software; and

(ii) the purpose for which the personal or network information is to be collected, transmitted, and used;

(C) in the case of an advertising feature, provides—

(i) a representative full-size example of each type of advertisement that may be delivered by the computer software;

(ii) a clear description of the estimated frequency with which each type of advertisement may be delivered; and

(iii) a clear description of how the user can distinguish each type of advertisement that the computer software delivers from advertisements generated by other software, Internet website operators, or services;

(D) in the case of a distributed computing feature, provides a clear description of—

(i) the types of information or messages the computer software will cause the computer to transmit;

(ii) the estimated frequency with which the computer software will cause the computer to transmit such messages or information;

(iii) the estimated volume of such information or messages, and the likely impact, if any, on the processing or communications capacity of the user's computer; and

(iv) the nature, volume, and likely impact on the computer's processing capacity of any computational or processing tasks the computer software will cause the computer to perform in order to generate the information or messages the computer software will cause the computer to transmit;

(E) in the case of a settings modification feature, provides a clear description of the nature of the modification, its function, and any collateral effects the modification may produce; and

(F) provides a clear description of procedures the user may follow to turn off such feature or uninstall the computer software.

(b) CONSENT.—For purposes of section 2(a)(2), consent requires—

(1) consent by the user of the computer to the installation of the computer software; and

(2) separate affirmative consent by the user of the computer to each information collection feature, advertising feature, distributed computing feature, and settings modification feature contained in the computer software.

(c) UNINSTALL PROCEDURES.—For purposes of section 2(a)(3), computer software shall—

(1) appear in the ''Add/Remove Programs'' menu or any similar feature, if any, provided by each operating system with which the computer software functions;

(2) be capable of being removed completely using the normal procedures provided by each operating system with which the computer software functions for removing computer software; and

(3) in the case of computer software with an advertising feature, include an easily identifiable link clearly associated with each advertisement that the software causes to be displayed, such that selection of the link by the user of the computer generates an on-screen window that informs the user about how to turn off the advertising feature or uninstall the computer software.

SEC. 4. UNAUTHORIZED USE OF CERTAIN COMPUTER SOFTWARE.

It is unlawful for any person who is not the user of a protected computer to use an information collection, advertising, distributed computing, or settings modification feature of computer software installed on that computer, if—

(1) the computer software was installed in violation of section 2;

(2) the use in question falls outside the scope of what was described to the user of the computer in the notice provided pursuant to section 3(a); or

(3) in the case of an information collection feature, the person using the feature fails to establish and maintain reasonable procedures to protect the security and integrity of personal information so collected.

SEC. 5. EXCEPTIONS.

(a) PREINSTALLED SOFTWARE.—A person who installs, or authorizes, permits, or causes the installation of, computer software on a protected computer before the first retail sale of the computer shall be deemed to be in compliance with this Act if the user of the computer receives notice that would satisfy section 3(a)(2) and grants consent that would satisfy section 3(b)(2) prior to—

(1) the initial collection of personal or network information, in the case of any information collection feature contained in the computer software;

(2) the initial generation of an advertisement on the computer, in the case of any advertising feature contained in the computer software;

(3) the initial transmission of information or messages, in the case of any distributed computing feature contained in the computer software; and

(4) the initial modification of user settings, in the case of any settings modification feature.

(b) OTHER EXCEPTIONS.—Sections 3(a)(2), 3(b)(2), and 4 do not apply to any feature of computer software that is reasonably needed to—

(1) provide capability for general purpose online browsing, electronic mail, or instant messaging, or for any optional function that is directly related to such capability and that the user knowingly chooses to use;

(2) determine whether or not the user of the computer is licensed or authorized to use the computer software; and

(3) provide technical support for the use of the computer software by the user of the computer.

(c) PASSIVE TRANSMISSION, HOSTING, OR LINK.—For purposes of this Act, a person shall not be deemed to have installed computer software, or authorized, permitted, or caused the installation of computer software, on a computer solely because that person provided—

(1) the Internet connection or other transmission capability through which the software was delivered to the computer for installation;

(2) the storage or hosting, at the direction of another person and without selecting the content to be stored or hosted, of the software or of an Internet website through which the software was made available for installation; or

(3) a link or reference to an Internet website the content of which was selected and controlled by another person, and through which the computer software was made available for installation.

(d) SOFTWARE RESIDENT IN TEMPORARY MEMORY.—In the case of an installation of computer software that falls within the meaning of section 7(10)(B) but not within the meaning of section 7(10)(A), the requirements set forth in subsections (a)(1), (b)(1), and (c) of section 3 shall not apply.

(e) FEATURES ACTIVATED BY USER OPTIONS.—In the case of an information collection, advertising, distributed computing, or settings modification feature that remains inactive or turned off unless the user of the computer subsequently selects certain optional settings or functions provided by the computer software, the requirements of subsections (a)(2) and (b)(2) of section 3 may be satisfied by providing the applicable disclosure and obtaining the applicable consent at the time the user selects the option that activates the feature, rather than at the time of initial installation.

SEC. 6. ADMINISTRATION AND ENFORCEMENT.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall be enforced by the Commission as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.—Compliance with this Act shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which

are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board with respect to any Federal credit union;

(4) part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any entity that violates any provision of that section is subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of that section.

(e) PRESERVATION OF COMMISSION AUTHORITY.—Nothing contained in this section shall be construed to 8 limit the authority of the Commission under any other provision of law.

SEC. 7. ACTIONS BY STATES.

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that this Act prohibits, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction—

(A) to enjoin that practice;

(B) to enforce compliance with the rule;

(C) to obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) to obtain such other relief as the court may consider to be appropriate.

(2) NOTICE.—

(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) EXEMPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before the filing of the action.

(ii) NOTIFICATION.—In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) INTERVENTION.—

(1) IN GENERAL.—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) EFFECT OF INTERVENTION.—If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this subtitle shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Commission for violation of section 2 of this Act, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that section.

(e) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(2) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) is an inhabitant; or

(B) may be found.

SEC. 8. DEFINITIONS.

In this Act:

(1) ADVERTISEMENT.—The term ''advertisement'' means a commercial promotion for a product or service, but does not include promotions for products or services that appear on computer software help or support pages that are displayed in response to a request by the user.

(2) ADVERTISING FEATURE.—The term ''advertising feature'' means a function of computer software that, when installed on a computer, delivers advertisements to the user of that computer.

(3) AFFIRMATIVE CONSENT.—The term ''affirmative consent'' means consent expressed through action by the user of a computer other than default action specified by the installation sequence and independent from any other consent solicited from the user during the installation process.

(4) CLEAR DESCRIPTION.—The term ''clear description'' means a description that is clear, conspicuous, concise, and in a font size that is at least as large as the largest default font displayed to the user by the software.

(5) COMPUTER SOFTWARE.—The term ''computer software''—

(A) means any program designed to cause a computer to perform a desired function or functions; and

(B) does not include any cookie.

(6) COOKIE.—The term ''cookie'' means a text file—

(A) that is placed on a computer by an Internet service provider, interactive computer service, or Internet website; and

(B) the sole function of which is to record information that can be read or recognized by an Internet service provider, interactive computer service, or Internet website when the user of the computer uses or accesses such provider, service, or website.

(7) DISTRIBUTED COMPUTING FEATURE.—The term ''distributed computing feature'' means a function of computer software that, when installed on a computer, transmits information or messages, other than personal or network information about the user of the computer, to any other computer without the knowledge or direction of the user and for purposes unrelated to the tasks or functions the user intentionally performs using the computer.

(8) FIRST RETAIL SALE.—The term ''first retail sale'' means the first sale of a computer, for a purpose other than resale, after the manufacture, production, or importation of the computer. For purposes of this paragraph, the lease of a computer shall be considered a sale of the computer at retail.

(9) INFORMATION COLLECTION FEATURE.—The term ''information collection feature'' means a function of computer software that, when installed on a computer, collects personal or network information about the user of the computer and transmits such information to any other party on an automatic basis or at the direction of a party other than the user of the computer.

(10) INSTALL.—The term ''install'' means—

(A) to write computer software to a computer's persistent storage medium, such as the computer's hard disk, in such a way that the computer software is retained on the computer after the computer is turned off and subsequently restarted; or

(B) to write computer software to a computer's temporary memory, such as random access memory, in such a way that the software is retained and continues to operate after the user of the computer turns off or exits the Internet service, interactive computer service, or Internet website from which the computer software was obtained.

(11) NETWORK INFORMATION.—The term ''network information'' means—

(A) an Internet protocol address or domain name of a user's computer;

(B) a cookie or other unique identifier of a computer user or a computer user's computer; or

(C) a Uniform Resource Locator or other information that identifies Internet web sites or other online resources accessed by a user of a computer.

(12) PERSONAL INFORMATION.—The term ''personal information'' means—

(A) a first and last name, whether given at birth or adoption, assumed, or legally changed;

(B) a home or other physical address including street name, name of a city or town, and zip code;

(C) an electronic mail address or online username;

(D) a telephone number;

(E) a social security number;

(F) any personal identification number;

(G) a credit card number, any access code associated with the credit card, or both;

(H) a birth date, birth certificate number, or place of birth; or

(I) any password or access code.

(13) PERSON.—The term ''person'' has the meaning given that term in section 3(32) of the Communications Act of 1934 (47 U.S.C. 153(32)).

(14) PROTECTED COMPUTER.—The term ''protected computer'' has the meaning given that term in section 1030(e)(2)(B) of title 18, United States Code.

(15) SETTINGS MODIFICATION FEATURE.—The term ''settings modification feature'' means

a function of computer software that, when installed on a computer—

(A) modifies an existing user setting, without direction from the user of the computer, with respect to another computer software application previously installed on that computer; or

(B) enables a user setting with respect to another computer software application previously installed on that computer to be modified in the future without advance notification to and consent from the user of the computer.

(16) USER OF A COMPUTER.—The term ''user of a computer'' means an individual who operates a computer with the authorization of the computer's lawful owner.

SEC. 9. EFFECTIVE DATE.

This Act shall take effect 180 days after the date of enactment of this Act.

By Mr. FEINGOLD (for himself, Mr. CORZINE, Mrs. CLINTON, Mr. LAUTENBERG, Mr. KENNEDY, Mr. SCHUMER, Mr. DURBIN, Mr. KERRY, Mrs. BOXER, Mr. REID, Mr. DODD, Ms. CANTWELL, Ms. MIKULSKI, and Mr. EDWARDS):

S. 2132. A bill to prohibit racial profiling; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, three years ago tomorrow, in his first address to a joint session of Congress, President Bush declared that racial profiling is wrong and pledged to end it in America. He then directed his Attorney General to implement this policy.

It is now three years later, and the American people are still waiting for the President to follow through on his pledge to end racial profiling.

So, today I join with Representative JOHN CONYERS, the distinguished ranking member of the House Judiciary Committee, in re-introducing the End Racial Profiling Act. We first introduced this bill in 2001, shortly after the President made his pledge and the Attorney General asserted that he would work with us on our legislation.

The End Racial Profiling Act would do exactly what the President promised to do: it would ban racial profiling once and for all and require Federal, State, and local law enforcement to take steps to end and prevent racial profiling.

I am very pleased that several of my distinguished colleagues have joined me on this bill Senators CORZINE, CLINTON, LAUTENBERG, KENNEDY, SCHUMER, DURBIN, KERRY, BOXER, REID, DODD, CANTWELL, MIKULSKI, and EDWARDS.

Racial profiling is the practice by which some law enforcement agents routinely stop African Americans, Latinos, Asian Americans, Arab Americans and others simply because of their race, ethnicity, or national origin. Reports in States from New Jersey to Florida, and Maryland to Texas all show that African Americans, Hispanics, and members of other minority groups are being stopped by some police far in excess of their share of the population and the rate at which they engage in criminal conduct.

I might add that the urgency for legislation banning racial profiling is compounded by concerns post-September 11 that racial profiling—not good police work and following up on legitimate leads—is being used against Arab and Muslim Americans, or Americans perceived to be Arab or Muslim.

The September 11 attacks were horrific and I share the determination of many Americans that finding those responsible and preventing future attacks should be this Nation's top priority. This is a challenge that our country can and must meet. But we need improved intelligence and law enforcement, not racial, ethnic or religious stereotypes, to protect our Nation from crime and future terrorist attacks.

In fact, I believe that the End Racial Profiling Act is a pro-law enforcement bill. It will help to restore the trust and confidence of the communities our law enforcement have pledged to serve and protect. That confidence is crucial to our success in stopping crime, and in stopping terrorism. The End Racial Profiling Act is good for law enforcement and good for America.

I'm very pleased that many state and local law enforcement officials stand with the sponsors of this bill in condemning racial profiling. Many law enforcement officials across the country agree that racial profiling is wrong and should not take place in America. In fact, many State and local law enforcement officials have begun to take steps to address the problem, or even the perception of a problem. For example, in my own State of Wisconsin, law enforcement officials have taken steps to train police officers, improve academy training, establish model policies prohibiting racial profiling, and improve relations with our State's diverse communities. I applaud the efforts of Wisconsin law enforcement.

But the Federal Government has a vital role in protecting civil rights and acting as a model for State and local law enforcement. Last June, the Justice Department issued a policy guidance to Federal law enforcement agencies banning racial profiling. But while this guidance is a useful first step, it does not achieve the President's stated goal of ending racial profiling in America. It does not carry the force of law and does not apply to State and local law enforcement. Federal legislation is still very much needed.

Our bill, the End Racial Profiling Act, would ban racial profiling and allow the Justice Department or individuals the ability to enforce this prohibition by filing a suit for injunctive relief. The bill would also require Federal, state, and local law enforcement agencies to adopt policies prohibiting racial profiling; to implement effective complaint procedures; to implement disciplinary procedures for officers who engage in the practice; and to collect data on stops. In addition, it requires the Attorney General to report to Congress to allow Congress and the American people to monitor whether the steps outlined in the bill to prevent and end racial profiling have been effective.

Like the bill we introduced last Congress, the bill also authorizes the Attorney General to provide incentive grants to help law enforcement comply with the ban on racial profiling, including funds to conduct training of police officers or purchase in-car video cameras.

Finally, we have revised the bill to conform with the definition of racial profiling in the Justice Department's guidance and to reflect concerns about racial profiling based on religion in a post-September 11 America.

Let me emphasize that local, State, and Federal law enforcement agents play a vital role in protecting the public from crime and protecting the Nation from terrorism. The vast majority of law enforcement agents nationwide discharge their duties professionally and without bias and we are all indebted to them for their courage and dedication. This bill should not be misinterpreted as a criticism of those who put their lives on the line for the rest of us every day. Rather, it is a statement that the use of race, ethnicity, religion, or national origin in deciding which persons should be subject to traffic stops, stops and frisks, questioning, searches, and seizures is wrong and ineffective, except where there is specific information linking persons of a particular race, ethnicity, religion, or national origin to a crime.

Now, perhaps more than ever before, our Nation cannot afford to waste precious law enforcement resources or alienate Americans by tolerating discriminatory practices. It is past time for Congress and the President to enact comprehensive federal legislation that will end racial profiling once and for all.

I urge the President to make good on his pledge to end racial profiling, and I urge my colleagues to join me in supporting the End Racial Profiling Act.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2132

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 ''End Racial Profiling Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Federal, State, and local law enforcement agents play a vital role in protecting the public from crime and protecting the Nation from terrorism. The vast majority of law enforcement agents nationwide discharge their duties professionally and without bias.

(2) The use by police officers of race, ethnicity, religion, or national origin in deciding which persons should be subject to traffic stops, stops and frisks, questioning, searches, and seizures is improper.

(3) In his address to a Joint Session of Congress on February 27, 2001, President George W. Bush declared that ''racial profiling is wrong and we will end it in America.'' He directed the Attorney General to implement this policy.

(4) In June 2003, the Department of Justice issued a Policy Guidance regarding racial profiling by Federal law enforcement agencies which stated: ''Racial profiling in law enforcement is not merely wrong, but also ineffective. Race-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy, and materially impair our efforts to maintain a fair and just society.''

(5) The Department of Justice Guidance is a useful first step, but does not achieve the President's stated goal of ending racial profiling in America: it does not apply to State and local law enforcement agencies, does not contain a meaningful enforcement mechanism, does not require data collection, and contains an overbroad exception for immigration and national security matters.

(6) Current efforts by State and local governments to eradicate racial profiling and redress the harms it causes, while also laudable, have been limited in scope and insufficient to address this national problem. Therefore, Federal legislation is needed.

(7) Statistical evidence from across the country demonstrates that racial profiling is a real and measurable phenomenon.

(8) As of November 15, 2000, the Department of Justice had 14 publicly noticed, ongoing, pattern or practice investigations involving allegations of racial profiling, and had filed 5 pattern and practice lawsuits involving allegations of racial profiling, with 4 of those cases resolved through consent decrees.

(9) A large majority of individuals subjected to stops and other enforcement activities based on race, ethnicity, religion, or national origin are found to be law abiding and therefore racial profiling is not an effective means to uncover criminal activity.

(10) A 2001 Department of Justice report on citizen-police contacts in 1999 found that, although African-Americans and Hispanics were more likely to be stopped and searched, they were less likely to be in possession of contraband. On average, searches and seizures of African-American drivers yielded evidence only 8 percent of the time, searches and seizures of Hispanic drivers yielded evidence only 10 percent of the time, and searches and seizures of white drivers yielded evidence 17 percent of the time.

(11) A 2000 General Accounting Office report on the activities of the United States Customs Service during fiscal year 1998 found that—

(A) black women who were United States citizens were 9 times more likely than white women who were United States citizens to be x-rayed after being frisked or patted down;

(B) black women who were United States citizens were less than half as likely as white women who were United States citizens to be found carrying contraband; and

(C) in general, the patterns used to select passengers for more intrusive searches resulted in women and minorities being selected at rates that were not consistent with the rates of finding contraband.

(12) In some jurisdictions, local law enforcement practices such as ticket and arrest quotas, and similar management practices, may have the unintended effect of encouraging law enforcement agents to engage in racial profiling.

(13) Racial profiling harms individuals subjected to it because they experience fear, anxiety, humiliation, anger, resentment, and cynicism when they are unjustifiably treated as criminal suspects. By discouraging individuals from traveling freely, racial profiling impairs both interstate and intrastate commerce.

(14) Racial profiling damages law enforcement and the criminal justice system as a whole by undermining public confidence and trust in the police, the courts, and the criminal law.

(15) In the wake of the September 11, 2001, terrorist attacks, many Arabs, Muslims, Central and South Asians, and Sikhs, as well as other immigrants and Americans of foreign descent, were treated with generalized suspicion and subjected to searches and seizures based upon religion and national origin, without trustworthy information linking specific individuals to criminal conduct. Such profiling has failed to produce tangible benefits, yet has created a fear and mistrust of law enforcement agencies in these communities.

(16) Racial profiling violates the equal protection clause of the Constitution. Using race, ethnicity, religion, or national origin as a proxy for criminal suspicion violates the constitutional requirement that police and other government officials accord to all citizens the equal protection of the law. Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252 (1977).

(17) Racial profiling is not adequately addressed through suppression motions in criminal cases for two reasons. First, the Supreme Court held, in Whren v. United States, 517 U.S. 806 (1996), that the racially discriminatory motive of a police officer in making an otherwise valid traffic stop does not warrant the suppression of evidence. Second, since most stops do not result in the discovery of contraband, there is no criminal prosecution and no evidence to suppress.

(18) A comprehensive national solution is needed to address racial profiling at the Federal, State, and local levels. Federal support is needed to combat racial profiling through specialized training of law enforcement agents, improved management systems, and the acquisition of technology such as in-car video cameras.

(b) PURPOSES.—The purposes of this Act are—

(1) to enforce the constitutional right to equal protection of the laws, pursuant to the Fifth Amendment and section 5 of the 14th Amendment to the Constitution of the United States;

(2) to enforce the constitutional right to protection against unreasonable searches and seizures, pursuant to the Fourth Amendment to the Constitution of the United States;

(3) to enforce the constitutional right to interstate travel, pursuant to section 2 of article IV of the Constitution of the United States; and

(4) to regulate interstate commerce, pursuant to clause 3 of section 8 of article I of the Constitution of the United States.

TITLE I—PROHIBITION OF RACIAL PROFILING

SEC. 101. PROHIBITION.

No law enforcement agent or law enforcement agency shall engage in racial profiling.

SEC. 102. ENFORCEMENT.

(a) REMEDY.—The United States, or an individual injured by racial profiling, may enforce this title in a civil action for declaratory or injunctive relief, filed either in a State court of general jurisdiction or in a district court of the United States.

(b) PARTIES.—In any action brought pursuant to this title, relief may be obtained against—

(1) any governmental unit that employed any law enforcement agent who engaged in racial profiling;

(2) any agent of such unit who engaged in racial profiling; and

(3) any person with supervisory authority over such agent.

(c) NATURE OF PROOF.—Proof that the routine or spontaneous investigatory activities of law enforcement agents in a jurisdiction have had a disparate impact on racial, ethnic, or religious minorities shall constitute prima facie evidence of a violation of this title.

(d) ATTORNEY'S FEES.—In any action or proceeding to enforce this title against any governmental unit, the court may allow a prevailing plaintiff, other than the United States, reasonable attorney's fees as part of the costs, and may include expert fees as part of the attorney's fee.

TITLE II—PROGRAMS TO ELIMINATE RACIAL PROFILING BY FEDERAL LAW ENFORCEMENT AGENCIES

SEC. 201. POLICIES TO ELIMINATE RACIAL PROFILING.

(a) IN GENERAL.—Federal law enforcement agencies shall—

(1) maintain adequate policies and procedures designed to eliminate racial profiling; and

(2) cease existing practices that encourage racial profiling.

(b) POLICIES.—The policies and procedures described in subsection (a)(1) shall include—

(1) a prohibition on racial profiling;

(2) the collection of data on routine investigatory activities sufficient to determine if law enforcement agents are engaged in racial profiling and submission of that data to the Attorney General;

(3) independent procedures for receiving, investigating, and responding meaningfully to complaints alleging racial profiling by law enforcement agents of the agency;

(4) procedures to discipline law enforcement agents who engage in racial profiling; and

(5) such other policies or procedures that the Attorney General deems necessary to eliminate racial profiling.

TITLE III—PROGRAMS TO ELIMINATE RACIAL PROFILING BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES

SEC. 301. POLICIES REQUIRED FOR GRANTS.

(a) IN GENERAL.—An application by a State or governmental unit for funding under a

covered program shall include a certification that such unit and any agency to which it is redistributing program funds—

(1) maintains adequate policies and procedures designed to eliminate racial profiling; and

(2) has ceased any existing practices that encourage racial profiling.

(b) POLICIES.—The policies and procedures described in subsection (a) shall include—

(1) a prohibition on racial profiling;

(2) the collection of data on routine investigatory activities sufficient to determine if law enforcement agents are engaged in racial profiling, and submission of that data to the Attorney General;

(3) independent procedures for receiving, investigating, and responding meaningfully to complaints alleging racial profiling by law enforcement agents;

(4) procedures to discipline law enforcement agents who engage in racial profiling; and

(5) such other policies or procedures that the Attorney General deems necessary to eliminate racial profiling.

(c) NONCOMPLIANCE.—If the Attorney General determines that a grantee is not in compliance with conditions established under this title, the Attorney General shall withhold the grant, in whole or in part, until the grantee establishes compliance. The Attorney General shall provide notice regarding State grants and opportunities for private parties to present evidence to the Attorney General that a grantee is not in compliance with conditions established under this title.

SEC. 302. BEST PRACTICES DEVELOPMENT GRANTS.

(a) GRANT AUTHORIZATION.—The Attorney General may make grants to States, law enforcement agencies and other governmental units, Indian tribal governments, or other public and private entities, to develop and implement best practice devices and systems to ensure the racially neutral administration of justice.

(b) USES.—The funds provided pursuant to subsection (a) may be used to support—

(1) development and implementation of training to prevent racial profiling and to encourage more respectful interaction with the public;

(2) acquisition and use of technology to facilitate the collection of data regarding routine investigatory activities in order to determine if law enforcement agents are engaged in racial profiling;

(3) acquisition and use of technology to verify the accuracy of data collection, including in-car video cameras and portable computer systems;

(4) development and acquisition of early warning systems and other feedback systems that help identify officers or units of officers engaged in or at risk of racial profiling or other misconduct, including the technology to support such systems;

(5) establishment or improvement of systems and procedures for receiving, investigating, and responding meaningfully to complaints alleging racial, ethnic, or religious bias by law enforcement agents; and

(6) establishment or improvement of management systems to ensure that supervisors are held accountable for the conduct of their subordinates.

(c) EQUITABLE DISTRIBUTION.—The Attorney General shall ensure that grants under this section are awarded in a manner that reserves an equitable share of funding for small and rural law enforcement agencies.

(d) AUTHORIZATION OF APPROPRIATIONS.—The Attorney General shall make available such sums as are necessary to carry out this section from amounts appropriated for programs administered by the Attorney General.

TITLE IV—DEPARTMENT OF JUSTICE REPORTS ON RACIAL PROFILING IN THE UNITED STATES

SEC. 401. ATTORNEY GENERAL TO ISSUE REPORTS ON RACIAL PROFILING IN THE UNITED STATES.

(a) REPORTS.—

(1) IN GENERAL.—Not later than 2 years after the enactment of this Act, and each year thereafter, the Attorney General shall submit to Congress a report on racial profiling by Federal, State, and local law enforcement agencies in the United States.

(2) SCOPE.—The reports issued pursuant to paragraph (1) shall include—

(A) a summary of data collected pursuant to sections 201(b)(2) and 301(b)(2) and any other reliable source of information regarding racial profiling in the United States;

(B) the status of the adoption and implementation of policies and procedures by Federal law enforcement agencies pursuant to section 201;

(C) the status of the adoption and implementation of policies and procedures by State and local law enforcement agencies pursuant to sections 301 and 302; and

(D) a description of any other policies and procedures that the Attorney General believes would facilitate the elimination of racial profiling.

(b) DATA COLLECTION.—Not later than 6 months after the enactment of this Act, the Attorney General shall by regulation establish standards for the collection of data under sections 201(b)(2) and 301(b)(2), including standards for setting benchmarks against which collected data shall be measured. Such standards shall result in the collection of data, including data with respect to stops, searches, seizures, and arrests, that is sufficiently detailed to determine whether law enforcement agencies are engaged in racial profiling and to monitor the effectiveness of policies and procedures designed to eliminate racial profiling.

(c) PUBLIC ACCESS.—Data collected under sections 201(b)(2) and 301(b)(2) shall be available to the public.

SEC. 402. LIMITATION ON USE OF DATA.

Information released pursuant to section 401 shall not reveal the identity of any individual who is detained or any law enforcement officer involved in a detention.

TITLE V—DEFINITIONS AND MISCELLANEOUS PROVISIONS

SEC. 501. DEFINITIONS.

In this Act:

(1) COVERED PROGRAM.—The term ''covered program'' means any program or activity funded in whole or in part with funds made available under—

(A) the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs (part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.));

(B) the ''Cops on the Beat'' program under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.), but not including any program, project, or other activity specified in section 1701(d)(8) of that Act (42 U.S.C. 3796dd(d)(8)); and

(C) the Local Law Enforcement Block Grant program of the Department of Justice, as described in appropriations Acts.

(2) GOVERNMENTAL UNIT.—The term ''governmental unit'' means any department, agency, special purpose district, or other instrumentality of Federal, State, local, or Indian tribal government.

(3) LAW ENFORCEMENT AGENCY.—The term ''law enforcement agency'' means a Federal, State, local, or Indian tribal public agency engaged in the prevention, detection, or investigation of violations of criminal, immigration, or customs laws.

(4) LAW ENFORCEMENT AGENT.—The term ''law enforcement agent'' means any Federal, State, local, or Indian tribal official responsible for enforcing criminal, immigration, or customs laws, including police officers and other agents of Federal, State, and local law enforcement agencies.

(5) RACIAL PROFILING.—The term ''racial profiling'' means the practice of a law enforcement agent relying, to any degree, on race, ethnicity, religion, or national origin in selecting which individuals to subject to routine or spontaneous investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality and timeframe, that links persons of a particular race, ethnicity, religion, or national origin to an identified criminal incident or scheme.

(6) ROUTINE OR SPONTANEOUS INVESTIGATORY ACTIVITIES.—The term ''routine or spontaneous investigatory activities'' means the following activities by law enforcement agents: interviews; traffic stops; pedestrian stops; frisks and other types of body searches; consensual or nonconsensual searches of the persons or possessions (including vehicles) of motorists or pedestrians; inspections and interviews of entrants into the United States that are more extensive than those customarily carried out; immigration related workplace investigations; and such other types of law enforcement encounters compiled by the FBI and the Justice Department's Bureau of Justice Statistics.

SEC. 502. SEVERABILITY.

If any provision of this Act or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 503. SAVINGS CLAUSE.

Nothing in this Act shall be construed to limit legal or administrative remedies under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), section 210401 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14141), the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

Mr. CORZINE. Mr. President, I am very pleased to be joining my colleague Senator RUSSELL FEINGOLD and 12 others in reintroducing the End Racial Profiling Act.

I first want to recognize Senator RUSS FEINGOLD who has been a tremendous leader on this issue—during the last two sessions he held the first Senate hearings on racial profiling and he and his staff have worked tirelessly to elevate the importance of this issue as a matter of civil rights. I also want to commend Representative JOHN CONYERS, who is introducing companion legislation in the House of Representatives today. This is just on example of his indefatigable work to address inequities in our society. I also want to thank Reverend Reginald Jackson, Executive Director of the New Jersey Black Ministers' Council. He and the entire council have worked tirelessly for years to address the issue of racial profiling in New Jersey and have provided immeasurable assistance in crafting this legislation.

The practice of racial profiling is the antithesis of America's belief in fairness and equal protection under the law.

Stopping people on our highways, our streets, and at our borders because of the color of their skin tears at the very fabric of American society.

We are a Nation of laws and everyone should receive equal protection under the law. Our Constitution tolerates nothing less. We should demand nothing less.

There is no equal protection—there is no equal justice—if law enforcement agencies engage in policies and practices that are premised on a theory that the way to stop crime is to go after black and brown people on the hunch that they are more likely to be criminals.

Let me add, that not only is racial profiling wrong, it is simply not an effective law enforcement tool. There is no evidence that stopping people of color adds up to catching bad guys.

In fact, there is statistical evidence which points out that singling out black motorist or Hispanic motorists for stops and searches doesn't lead to a higher percentage of arrests. Minority motorists are simply no more likely to be breaking the law than white motorists.

But unfortunately racial profiling persists.

In 2001, minority motorists accounted for 73 percent of those searched on the New Jersey turnpike. But even the State Attorney General admitted that State troopers were twice—I repeat twice—as likely to find drugs or other illegal items when searching vehicles driven by whites.

Or take the example of the March 2000 Government Accounting Office report on the U.S. Customs Service.

The report found that black, Asian, and Hispanic women were four to nine times more likely than white women to be subjected to X rays after being frisked or patted down.

But on the basis of the X ray results, black women were less than half as likely as white women to be found carrying contraband.

This is law enforcement by hunch. No warrants. No probable cause.

And what is the hunch based on?

Race—plain and simple.

No where was this more evident, than in my own home State six years ago.

Four young men on the New Jersey Turnpike in a minivan—on their way to North Carolina, hoping to go to school on basketball scholarships.

Two State troopers pulled them off the road, the frightened driver lost control of the van, two dozens shots rang out. Three of the four kids were shot.

I spoke to these kids a while ago. One of the them told me he was asleep when the van was pulled over.

He told me, ''What woke me up was a bullet.''

Stories like this should wake us all up.

The practice of racial profiling broadly undermines the confidence of the American people in the institutions that we depend on to protect and defend us. Different rules for different people do not work.

Now—We know that many law enforcement agencies, including some from my home State, have acknowledged the danger of the practice and have taken steps to combat it. Indeed, I am proud to report that New Jersey has banned racial profiling. I commend them for their efforts.

That said, it is clear that this is a national problem that requires a national response applicable to all.

That is why Senator FEINGOLD and I and many others introduced the End Racial Profiling Act in 2001 to end this practice. The legislation provided a clear, enforceable ban on racial profiling and established a ''carrot and stick'' approach to encourage law enforcement to take steps to end the practice.

The legislation helped bring much-needed attention to this critical issue and was positively received by the civil rights community and many in law enforcement. Soon after introduction, Senator FEINGOLD held very informative hearings on the bill, at which I testified. We heard from several law enforcement leaders, including Oakland Police Chief Ronald Davis and Raymond Kelly, former Commissioner of the U.S. Customs Service and the New York City Police Department, on the pernicious impact of racial profiling on the trust between law enforcement and communities that is essential for successful police work. They testified that racial profiling is contrary to effective law enforcement and indeed takes energy and focus away from finding real criminals.

Then, in June 2003, the U.S. Department of Justice issued guidelines to prohibit racial profiling by federal law enforcement agencies, following up on President Bush's statement in his February 27, 2001, address to a Joint Session of Congress, that racial profiling is ''wrong and we will end it in America.''

In this guidance, the Department stated:

> Racial profiling in law enforcement is not merely wrong, but also ineffective. Race-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy, and materially impair our efforts to maintain a fair and just society.

These guidelines, as well as current efforts by State and local governments, to eradicate racial profiling and redress the harms it causes, while laudable, have been limited in scope and insufficient to address this national problem. Quite simply, federal legislation is still very much needed.

In most respects the legislation we are now introducing today is very similar to the bill that we introduced in 2001.

It clearly defines racial profiling and bans it.

No routine stops based solely on race, religion, national origin or ethnicity. Religion is a new addition to the category of protected classes, in acknowledgment of some of the new law enforcement tactics developed after the September 11, 2001, terrorist attacks. For example, in the wake of the attacks, Arab-American, Muslim-American, South Asian-American and Sikh-American communities were made the target of generalized suspicion and subjected to searches and seizures based upon their religion and national origin, which has created a fear and mistrust of law enforcement agencies and failed to produce tangible investigative benefit.

We will also require the collection of statistics to accurately measure whether progress is being made. By collecting this data, we will get a fair picture of law enforcement at work. And we will provide law enforcement with the information they need to detect problems early on.

It is not our intention to micromanage law enforcement. Our bill does not tell law enforcement agencies what data should be collected. Instead, we direct the Attorney General to develop the standards for data collection, and he presumably would work with law enforcement in developing those standards. Our legislation also specifically directs the Attorney General to also establish standards for setting benchmarks against which the collected data should be measured—so that no data is taken out of context, as some in law enforcement rightly fear.

If the numbers reveal a portrait of continued racial profiling, then the Justice Department or independent third parties can seek relief in Federal court ordering that remedies be put into effect to end racial profiling.

Our bill would also put in place procedures to receive and investigate complaints alleging racial profiling.

It will require procedures to discipline law enforcement officers engaging in racial profiling.

Finally, we will encourage a climate of cultural change in law enforcement with a carrot and a stick.

First, the carrot: We recognize that law enforcement shouldn't be expected to do this alone. So we are saying that if you do the job right—fairly and equitably—you can be eligible to receive a best practices development grant—to help pay for programs dealing with advanced training.

To help pay for the computer technology that is necessary to collect the data and statistics we have demanded.

We'll help pay for video cameras and recorders for your patrol cars.

We'll help pay for establishing or improving systems for handling complaints alleging ethnic or racial profiling.

We'll help to establish management systems to ensure that supervisors are held accountable for the conduct of subordinates.

But if you don't do the job right, there is the stick. If State and local

law enforcement agencies refuse to implement procedures to end and prevent profiling, they will be subject to a loss of Federal law enforcement funds.

Let me be clear, this bill is not about blaming law enforcement, and it is not designed to prevent law enforcement from doing its job. In fact, we believe that it will help our officers maintain the public trust they need to do their jobs.

If race is a part of a description of a specific suspect involved in an investigation, this law does not prevent that information from being distributed. But stopping people on a random or race-based hunch will be outlawed. Race has been a never-ending battle in this country. It began with our constitution, when the founding fathers argued over the rights of slaves. And then we fought a war over race. We fought a war that ripped our country apart.

Our country emerged whole, but discrimination continued for decades—discrimination sanctioned in part, unfortunately, by our own Supreme Court.

But our country's history has always been about change, about growth, about recognizing those things that weaken us from within.

A generation ago, we began to fight another war—a war founded in peaceful principles, but a war that killed our heroes, burned our cities, and shook us once again to the very core.

But we advanced, with important civil rights initiatives like the Voting Rights Act. Like the public accommodations law. We demanded and gained laws to fight discrimination in employment, in housing, in education. Today, it is time for us to take another step. Racial profiling has bred humiliation, anger, resentment and cynicism throughout this country. It has weakened respect for the law—by everyone, not just those offended.

Simply put—it is wrong and we must end it. Today we pledge to do just that—to define it, to ban it, and to enforce that ban.

By Mrs. FEINSTEIN (for herself, Mr. CAMPBELL, Mr. DOMENICI, and Mr. SMITH):

S. 2134. A bill to authorize the Secretary of Agriculture and the Secretary of the Interior to enter into an agreement or contract with Indian tribes meeting certain criteria to carry out projects to protect Indian forest land; to the Committee on Indian Affairs.

Mrs. FEINSTEIN. Mr. President, I am pleased to introduce a bipartisan bill today that gives Native American tribes a chance to protect their reservation lands from catastrophic fire. I want to thank my cosponsors, Chairman PETE DOMENICI of the Energy and Natural Resources Committee, and Chairman BEN NIGHTHORSE CAMPBELL of the Committee on Indian Affairs.

Like other Americans, many Native American tribes are concerned about the risk of catastrophic forest fires spreading from nearby Federal lands onto their own lands. Last summer, at least 18 reservations were invaded by fire from adjacent Federal public forest lands.

This bill attempts to give the tribes a chance to defend themselves and their ancestral lands by involving them in brush-clearing projects on Federal lands near their reservations.

This is not just a theoretical problem, as tribes from my State know all too well.

Last fall's devastating wildfires in southern California caused disproportionate suffering for Native Americans: Over 30,000 acres burned on 11 tribal reservations. Most tragically, 10 lives were lost on or near reservations.

I am determined to give the tribes of my State and from around the country the opportunity to prevent this tragedy from recurring: The bill sets up a process for the Forest Service or the Bureau of Land Management to enter into contracts with the tribes for fuel reduction purposes. If a tribe requests a brush-clearing project on federal lands near its reservation, the agencies are encouraged to respond within specific timeframes and suggest remedies for any agency concerns with the tribe's proposal. There remains free and open competition for timber contracts on Federal land. However, in determining the recipients of the contracts, the agencies are encouraged to consider such factors as tribal treaty rights or cultural and historical affiliation to the land involved.

Nearly 100 Native American tribes support this legislation, including most, if not all, the tribes in the State of California.

So I am pleased to introduce this bill today, and I hope my colleagues will support it.

By Mrs. MURRAY (for herself and Ms. CANTWELL):

S. 2135. A bill to amend title XVIII of the Social Security Act to improve the provision of items and services provided to Medicare beneficiaries residing in rural areas; to the Committee on Finance.

Mrs. MURRAY. Mr. President, I rise today to again join my colleague, Senator CANTWELL, in introducing the MediFair Act of 2004. My bill will restore fairness to the Medicare program and provide equity for health care providers participating in Medicare. Most importantly, it will open doors of care to more seniors and the disabled in my State.

Today, unfair Medicare reimbursement rates are causing doctors to limit their care for Medicare beneficiaries. Throughout my State, seniors and the disabled are having a hard time finding a doctor who will accept new Medicare patients.

Unfortunately, the recently-passed Medicare Prescription Drug, Improvement and Modernization Act of 2003 further compromises health care in Washington State because it reduces Washington State's per beneficiary payments from 42nd to 45th nationwide. This reduction places health care providers in my State at an economic disadvantage and further limits access to health care in Washington State.

My bill will reduce the regional inequities that have resulted in vastly different levels of care and access to care by ensuring that every State receives at least the national average of per-patient spending. This measure will encourage more doctors to accept Medicare patients and will also guarantee that seniors are not penalized when they choose to retire in the State of Washington.

In addition to ensuring that no State receives less than the national average, my legislation will encourage healthy outcomes and efficient use of Medicare payments. The current Medicare system punishes health care providers who practice efficient healthcare and healthy outcomes. Physicians and hospitals in my State are proud of the pioneering role they have played in providing high quality, cost effective medicine. Unfortunately, they have been rewarded for their exceptional service by being paid a fraction of their actual costs.

On the other hand, States that are inefficient and that over-utilize the system are rewarded with higher states of reimbursement. As we grapple with an ever-increasing budget deficit. We need to make sure that every dollar spent on Medicare is used as effectively as possible. I ask each and every one of my colleagues to join me in restoring fairness to the Medicare program and increasing access to health care for Medicare beneficiaries by supporting the MediFair Act.

I want to acknowledge the lead sponsor of the MediFair bill in the House, Representative ADAM SMITH, as well as the other cosponsors, Representative BAIRD, Representative DICKS, Representative INSLEE, Representative LARSEN, and Representative MCDERMOTT.

I have been working on addressing the issue of inequitable Medicare reimbursement policies for a number of years, and I am pleased that we have made inroads in addressing this issue. I especially appreciate the efforts by the Department of Health and Human Services (HHS) to reward healthy outcomes, and I look forward to working with HHS in the future to meet these goals.

Medicare should reward States like Washington that have a proven tradition of efficient and effective health care. Passing the MediFair Act will go a long way to improving health care access for seniors in States like Washington and ensuring that Federal health care dollars produce the best results possible for our patients.

By Mr. ROBERTS:

S. 2136. An original bill to extend the final report date and termination date

of the National Commission on Terrorist Attacks Upon the United States, to provide additional funding for the Commission, and for other purposes; from the Select Committee on Intelligence; placed on the calendar.

Mr. ROBERTS. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2136

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES.

(a) FINAL REPORT DATE.—Subsection (b) of section 610 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 6 U.S.C. 101 note; 116 Stat. 2413) is amended by striking ''18 months'' and inserting ''20 months''.

(b) TERMINATION DATE.—Subsection (c) of that section is amended—

(1) in paragraph (1), by striking ''60 days'' and inserting ''30 days''; and

(2) in paragraph (2), by striking ''60-day period'' and inserting ''30-day period''.

(c) ADDITIONAL FUNDING.—Section 611 of that Act (6 U.S.C. 101 note; 116 Stat. 2413) is amended—

(1) by redesignating subsection (b) as subsection (c);

(2) by inserting after subsection (a) the following new subsection (b):

''(b) ADDITIONAL FUNDING.—In addition to the amounts made available to the Commission under subsection (a) and under chapter 2 of title II of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11; 117 Stat. 591), of the amounts appropriated for the programs and activities of the Federal Government for fiscal year 2004 that remain available for obligation, not more than $1,000,000 shall be available for transfer to the Commission for purposes of the activities of the Commission under this title.''; and

(3) in subsection (c), as so redesignated, by striking ''subsection (a)'' and inserting ''this section''.

By Mrs. CLINTON:

S. 2139. A bill to provide coverage under the Energy Employees Occupational Illness Compensation Program for individuals employed at atomic weapons employer facilities during periods of residual contamination; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CLINTON. Mr. President, I rise to introduce an important piece of legislation to assist our atomic weapons workers. The legislation addresses a major flaw in the Energy Employees Occupational Illness Compensation Program by expanding eligibility for benefits.

Under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), workers are eligible for a payment of $150,000 and medical coverage for expenses associated with the treatment of diseases contracted due to exposure to radiation at atomic weapons plants. However, under EEOICPA, workers who became sick from working in contaminated atomic weapons plants after weapons production ceased are not eligible for benefits.

In 2003, the National Institute of Occupational Safety and Health released a Congressionally-mandated report, entitled '' Report on Residual Radioactive and Beryllium Contamination in Atomic Weapons Employer and Beryllium Vendor Facilities.'' The report concluded that ''significant'' residual radioactive contamination existed in many of these plants for years and decades after weapons production ceased, posing a risk of radiation-related cancers or disease to unknowing workers.

In fact, the report found that: 97, 44 percent, of covered facilities have potential for significant residual radioactive contamination outside of the periods in which atomic weapons-related production occurred; 88, 40 percent, of such facilities have little potential for significant residual radioactive contamination outside of the periods in which atomic weapons-related production occurred; and 34, 16 percent, of such facilities have insufficient information to make a determination.

In my State of New York, 16 of 31 covered facilities were found to have the potential for significant contamination, 10 had little potential for significant contamination, and 5 of the 31 had insufficient information.

In other words, more than half of the New York Atomic Weapons Employer Facilities in New York were contaminated after weapons production ceased. As a result, workers were exposed to radiation, and deserve to be eligible for benefits under EEOICPA.

That is why I am introducing the Residual Radioactive Contamination Compensation Act (RRCCA) today. The bill would extend eligibility for benefits under EEOICPA to workers who were employed at facilities where NIOSH has found potential for significant radioactive contamination.

In addition to expanding eligibility to workers employed at facilities where NIOSH has found potential for significant radioactive contamination, the Residual Radioactive Contamination Compensation Act would require NIOSH to update the list of such facilities annually. This addresses the fact that there was insufficient information for NIOSH to characterize a number of sites in its 2003 report.

I would also like to take the opportunity to draw attention to another important issue—the special cohort rule. Under EEOICPA, the Department of Health and Human Services was to establish procedures so that workers can petition the government to be included in a ''special cohort''—meaning that they would be eligible for the program—if their radiation doses are difficult to estimate but it is likely that they have radiation-caused illnesses. Despite this important mandate, the letter notes that ''. . . nearly 39 months after EEOICPA was signed into law, the promise of ''timely, uniform and adequate compensation'' has not been met.

As a result, I sent a letter to Secretary Thompson, along with Senator VOINOVICH and 16 of my other Senate colleagues—Senators HARKIN, KENNEDY, SCHUMER, MURRAY, DEWINE, ALEXANDER, CRAIG, BOND, and TALENT, REID, GRASSLEY, HOLLINGS, CANTWELL, DOMENICI, CAMPBELL, and BINGAMAN. The letter requested that the Secretary immediately put out the special cohort rule. I ask unanimous consent that a copy of that letter be printed in the RECORD.

More than two weeks after the letter was sent, I have still not received a response. This is unacceptable. The Administration seems to have no sense of urgency in addressing this issue. But each day that passes only delays long overdue justice for the Cold War heroes who worked in our weapons facilities.

I ask unanimous consent that the text of the Residual Radioactive Contamination Compensation Act be printed in the RECORD.

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

FEBRUARY 11, 2004.

Hon. TOMMY G. THOMPSON,
Secretary, U.S. Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC.

DEAR MR. SECRETARY: On October 30, 2000, the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) was signed into law (PL 106–386) as part of the FY 01 Defense Authorization Act. Enactment of EEOICPA was recognition by Congress and the President that the federal government needed to act quickly to remedy long-standing injustices against atomic weapons program workers. The findings of the Act make the need for the Program abundantly clear, and include the acknowledgment that:

''Since the inspection of the nuclear weapons program and for several decades afterwards, a large number of nuclear weapons workers at sites of the Department of Energy and at sites of vendors who supplied the Cold War effort were put at risk without their knowledge and consent for reasons that, documents reveal, were driven by fears of adverse publicity, liability, and employee demands for hazardous duty pay.''

The Act further states that:

''the purpose of the compensation program is to provide for timely, uniform, and adequate compensation of covered employees and, where applicable, survivors of such employees, suffering from illnesses incurred by such employees in the performance of duty for the Department of Energy and certain of its contractors and subcontractors.''

Yet nearly 39 months after EEOICPA was signed into law, the promise of ''timely, uniform and adequate compensation'' has not been met. We are very concerned about the delay in finalizing the ''special exposure cohort'' petition procedures by the Department of Health and Human Services (HHS) pursuant to 42 USC 7384(q).

In this regard, EEOICPA specifically provides:

''. . . members of a class of employees at a Department of Energy facility, or at an atomic weapons employer facility, may be treated as members of the Special Exposure Cohort for purposes of the compensation program if the President, upon recommendation of the Advisory Board on Radiation and Worker Health, determines that—

(1) it is not feasible to estimate with sufficient accuracy the radiation dose that the class received; and

(2) there is reasonable likelihood that such radiation dose may have endangered the health of members of the class.''

The law further states that, ''the President shall consider such petitions pursuant to procedures established by the President.''

Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort were first proposed through a rulemaking, and then subsequently withdrawn in 2002 after uniform criticism. Revised rules were proposed in March of 2003, but to date they have not been finalized. Workers have and continue to be blocked from filing petitions to become members of the Special Exposure Cohort because HHS has failed to meet its statutory responsibility to issue these regulations.

Further delay is denying long-overdue justice for those who were intended to be covered by the special exposure cohort provisions of the Act. After over three years, HHS has had ample time to study this matter, and further delay is simply inexcusable.

Therefore, we urge you to finalize the special exposure cohort rules and publish them in the Federal Register immediately. Our atomic weapons program workers, who are true Cold War heroes, helped protect our nation and deserve nothing less. We thank you for your prompt attention to this matter.

Sincerely,

MEMBERS OF CONGRESS.

S. 2139

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Residual Radioactive Contamination Compensation Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Beginning in the early 1940s, the Department of Energy and its predecessors, the Atomic Energy Commission and the Manhattan Engineering District, relied upon hundreds of private-sector factories and laboratories to develop, test, and produce atomic weapons for use by the military, and these facilities became contaminated with radioactive materials during the process of producing material used for atomic weapons production.

(2) The Energy Employees Occupational Illness Compensation Program Act of 2000 (in this section referred to as EEOICPA) provides health care and lump-sum benefits for radiation-related cancers and other illnesses to certain covered workers made sick while they toiled in the nation's nuclear weapons factories, including vendor facilities. EEOICPA defines these private-sector vendor facilities as atomic weapons employer facilities, and employees working in such facilities while their employers were under contract to process nuclear weapons materials are defined as atomic weapons employees.

(3) Many of the atomic weapons employer facilities were not properly decontaminated after processing radioactive materials such as thorium, uranium, and radium and retained significant levels of contamination. Workers who were hired and employed in such atomic weapons employer facilities after the date that contracts were ended for production were potentially exposed to significant amounts of radiation. Congress was not aware of the presence of residual radioactive contamination in these facilities when it enacted EEOICPA, thus inadvertently denying coverage under the law to those who were unwittingly exposed to radiation left over from nuclear weapons activities.

(4) In December 2001, the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107) was enacted, which required in section 3151(b) that the National Institute for Occupational Safety and Health study and issue a final report to Congress by December 2002 describing which of the atomic weapons employer facilities had significant residual radioactive contamination remaining in them after processing materials for use in atomic weapons and during what time periods such radioactive contamination remained.

(5) In October 2003, the Institute issued a report, titled Report on Residual Radioactive and Beryllium Contamination in Atomic Weapons Employer and Beryllium Vendor Facilities. The report found that, out of 219 atomic weapons employer facilities—

(A) 97 (44 percent) of such facilities have potential for significant residual radioactive contamination outside of the periods in which atomic weapons-related production occurred;

(B) 88 (40 percent) of such facilities have little potential for significant residual radioactive contamination outside of the periods in which atomic weapons-related production occurred; and

(C) 34 (16 percent) of such facilities have insufficient information to make a determination.

(6) Congress is now aware that workers were employed in a substantial number of atomic weapons employer facilities years after the Manhattan Project ended. These workers were potentially harmed by legacy residual radioactive contamination that permeated the walls, the floors, and the air of their worksites well after the Atomic Energy Commission and the Department of Energy terminated contracts for production activities. This exposure to residual radioactive contamination took place without the knowledge or consent of these workers.

(7) Congress therefore declares that, based on the scientific assessment by the Institute, those workers hired and employed in such facilities during the period after Cold War production stopped but during which the Institute found there was significant residual radioactive contamination should be defined as atomic weapons employees under EEOICPA, should be eligible to apply for compensation under subtitle B of EEOICPA, and should have their claims evaluated on the same basis as those atomic weapons employees who were employed during the period when processing of radioactive materials was underway as part of the atomic weapons program.

SEC. 3. COVERAGE UNDER ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM OF INDIVIDUALS EMPLOYED AT ATOMIC WEAPONS EMPLOYER FACILITIES DURING PERIODS OF RESIDUAL CONTAMINATION

Paragraph (3) of section 3621 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 73841) is amended to read as follows:

(3) The term atomic weapons employee means any of the following:

(A) An individual employed at an atomic weapons employer facility during a period when the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling.

(B) An individual employed—

(i) at an atomic weapons employer facility with respect to which the National Institute for Occupational Safety and Health, in its report dated October 2003 and titled Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities, or any update to that report, found that there is a potential (not including a case in which the Institute found that there is little potential) for significant residual contamination outside of the period in which weapons-related production occurred; and

(ii) during a period, as specified in such report or any update to such report, of significant residual contamination at that facility.

SEC. 4. UPDATE TO REPORT

In each of 2005, 2006, and 2007, the Director of the National Institute for Occupational Safety and Health shall submit to Congress, not later than December 31 of that year, an update to the report required by section 3151(b) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 42 U.S.C. 7384 note). Each such update shall—

(1) for each facility for which such report, or any update to such report, found that insufficient information was available to determine whether significant residual contamination was present, determine whether significant residual contamination was present;

(2) for each facility for which such report, or any update to such report, found that significant residual contamination remained present as of the date of the report, determine the date on which such contamination ceased to be present;

(3) for each facility for which such report, or any update to such report, found that significant residual contamination was present but for which the Director has been unable to determine the extent to which such contamination is attributable to beryllium or atomic weapons-related activities, identify the specific dates of coverage attributable to such activities and, in so identifying, presume that such contamination is attributable to such activities until there is evidence of decontamination of residual contamination identified with beryllium or atomic weapons-related activities; and

(4) if new information that pertains to the report has been made available to the Director since that report was submitted, identify and describe such information.

SEC. 5. PUBLICATION IN FEDERAL REGISTER

The Director shall ensure that the report referred to in section 4, and each update required by section 4, are published in the Federal Register not later than 15 days after being released.

By Ms. CANTWELL (for herself and Mrs. MURRAY):

S. 2140. A bill to expand the boundary of the Mount Rainier National Park; to the Committee on Energy and Natural Resources.

Ms. CANTWELL. Mr. President, I rise today to introduce—along with my colleague Senator MURRAY—the Expanding and Making Mount Rainier National Park More Accessible Act.

This bill authorizes a boundary expansion of Mount Rainier National Park to allow the National Park Service to acquire 800 acres of land from private landowners, on a willing seller basis. These lands are located near the Carbon River and, if acquired, they would be included in Mount Rainier National Park, one of America's greatest national parks.

If enacted, the proposed expansion will improve access for visitors, allow for a new campsite to be built, and save taxpayers money that will no longer be needed to repair a frequently washed out road.

While this legislation will make Mount Rainier National Park safer and

more accessible for families and outdoor enthusiasts, it is important to note that this expansion will also promote the local economy. Outdoor recreation is more than an activity in the Northwest, it is also a key part of our economy. By improving access to the park, my bill will make it easier for visitors to enjoy the park and to purchase goods and services in nearby communities.

This expansion will ensure continued access to the park because the northwest entrance road is continually washed out by seasonal fluctuations of the glacier-fed Carbon River. The river, which now flows at a higher elevation than the roadbed, has blocked visitors from accessing the National Park Service's Ipsut Creek campground and nearby hiking trails inside the park. The repairs to this road have proven both costly and short-lived and have strained the National Park Service's already limited maintenance budget. In the long run, the expansion will save taxpayers money because the road will not have to be maintained to current standards. If this bill is enacted, the National Park Service plans to provide a shuttle service to take visitors to the Carbon Glacier trailhead. That way, visitors will still be able to hike to the Carbon Glacier during day trips.

If this bill is enacted, local conservation groups and the National Park Service will work to reach agreements with landowners in the proposed expansion area. I am pleased that the current landowners actively participated in the process and enthusiastically support this legislation. In fact, they are eager to sell their land to the National Park Service so that these lands will be permanently protected for the enjoyment of future generations.

I look forward to working with my colleagues in the Senate as well as other members of the Washington state congressional delegation to ensure swift passage of this important legislation.

SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 93—AUTHORIZING THE USE OF THE ROTUNDA OF THE CAPITOL BY THE JOINT CONGRESSIONAL COMMITTEE ON INAUGURAL CEREMONIES

Mr. LOTT (for himself and Mr. DODD) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 93

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. USE OF THE ROTUNDA OF THE CAPITOL BY THE JOINT CONGRESSIONAL COMMITTEE ON INAUGURAL CEREMONIES.

The rotunda of the United States Capitol is authorized to be used on January 20, 2005, by the Joint Congressional Committee on Inaugural Ceremonies in connection with the proceedings and ceremonies conducted for the inauguration of the President-elect and the Vice President-elect of the United States.

SENATE CONCURRENT RESOLUTION 94—ESTABLISHING THE JOINT CONGRESSIONAL COMMITTEE ON INAUGURAL CEREMONIES

Mr. LOTT (for himself and Mr. DODD) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 94

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. ESTABLISHMENT OF JOINT COMMITTEE.

There is established a Joint Congressional Committee on Inaugural Ceremonies (in this resolution referred to as the ''joint committee''), consisting of 3 Senators and 3 Members of the House of Representatives appointed by the President of the Senate and the Speaker of the House of Representatives, respectively. The joint committee is authorized to make the necessary arrangements for the inauguration of the President-elect and the Vice President-elect of the United States.

SEC. 2. SUPPORT OF THE JOINT COMMITTEE.

The joint committee—

(1) is authorized to utilize appropriate equipment and the services of appropriate personnel of departments and agencies of the Federal Government, under arrangements between the joint committee and the heads of the departments and agencies, in connection with the inaugural proceedings and ceremonies; and

(2) may accept gifts and donations of goods and services to carry out its responsibilities.

AMENDMENTS SUBMITTED & PROPOSED

SA 2619. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others.

SA 2620. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 1805, supra.

SA 2621. Mr. DASCHLE (for himself, Mr. CRAIG, and Mr. BAUCUS) proposed an amendment to the bill S. 1805, supra.

SA 2622. Mr. KOHL proposed an amendment to amendment SA 2620 submitted by Mrs. BOXER to the bill S. 1805, supra.

SA 2623. Mr. HATCH (for Mr. CAMPBELL (for himself, Mr. LEAHY, Mr. HATCH, Mr. DEWINE, Mr. SESSIONS, Mr. CRAIG, Mr. REID, and Mrs. BOXER)) proposed an amendment to the bill S. 1805, supra.

SA 2624. Mr. WARNER submitted an amendment intended to be proposed by him to the bill S. 1805, supra; which was ordered to lie on the table.

SA 2625. Mr. CRAIG (for Mr. FRIST (for himself and Mr. CRAIG)) proposed an amendment to the bill S. 1805, supra.

SA 2626. Mr. FRIST (for himself and Mr. MCCONNELL) proposed an amendment to the bill S. 1805, supra.

SA 2627. Ms. MIKULSKI (for herself, Mr. SARBANES, Mr. LAUTENBERG, Mr. CORZINE, and Mrs. CLINTON) proposed an amendment to the bill S. 1805, supra.

SA 2628. Mr. CRAIG (for Mr. FRIST (for himself and Mr. CRAIG)) proposed an amendment to the bill S. 1805, supra.

SA 2629. Mr. CORZINE (for himself, Mr. LAUTENBERG, Ms. MIKULSKI, Mr. KENNEDY, Mrs. CLINTON, and Mrs. BOXER) submitted an amendment intended to be proposed by him to the bill S. 1805, supra.

SA 2630. Mr. CRAIG (for Mr. FRIST (for himself and Mr. CRAIG)) proposed an amendment to the bill S. 1805, supra.

TEXT OF AMENDMENTS

SA 2619. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

On page 11, after line 19, add the following:

SEC. 5. ARMOR PIERCING AMMUNITION.

(a) EXPANSION OF DEFINITION OF ARMOR PIERCING AMMUNITION.—Section 921(a)(17)(B) of title 18, United States Code, is amended—

(1) in clause (i), by striking ''or'' at the end;

(2) in clause (ii), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(iii) a projectile that may be used in a handgun and that the Attorney General determines, pursuant to section 926(d), to be capable of penetrating body armor; or

''(iv) a projectile for a centerfire rifle, designed or marketed as having armor piercing capability, that the Attorney General determines, pursuant to section 926(d), to be more likely to penetrate body armor than standard ammunition of the same caliber.''.

(b) DETERMINATION OF THE CAPABILITY OF PROJECTILES TO PENETRATE BODY ARMOR.—Section 926 of title 18, United States Code, is amended by adding at the end the following:

''(d)(1) Not later than 1 year after the date of enactment of this subsection, the Attorney General shall promulgate standards for the uniform testing of projectiles against Body Armor Exemplar.

''(2) The standards promulgated pursuant to paragraph (1) shall take into account, among other factors, variations in performance that are related to the length of the barrel of the handgun or centerfire rifle from which the projectile is fired and the amount and kind of powder used to propel the projectile.

''(3) As used in paragraph (1), the term 'Body Armor Exemplar' means body armor that the Attorney General determines meets minimum standards for the protection of law enforcement officers.''.

SA 2620. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

On page 11, after line 19, add the following:

SEC. 5. REQUIREMENT OF CHILD HANDGUN SAFETY DEVICES.

(a) SHORT TITLE.—This section may be cited as the ''Child Safety Device Act of 2004''.

(b) DEFINITIONS.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

''(36) The term 'locking device' means a device or locking mechanism that is approved by a licensed firearms manufacturer for use

on the handgun with which the device or locking mechanism is sold, delivered, or transferred and that—

''(A) if installed on a firearm and secured by means of a key or a mechanically, electronically, or electromechanically operated combination lock, is designed to prevent the firearm from being discharged without first deactivating or removing the device by means of a key or mechanically, electronically, or electromechanically operated combination lock;

''(B) if incorporated into the design of a firearm, is designed to prevent discharge of the firearm by any person who does not have access to the key or other device designed to unlock the mechanism and thereby allow discharge of the firearm; or

''(C) is a safe, gun safe, gun case, lock box, or other device that is designed to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.''.

(c) UNLAWFUL ACTS.—

(1) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

''(z) LOCKING DEVICES.—

''(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than a licensed importer, licensed manufacturer, or licensed dealer, unless the transferee is provided with a locking device for that handgun.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

''(A) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a firearm;

''(B) transfer to, or possession by, a law enforcement officer employed by an entity referred to in subparagraph (A) of a firearm for law enforcement purposes (whether on or off duty); or

''(C) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under State law of a firearm for purposes of law enforcement (whether on or off duty).''.

(2) EFFECTIVE DATE.—Section 922(z) of title 18, United States Code, as added by this subsection, shall take effect on the date which is 180 days after the date of enactment of this Act.

(d) CIVIL PENALTIES.—Section 924 of title 18, United States Code, is amended—

(1) in subsection (a)(1), by striking ''or (f)'' and inserting ''(f), or (p)''; and

(2) by adding at the end the following:

''(p) PENALTIES RELATING TO LOCKING DEVICES.—

''(1) IN GENERAL.—

''(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensee, the Attorney General shall, after notice and opportunity for hearing—

''(i) suspend or revoke any license issued to the licensee under this chapter;

''(ii) subject the licensee to a civil penalty of not more than $15,000; or

''(iii) impose the penalties described in clauses (i) and (ii).

''(B) REVIEW.—An action by the Attorney General under this paragraph may be reviewed only as provided under section 923(f).

''(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) does not preclude any administrative remedy that is otherwise available to the Attorney General.''.

(e) AMENDMENT TO CONSUMER PRODUCT SAFETY ACT.—The Consumer Product Safety Act (15 U.S.C. 2051 et seq.), is amended by adding at the end the following:

''SEC. 39. CHILD HANDGUN SAFETY DEVICES.

''(a) ESTABLISHMENT OF STANDARD.—

''(1) RULEMAKING REQUIRED.—

''(A) INITIATION OF RULEMAKING.—Notwithstanding section 3(a)(1)(E), the Commission shall initiate a rulemaking proceeding under section 553 of title 5, United States Code, not later than 90 days after the date of enactment of the Child Safety Device Act of 2004 to establish a consumer product safety standard for locking devices. The Commission may extend this 90-day period for good cause.

''(B) FINAL RULE.—Notwithstanding any other provision of law, the Commission shall promulgate a final consumer product safety standard under this paragraph not later than 12 months after the date on which the Commission initiated the rulemaking proceeding under subparagraph (A). The Commission may extend this 12-month period for good cause.

''(C) EFFECTIVE DATE.—The consumer product safety standard promulgated under this paragraph shall take effect on the date which is 6 months after the date on which the final standard is promulgated.

''(D) STANDARD REQUIREMENTS.—The standard promulgated under this paragraph shall require locking devices that—

''(i) are sufficiently difficult for children to de-activate or remove; and

''(ii) prevent the discharge of the handgun unless the locking device has been de-activated or removed.

''(2) INAPPLICABLE PROVISIONS.—

''(A) PROVISIONS OF THIS ACT.—Sections 7, 9, and 30(d) shall not apply to the rulemaking proceeding described under paragraph (1). Section 11 shall not apply to any consumer product safety standard promulgated under paragraph (1).

''(B) CHAPTER 5 OF TITLE 5.—Chapter 5 of title 5, United States Code, except for section 553 of that title, shall not apply to this section.

''(C) CHAPTER 6 OF TITLE 5.—Chapter 6 of title 5, United States Code, shall not apply to this section.

''(b) ENFORCEMENT.—Notwithstanding subsection (a)(2)(A), the consumer product safety standard promulgated by the Commission pursuant to subsection (a) shall be enforced under this Act as if it were a consumer product safety standard described under section 7(a).

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

''(1) CHILD.—The term 'child' means an individual who has not attained the age of 13 years.

''(2) LOCKING DEVICE.—The term 'locking device' has the meaning given that term in clauses (i) and (iii) of section 921(a)(36) of title 18, United States Code.''.

(f) CONFORMING AMENDMENT.—Section 1 of the Consumer Product Safety Act is amended by adding at the end of the table of contents the following:

''Sec. 39. Child handgun safety devices.''.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Consumer Product Safety Commission $2,000,000 for each of the fiscal years 2005 through 2007 to carry out the provisions of section 39 of the Consumer Product Safety Act, as added by subsection (e).

(2) AVAILABILITY OF FUNDS.—Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SA 2621. Mr. DASCHLE (for himself, Mr. CRAIG, and Mr. BAUCUS) proposed an amendment to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

On page 7, line 19, strike ''including'' and all that follows through page 8, line 19, and insert ''including, but not limited to—

''(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record which such person is required to keep pursuant to State or Federal law, or aided, abetted or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

''(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing or having reasonable cause to believe that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code;''.

On page 9, lines 1 and 2, strike ''or in a manner that is reasonably foreseeable'' and insert '', or when used in a manner that is reasonably foreseeable, except that such reasonably foreseeable use shall not include any criminal or unlawful misuse of a qualified product, other than possessory offenses.''.

On page 9, strike lines 12 through 21, and insert the following:

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (v) of subparagraph (A) are intended to be construed to not be in conflict, and no provision of this Act shall be construed to create a Federal private cause of action or remedy.

On page 10, strike lines 13 through 18, and insert the following:

(C) a person engaged in the business of selling ammunition (as defined under section 921(a)(17)(A) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level, who is in compliance with all applicable Federal, State, and local laws.

On page 11, line 7, strike the semicolon and insert ''; and''.

On page 11, strike lines 8 through 15, and insert the following:

(B) 2 or more members of which are manufacturers or sellers of a qualified product, and that is involved in promoting the business interests of its members, including organizing, advising, or representing its members with respect to their business, legislative, or legal activities in relation to the manufacture, importation, or sale of a qualified product.

On page 11, strike lines 16 through 19, and insert the following:

(9) UNLAWFUL MISUSE.—The term ''unlawful misuse'' means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

SA 2622. Mr. KOHL proposed an amendment to amendment SA 2620 submitted by Mrs. BOXER to the bill S.

1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

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

TITLE II—CHILD SAFETY LOCKS

SEC. 201. SHORT TITLE.

This title may be cited as the ''Child Safety Lock Act of 2004''.

SEC. 202. PURPOSES.

The purposes of this title are—

(1) to promote the safe storage and use of handguns by consumers;

(2) to prevent unauthorized persons from gaining access to or use of a handgun, including children who may not be in possession of a handgun; and

(3) to avoid hindering industry from supplying firearms to law abiding citizens for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

SEC. 203. FIREARMS SAFETY.

(a) UNLAWFUL ACTS.—

(1) MANDATORY TRANSFER OF SECURE GUN STORAGE OR SAFETY DEVICE.—Section 922 of title 18, United States Code, is amended by inserting at the end the following:

''(z) SECURE GUN STORAGE OR SAFETY DEVICE.—

''(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

''(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

''(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

''(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

''(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

''(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

''(3) LIABILITY FOR USE.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

''(B) PROSPECTIVE ACTIONS.—A qualified civil liability action may not be brought in any Federal or State court.

''(C) DEFINED TERM.—As used in this paragraph, the term 'qualified civil liability action'—

''(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

''(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

''(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

''(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.''.

(b) CIVIL PENALTIES.—Section 924 of title 18, United States Code, is amended—

(1) in subsection (a)(1), by striking ''or (f)'' and inserting ''(f), or (p)''; and

(2) by adding at the end the following:

''(p) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

''(1) IN GENERAL.—

''(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

''(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

''(ii) subject the licensee to a civil penalty in an amount equal to not more than $2,500.

''(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

''(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.''.

(c) LIABILITY; EVIDENCE.—

(1) LIABILITY.—Nothing in this title shall be construed to—

(A) create a cause of action against any Federal firearms licensee or any other person for any civil liability; or

(B) establish any standard of care.

(2) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this title shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action relating to section 922(z) of title 18, United States Code, as added by this section.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to bar a governmental action to impose a penalty under section 924(p) of title 18, United States Code, for a failure to comply with section 922(z) of that title.

SEC. 204. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 180 days after the date of enactment of this Act.

SA 2623. Mr. HATCH (for Mr. CAMPBELL (for himself, Mr. LEAHY, Mr. HATCH, Mr. DEWINE, Mr. SESSIONS, Mr. CRAIG, Mr. REID, and Mrs. BOXER)) proposed an amendment to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

On page 11, after line 19, add the following:

SEC. 5. LAW ENFORCEMENT OFFICERS SAFETY ACT.

(a) SHORT TITLE.—This section may be cited as the ''Steve Young Law Enforcement Officers Safety Act''.

(b) EXEMPTION OF QUALIFIED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.—

(1) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926A the following:

''§ 926B. Carrying of concealed firearms by qualified law enforcement officers

''(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

''(b) This section shall not be construed to supersede or limit the laws of any State that—

''(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

''(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

''(c) As used in this section, the term 'qualified law enforcement officer' means an employee of a governmental agency who—

''(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;

''(2) is authorized by the agency to carry a firearm;

''(3) is not the subject of any disciplinary action by the agency;

''(4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm; and

''(5) is not prohibited by Federal law from receiving a firearm.

''(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is, or was, employed as a law enforcement officer.

''(e) DEFINED TERM.—As used in this section, the term 'firearm' does not include—

''(1) any machinegun (as defined in section 5845 of title 26);

''(2) any firearm silencer (as defined in section 921); and

''(3) any destructive device (as defined in section 921).''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 44 of title 18, United States Code, is amended by inserting after the item relating to section 926A the following:

''926B. Carrying of concealed firearms by qualified law enforcement officers.''.

(c) EXEMPTION OF QUALIFIED RETIRED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.—

(1) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926B, as added by subsection (b), the following:

''§ 926C. Carrying of concealed firearms by qualified retired law enforcement officers

''(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

''(b) This section shall not be construed to supersede or limit the laws of any State that—

''(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

''(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

''(c) As used in this section, the term 'qualified retired law enforcement officer' means an individual who—

''(1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

''(2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

''(3)(A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or

''(B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

''(4) has a nonforfeitable right to benefits under the retirement plan of the agency;

''(5) during the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms; and

''(6) is not prohibited by Federal law from receiving a firearm.

''(d) The identification required by this subsection is photographic identification issued by the agency for which the individual was employed as a law enforcement officer.

''(e) DEFINED TERM.—As used in this section, the term 'firearm' does not include—

''(1) any machinegun (as defined in section 5845 of title 26);

''(2) any firearm silencer (as defined in section 921); and

''(3) a destructive device (as defined in section 921).''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 44 of title 18, United States Code, is amended by inserting after the item relating to section 926B the following:

''926C. Carrying of concealed firearms by qualified retired law enforcement officers.''.

SA 2624. Mr. WARNER submitted an amendment intended to be proposed by him to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; which was ordered to lie on the table as follows:

At the end of the bill, add the following:

TITLE ___—MEDICAL LIABILITY REFORM

SEC. ___01. SHORT TITLE.

This title may be cited as the ''Protecting the Practice of Medicine Act''.

SEC. ___02. DEFINITIONS.

In this title:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term ''collateral source benefits'' means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term ''contingent fee'' includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term ''economic damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE LAWSUIT.—The term ''health care lawsuit'' means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider, regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(8) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(9) HEALTH CARE LIABILITY CLAIM.—The term ''health care liability claim'' means a demand by any person, whether or not pursuant to ADR, against a health care provider, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(10) HEALTH CARE PROVIDER.—The term ''health care provider'' means any person or entity required by State or Federal laws or regulations to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(11) HEALTH CARE GOODS OR SERVICES.—The term ''health care goods or services'' means any goods or services provided by a health care provider or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(12) MALICIOUS INTENT TO INJURE.—The term ''malicious intent to injure'' means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(13) NONECONOMIC DAMAGES.—The term ''noneconomic damages'' means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(14) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider. Punitive damages are neither economic nor noneconomic damages.

(15) RECOVERY.—The term ''recovery'' means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(16) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. ___03. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

(a) IN GENERAL.—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit

shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) GENERAL EXCEPTION.—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) MINORS.—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

SEC. ___04. COMPENSATING PATIENT INJURY.

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, nothing in this title shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) ADDITIONAL NONECONOMIC DAMAGES.—In any health care lawsuit, the amount of noneconomic damages recovered, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of $250,000 shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed $250,000, the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

SEC. ___05. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—

(1) IN GENERAL.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) CONTINGENCY FEES.—

(A) IN GENERAL.—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) LIMITATION.—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first $50,000 recovered by the claimant(s).

(ii) 33⅓ percent of the next $50,000 recovered by the claimant(s).

(iii) 25 percent of the next $500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(b) APPLICABILITY.—

(1) IN GENERAL.—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) MINORS.—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) EXPERT WITNESSES.—

(1) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) LIMITATION.—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

SEC. ___06. ADDITIONAL HEALTH BENEFITS.

(a) IN GENERAL.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

SEC. ___07. PUNITIVE DAMAGES.

(a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability.

If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or $250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

SEC. ___08. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this title.

SEC. ___09. EFFECT ON OTHER LAWS.

(a) VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such title XXI shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(b) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this title shall be deemed to affect any defense available to a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. ___10. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this title shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this title. The provisions governing health care lawsuits set forth in this title supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this title; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) PREEMPTION OF CERTAIN STATE LAWS.—The provisions of this title shall preempt any constitutional provision, statute, or rule of State law, whether enacted prior to, on, or after the date of enactment of this Act, that—

(1) prohibits the application of any limitation on the amount of compensatory, punitive, or total damages in a health care lawsuit; or

(2) provides for a greater amount of compensatory, punitive, or total damages in a health care lawsuit than those provided for under this title.

(c) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this title (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections for a health care provider from liability, loss, or damages than those provided by this title;

(B) notwithstanding any other provision of this section, preempt or supercede any State law that provides for a specific monetary limit on total damages (including compensatory damages) that may be awarded in a health care lawsuit regardless of whether such monetary limit is greater or lesser than is provided for under this title;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

SEC. ___11. APPLICABILITY; EFFECTIVE DATE.

This title shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

SA 2625. Mr. CRAIG (for Mr. FRIST (for himself and Mr. CRAIG)) proposed an amendment to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

At the appropriate place, add the following:

SEC. 5. ARMOR PIERCING AMMUNITION.

(a) UNLAWFUL ACTS.—Section 922(a) of title 18, United States Code, is amended by striking paragraphs (7) and (8) and inserting the following:

''(7) for any person to manufacture or import armor piercing ammunition, unless—

''(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

''(B) the manufacture of such ammunition is for the purpose of exportation; or

''(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General.

''(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery—

''(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

''(B) is for the purpose of exportation; or

''(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General.''.

(b) PENALTIES.—Section 924(c) of title 18, United States Code, is amended by adding at the end the following:

''(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

''(A) be sentenced to a term of imprisonment of not less than 15 years;

''(B) if death results from the use of such ammunition—

''(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

''(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.''.

(c) STUDY AND REPORT.—

(1) STUDY.—The Attorney General shall conduct a study to determine whether a uniform standard for the uniform testing of projectiles against Body Armor is feasible.

(2) ISSUES TO BE STUDIED.—The study conducted under paragraph (1) shall include—

(A) variations in performance that are related to the length of the barrel of the handgun or centerfire rifle from which the projectile is fired; and

(B) the amount of powder used to propel the projectile.

(3) REPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report containing the results of the study conducted under this subsection to—

(A) the chairman and ranking member of the Judiciary Committee of the Senate; and

(B) the chairman and ranking member of the Judiciary Committee of the House of Representatives.

SA 2626. Mr. FRIST (for himself and Mr. MCCONNELL) proposed an amendment to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

At the end, add the following:

SEC. ___. MAKING THE PROVISIONS OF THE VOTING RIGHTS ACT OF 1965 PERMANENT.

(a) PERMANENCY OF PRECLEARANCE REQUIREMENTS.—Section 4(a)(8) of the Voting Rights Act of 1965 (42 U.S.C. 1973b(a)(8)) is amended to read as follows:

''(8) The provisions of this section shall not expire.''.

(b) PERMANENCY OF BILINGUAL ELECTION REQUIREMENTS.—Section 203(b)(1) of the Voting Rights Act of 1965 (42 U.S.C. 1973aa–1a(b)(1)) is amended by striking ''Before August 6, 2007, no covered State'' and insert ''No covered State''.

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

SA 2627. Ms. MIKULSKI (for herself, Mr. SARBANES, Mr. LAUTENBERG, Mr. CORZINE, and Mrs. CLINTON) proposed an amendment to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

On page 8, line 22, strike ''or''.

On page 9, line 2, strike the period and insert ''; or''.

On page 9, between lines 2 and 3, insert the following:

''(vi) an action involving a shooting victim of John Allen Muhammad or Lee Boyd Malvo.''.

SA 2628. Mr. CRAIG (for Mr. FRIST (for himself and Mr. CRAIG)) proposed an amendment to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

On page 8, line 22, strike ''or''.

On page 9, line 2, strike the period at the end and insert ''; or''.

On page 9, between lines 2 and 3, insert the following:

(vi) an action involving a shooting victim of John Allen Muhammad or John Lee Malvo that meets 1 of the requirements under clauses (i) through (v).

SA 2629. Mr. CORZINE (for himself, Mr. LAUTENBERG, Ms. MIKULSKI, Mr. KENNEDY, Mrs. CLINTON, and Mrs. BOXER) submitted an amendment intended to be proposed by him to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

On page 11, after line 19, insert the following:

SEC. 5. LAW ENFORCEMENT EXCEPTION.

Notwithstanding any other provision of this Act, nothing in this Act shall be construed as limiting the right of an officer or employee of any Federal, State, or local law enforcement agency to recover damages authorized under Federal or State law.

SA 2630. Mr. CRAIG (for Mr. FRIST (for himself and Mr. CRAIG)) proposed an amendment to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

On page 9, between lines 21 and 22, insert the following:

(E) LAW ENFORCEMENT EXCEPTION.—Nothing in this Act shall be construed to limit the right of an officer or employee of any Federal, State, or local law enforcement agency to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that the following hearing has been scheduled before the Committee on Energy and Natural Resources:

The hearing will be held on Thursday, March 4th, at 10 a.m. in Room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to review the Energy Information Administration (EIA) Annual Energy Outlook 2004 report regarding the supply, demand and price projections for oil, natural gas, nuclear, coal and renewable resources, focusing on oil and natural gas. In addition, commercial and market perspectives on the state of oil and natural gas markets will be considered.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364, Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Lisa Epifani at 202–224–5269 or Shane Perkins at 202–224–7555.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. CRAIG. 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 Thursday, February 26, 2004, at 10 a.m. to conduct a hearing on the nominations of the Hon. Alphonso R. Jackson, of Texas, to be Secretary of the Department of Housing and Urban Development; the Hon. Linda Mysliwy Conlin, of New Jersey, to be a member of the Board of Directors of the Export-Import Bank of the United States; and Ms. Rhonda Keenum, of Mississippi, to be Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Services.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. CRAIG. 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 Thursday, February 26, 2004, at 2 p.m. to conduct a hearing on ''Review of Current Investigations and Regulatory Actions Regarding the Mutual Fund Industry.''

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. CRAIG. 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 Thursday February 26 at 2:30 p.m. to receive testimony on the nomination of Susan Johnson Grant to be Chief Financial Officer, Department of Energy.

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

COMMITTE ON FOREIGN RELATIONS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 26 at 9:30 a.m. to hold a hearing on Public Diplomacy and International Free Press.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 26 at 2:30 p.m. to hold a hearing on Libya—Next Steps in U.S. Relations.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet for a hearing on ''Higher Education Accreditation: How Can the System Better Ensure Quality and Accountability?'' during the session of the Senate on Thursday, February 26, 2004 at 2 p.m. in SD–430.

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

COMMITTEE ON THE JUDICIARY

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, February 26, 2004, at 9:30 a.m. in Dirksen Senate Building 226.

Agenda:

I. Nominations:

Henry W. Saad to be U.S. Circuit Judge for the Sixth Circuit, William James Haynes II to be U.S. Circuit Judge for the Fourth Circuit, Raymond W. Gruender to be U.S. Circuit Judge for the Eighth Circuit, Franklin S. Van Antwerpen to be United States Circuit Judge for the Third Circuit, Judith C. Herrera to be United States District Judge for the District of New Mexico, F. Dennis Saylor to be United States District Judge for the District of Massachusetts, Sandra L. Townes to be United States District Judge for the Eastern District of New York, Louis Guirola, Jr. to be United States District Judge for the Southern District of Mississippi, Virginia E. Hopkins to be United States District Judge for the Northern District of Alabama, Kenneth M. Karas to be United States District Judge for the Southern District of New York, Richard S. Martinez to be United States District Judge for the Western District of Washington, Gene E.K. Pratter to be United States District Judge for the Eastern District of Pennsylvania, Neil Vincent Wake to be United States District Judge for the District of Arizona, Michele M. Leonhart to be Deputy Administrator of Drug Enforcement, Domingo S. Herraiz to be Director of the Bureau of Justice Assistance, United States Department of Justice.

SELECT COMMITTEE ON INTELLIGENCE

Mr. CRAIG. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the

Senate on February 26, 2004 at 2:30 p.m. to hold a closed business meeting.

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

PRIVILEGE OF THE FLOOR

Mr. CRAIG. Mr. President, I ask unanimous consent to extend the privilege of the floor for the remainder of this second session of the 108th Congress to Reed O'Connor, a detailee from the Department of Justice to the majority staff of the Judiciary Committee.

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

MEASURE READ THE FIRST TIME—S. 2137

Mr. MCCONNELL. I understand S. 2137, introduced earlier today by Senator DORGAN, is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The assistant legislative clerk read as follows:

A bill (S. 2137) to authorize the Secretary of Health and Human Services to promulgate regulations for the reimportation of prescription drugs, and for other purposes.

Mr. MCCONNELL. I ask its second reading and I object to my own request.

The PRESIDING OFFICER. The objection is heard.

The bill will be read the second time on the next legislative day.

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

ROAD REPAIR AND CONSTRUCTION

Mr. CONRAD. Mr. President, it is my understanding that the chairman and ranking member of the Environment and Public Works Committee will shortly ask unanimous consent to correct certain errors in the enrollment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act, S. 1072. As the managers know, this unanimous consent agreement does not address two issues that are very important to me, and I would like to engage the managers of the highway bill in a colloquy on these matters.

First, the consent agreement does not cover my amendment to address an emergency road situation in the Devils Lake Basin of ND. During consideration of the highway bill, the chairman and ranking member of the Environment and Public Works Committee agreed to include a modified version of my amendment in a managers' amendment. The modified amendment would allow the State of North Dakota to use certain funds within its annual highway allocation to repair and reconstruct roads currently serving as dams and to receive reimbursement from the Emergency Relief program for that work. Unfortunately, this language was inadvertently left out of the managers' amendment.

The amendment that was agreed to by the chairman and ranking member is not my preferred solution. I believe the sole responsibility for this emergency situation belongs to the Federal Highway Administration. Over the years, the Federal Highway Administration allowed these roads to be raised without first stabilizing them as dams. We now have a situation where 8 miles of roads are serving as dams and holding back water, yet the roads were not constructed as dams. It these roads were to fail, the Emergency Relief program would be activated to rebuild them. I believe the State of North Dakota should not have to divert its limited highway dollars to address this emergency situation created by the Federal Government and will continue to pursue a solution that does not require my state to take sole responsibility for this situation. But I want to stress that I greatly appreciate the help of both the chairman and ranking member in devising a compromise and agreeing to accept the modified amendment.

Mr. INHOFE. I understand the Senator's position. Unfortunately, we do not agree on his preferred solution which is why compromise language was developed and the amendment was modified. I will agree with the Senator that the modified amendment was indeed cleared by both the majority and minority sides of the committee. However, as the Senator notes, this modified amendment was inadvertently left out of the manager's package that was approved by the Senate. I commit to fixing this error at the earliest possible opportunity and will work in conference to protect the Senate position on this issue.

Mr. JEFFORDS. I fully agree with the chairman. The Senator's amendment should have been included in the managers' amendment, and I will work with you and the chairman to resolve this matter as the process moves forward.

Mr. CONRAD. I greatly appreciate the help and cooperation of the Senator from Oklahoma and the Senator from Vermont on this very important issue and their willingness to accept my amendment. Let me now turn to the second issue, that of making sure this legislation is fully paid for within the six year period for which programs are authorized in the highway bill.

During Finance Committee consideration of the tax title of the SAFETEA bill, I was joined by the chairman of the Budget Committee, Senator NICKLES, in insisting that the bill should be properly paid for over 6 years with no gimmicks. We filed an amendment to accomplish this, but I agreed to withhold from offering it in return for a commitment from the chairman and ranking member of the Finance Committee to work with me to find appropriate offsets before the SAFETEA bill was voted off the Senate floor.

During floor consideration of the SAFETEA bill, I filed an amendment that would have fulfilled the commitment made to committee members during the Finance markup. Chairman GRASSLEY and Senator BAUCUS worked with me to include my amendment in a managers' amendment. Unfortunately, because some items in my amendment were nongermane, only a portion of the amendment was ultimately accepted as part of the managers' amendment before the Senate voted on final passage of the SAFETEA bill.

It would be my preference to address that issue in the unanimous consent agreement that will be offered shortly, but I understand that is not possible at this time. However, it is my understanding that there will be another opportunity to fulfill the commitment to fully offset spending in the Senate's highway bill before it is sent to the House for consideration. As the bill now stands, approximately $7.6 billion of spending over the next 6 years in the SAFETEA bill is not offset. I believe it is critical that this commitment be honored and that the remaining $7.6 billion in outlays be offset within the next 6 years. I am eager to continue working with the chairmen and ranking members of both the Finance and Environment and Public Works Committees to address my concerns.

Mr. GRASSLEY. I support the amendments offered by my colleagues from North Dakota and Oklahoma. I was disappointed that, despite our best efforts, we were unable to clear the full text of the Conrad-Nickles amendment. But for an objection that was unrelated to the purpose of the Conrad-Nickles amendment, the highway bill would contain the full agreement between Senators BAUCUS, NICKLES, CONRAD, and me. I want to assure them that I fully intend to make good on the promise made in the committee markup. As the legislative process moves forward, I pledge that I will continue working to address their concerns.

Mr. BAUCUS. I concur with the statement of the chairman of the Finance Committee, and I, too, pledge to continue working to address the concerns of my colleagues from Oklahoma and North Dakota.

Mr. INHOFE. I agree with my colleagues that we ought to fully offset the spending that will occur over the next 6 years as a result of the authorizations in the SAFETEA bill. I am committed to working with my colleagues to see that this goal is achieved.

Mr. JEFFORDS. I thank Senator CONRAD and Senator NICKLES for their continued efforts on this issue. I, too, want to lend my commitment and support to fully paying for the SAFETEA bill before the Senate completes action on the legislation.

Mr. CONRAD. I thank the managers for those commitments. With those assurances, I will not object to the unanimous consent request to make technical corrections in the Senate-passed bill.

THE FERRY BOAT DISCRETIONARY PROGRAM

Mrs. MURRAY. Mr. President, it has come to my attention that there was an error in processing my amendment to increase funding for, and make other improvements to, the Federal Highway Administration Ferry Boat Discretionary Program.

My amendment was included in the SAFETEA authorization bill, and I want to confirm with my colleagues the correct funding level for the record so there is no confusion.

Prior to my amendment being sent to the desk, I had reached agreement with all the majority and minority managers of the bill to increase funding for the ferry program to the level of $120 million per year in the SAFETEA authorization bill.

Unfortunately, it appears that, in the processing of the final amendments to the bill, the amendment making this change was not the amendment that was sent to the desk and enrolled by the bill clerk.

To clarify the record, I would like to ask my colleague, Chairman INHOFE, what is his understanding of the level that is agreed upon for the ferry program in the SAFETEA authorization bill?

Mr. INHOFE. I say to Senator MURRAY, the agreed upon level for inclusion in the SAFETEA bill for the Ferry Boat Discretionary Program is $120 million per year of which $60 million is provided in contract authority and $60 million is authorized for appropriation.

Mrs. MURRAY. I also ask Senators BOND, JEFFORDS and REID, whether that is their understanding?

Mr. BOND. Yes, we agree that this is the amount we consider to be included in the SAFETEA authorization bill for the ferry boat discretionary program.

Mr. JEFFORDS. The Senior Senator from Washington State is correct. It was our understanding that the bill envisions $120 million per year for that program.

Mr. REID. I say to Senator MURRAY, I am in agreement that a commitment was made to include $120 million per year for the ferry boat discretionary program.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that in the engrossment of the bill S. 1072, the Secretary of the Senate be authorized to strike pages 43 through 83, and pages 105 and 106 of amendment No. 2616. I further ask that the bill be printed as passed.

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

The text of S. 1072 is as follows:

S. 1072

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 ''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. 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, $50,000,000 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.

(17) DENALI ACCESS SYSTEM.—For the Denali Access System under section 309 of the Denali Commission Act of 1998 (42 U.S.C. 3121 note; Public Law 105–277), $30,000,000 for each of fiscal years 2004 through 2009.

(18) DELTA REGION TRANPORTATION DEVELOPMENT PROGRAM.—For planning and construction activities authorized under the Delta Regional Authority, $80,000,000 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 AND MAINTENANCE FACILITIES; COORDINATION OF FERRY CONSTRUCTION AND MAINTENANCE.

(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 and maintenance facilities; coordination of ferry construction and maintenance

''(a) CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.—

''(1) IN GENERAL.—The Secretary shall carry out a program for construction of ferry boats and ferry terminal facilities in accordance with section 129(c).

''(2) FEDERAL SHARE.—The Federal share of the cost of construction of ferry boats and ferry terminals and maintenance facilities under this subsection shall be 80 percent.

''(3) ALLOCATION OF FUNDS.—The Secretary shall give priority in the allocation of funds under this subsection to those ferry systems, and public entities responsible for developing ferries, that—

''(A) carry the greatest number of passengers and vehicles;

''(B) carry the greatest number of passengers in passenger-only service; or

''(C) provide critical access to areas that are not well-served by other modes of surface transportation.

''(b) NON-CONTRACT AUTHORITY AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) $50,000,000 for each fiscal year to carry out this section.

''(2) AVAILABILITY.—Notwithstanding section 118(a), funds made available under paragraph (1) shall be available in advance of an annual appropriation.''.

(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 and maintenance 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); and

(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:

''(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, integrated, interoperable emergency communications, 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 (including integrated, interoperable emergency communications) of highway safety as key factors in evaluating highway projects;

''(D) considers safety needs of, and high-fatality segments of, public roads;

''(E) considers the results of State, regional, or local transportation and highway safety planning processes;

''(F) describes a program of projects or strategies to reduce or eliminate safety hazards;

''(G) is approved by the Governor of the State or a responsible State agency; and

''(H) is consistent with the requirements of section 135(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 subsection (c)(1)(D) 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, reports, surveys, schedules, lists, or data compiled or collected for any purpose directly relating to paragraph (1) or subsection (c)(1)(D), or published by the Secretary in accordance with paragraph (3), shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location identified or addressed in such reports, surveys, schedules, lists, or other data.

''(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—

''(1) available for expenditure on compilation and analysis of data in support of activities carried out under subsection (g); and

''(2) apportioned in accordance with section 104(b)(5).''.

(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 nonapplication 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.''.

SEC. 1410. OPEN CONTAINER REQUIREMENTS.

Section 154 of title 23, United States Code, is amended by striking subsection (c) and inserting the following:

''(c) TRANSFER OF FUNDS.—

''(1) IN GENERAL.—The Secretary shall withhold the applicable percentage for the fiscal year of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b), if a State has not enacted or is not enforcing a provision described in subsection (b), as follows:

''For:	**The applicable percentage is:**
Fiscal year 2008	2 percent.
Fiscal year 2009	2 percent.
Fiscal year 2010	2 percent.
Fiscal year 2011 and each subsequent fiscal year.	2 percent.

''(2) RESTORATION.—If (during the 4-year period beginning on the date the apportionment for any State is reduced in accordance with this subsection) the Secretary determines that the State has enacted and is enforcing a provision described in subsection (b), the apportionment of the State shall be increased by an amount equal to the amount of the reduction made during the 4-year period.''.

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. 4601–4 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.'';

(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

(3) 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 a semicolon; 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; or

''(7) if the project or program involves the purchase of integrated, interoperable emergency communications equipment.''.

(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.''.

(c) RESPONSIBILITY OF STATES.—

(1) IN GENERAL.—Each State shall be responsible for ensuring that subrecipients of Federal funds within the State under section 149 of title 23, United States Code, have emission reduction strategies for fleets that are—

(A) used in construction projects located in nonattainment and maintenance areas; and

(B) funded under title 23, United States Code.

(2) EMISSION REDUCTION STRATEGIES.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary, shall develop a nonbinding list of emission reduction strategies and supporting technical information for each strategy, including—

(A) contract preferences;

(B) requirements for the use of anti-idling equipment;

(C) diesel retrofits; and

(D) such other matters as the Administrator of the Environmental Protection Agency, in consultation with the Secretary, determine to be appropriate.

(3) USE OF CMAQ FUNDS.—A State may use funds made available under this title and title 23, United States Code, for the congestion mitigation and air quality program under section 149 of title 23, United States Code, to ensure the deployment of the emission reduction strategies described in paragraph (1).

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).

SEC. 1622. 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.

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.'';

(C) in paragraph (3)—

(i) in subparagraph (A), by striking ''under this title'' and inserting ''under this chapter and section 125(e)''; and

(ii) by adding at the end the following:

''(C) FEDERAL LANDS HIGHWAY PROGRAM DEMONSTRATION PROJECT.—

''(i) IN GENERAL.—The Secretary shall establish a demonstration project under which all funds made available under this chapter for Indian reservation roads and for highway bridges located on Indian reservation roads as provided for in subparagraph (A) shall be made available, on the request of an affected Indian tribal government, to the Indian tribal government for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.), contracts and agreements for the planning, research, engineering, and construction described in that subparagraph.

''(ii) EXCLUSION OF AGENCY PARTICIPATION.—In accordance with subparagraph (B), all funds for Indian reservation roads and for highway bridges located on Indian reservation roads to which clause (i) applies shall be paid without regard to the organizational level at which the Federal lands highway program has previously carried out the programs, functions, services, or activities involved.

''(iii) SELECTION OF PARTICIPATING TRIBES.—

''(I) PARTICIPANTS.—

''(aa) IN GENERAL.—In addition to Indian tribes or tribal organizations that, as of the date of enactment of this subparagraph, are contracting or compacting for any Indian reservation road function or program, for each fiscal year, the Secretary may select up to 15 Indian tribes from the applicant pool described in subclause (II) to participate in the demonstration project carried out under clause (i).

''(bb) CONSORTIA.—Two or more Indian tribes that are otherwise eligible to participate in a program or activity to which this title applies may form a consortium to be considered as a single Indian tribe for the purpose of becoming part of the applicant pool under subclause (II).

''(cc) FUNDING.—An Indian tribe participating in the pilot program under this subparagraph shall receive funding in an amount equal to the sum of the funding that the Indian tribe would otherwise receive in accordance with the funding formula established under the other provisions of this subsection, and an additional percentage of that amount equal to the percentage of funds withheld during the applicable fiscal year for the road program management costs of the Bureau of Indian Affairs under subsection (f)(1).

''(II) APPLICANT POOL.—The applicant pool described in this subclause shall consist of each Indian tribe (or consortium) that—

''(aa) has successfully completed the planning phase described in subclause (IV);

''(bb) has requested participation in the demonstration project under this subparagraph through the adoption of a resolution or other official action by the tribal governing body; and

''(cc) has demonstrated financial stability and financial management capability in accordance with subclause (III) during the 3-fiscal-year period immediately preceding the fiscal year for which participation under this subparagraph is being requested.

''(III) CRITERIA FOR DETERMINING FINANCIAL STABILITY AND FINANCIAL MANAGEMENT CAPACITY.—For the purpose of subclause (II), evidence that, during the 3-year period referred to in subclause (II)(cc), an Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe's self-determination contracts or self-governance funding agreements with any Federal agency shall be conclusive evidence of the required stability and capability.

''(IV) PLANNING PHASE.—

''(aa) IN GENERAL.—An Indian tribe (or consortium) requesting participation in the demonstration project under this subparagraph shall complete a planning phase that shall include legal and budgetary research and internal tribal government and organization preparation.

''(bb) ELIGIBILITY.—An Indian tribe (or consortium) described in item (aa) shall be eligible to receive a grant under this subclause to plan and negotiate participation in a project described in that item.

''(V) REPORT TO CONGRESS.—Not later than September 30, 2006, the Secretary shall submit to Congress a report describing the implementation of the demonstration project and any recommendations for improving the project.''; and

(D) 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) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other funds made available for Indian reservation roads for each fiscal year, there is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) $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.—

''(1) CONTRACT AUTHORITY.—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).

''(2) HEALTH AND SAFETY ASSURANCES.—Notwithstanding any other provision of law, an Indian tribe or tribal organization may commence road and bridge construction under the Transportation Equity Act for the

21st Century (Public Law 105-178) or the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 that is funded through a contract or agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.) if the Indian tribe or tribal organization—

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

''(B) obtains the advance review of the plans and specifications from a licensed professional that has certified that the plans and specifications meet or exceed the applicable health and safety standards; and

''(C) provides a copy of the certification under subparagraph (B) to the Assistant Secretary for Indian Affairs.''.

(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) MAINTENANCE OF INDIAN RESERVATION ROADS.—Section 204(c) of title 23, United States Code, is amended by striking the second and third sentences and inserting the following: ''Notwithstanding any other provision of this title, of the amount of funds apportioned for Indian reservation roads from the Highway Trust Fund, an Indian tribe may expend for the purpose of maintenance not more than the greater of $250,000 or 25 percent of the apportioned amount. The Bureau of Indian Affairs shall continue to retain primary responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations. The Secretary shall ensure that funding made available under this subsection for maintenance of Indian reservation roads for each fiscal year is supplementary to and not in lieu of any obligation of funds by the Bureau of Indian Affairs for road maintenance programs on Indian reservations.''.

(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. 4601–12 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. 4601–12 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 decisionmaking 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, II, and III 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''.

SEC. 1823. PRIORITY FOR PEDESTRIAN AND BICYCLE FACILITY ENHANCEMENT PROJECTS.

Section 133(e)(5) of title 23, United States Code, is amended by adding at the end the following:

''(D) PRIORITY FOR PEDESTRIAN AND BICYCLE FACILITY ENHANCEMENT PROJECTS.—The Secretary shall encourage States to give priority to pedestrian and bicycle facility enhancement projects that include a coordinated physical activity or healthy lifestyles program.''.

SEC. 1824. THE DELTA REGIONAL AUTHORITY.

(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:

''§ 178. Delta Region transportation development program

''(a) IN GENERAL.—The Secretary shall carry out a program to—

''(1) support and encourage multistate transportation planning and corridor development;

''(2) provide for transportation project development;

''(3) facilitate transportation decisionmaking; and

''(4) support transportation construction.

''(b) ELIGIBLE RECIPIENTS.—A State transportation department or metropolitan planning organization may receive and administer funds provided under the program.

''(c) ELIGIBLE ACTIVITIES.—The Secretary shall make allocations under the program for multistate highway and transit planning, development, and construction projects.

''(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—All activities funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required by section 134 and 135.

''(e) SELECTION CRITERIA.—The Secretary shall select projects to be carried out under the program based on—

''(1) whether the project is located—

''(A) in an area that is part of the Delta Regional Authority; and

''(B) on the Federal-aid system;

''(2) endorsement of the project by the State department of transportation; and

''(3) evidence of the ability to complete the project.

''(f) PROGRAM PRIORITIES.—In administering the program, the Secretary shall—

''(1) encourage State and local officials to work together to develop plans for multimodal and multijurisdictional transportation decisionmaking; and

''(2) give priority to projects that emphasize multimodal planning, including planning for operational improvements that—

''(A) increase the mobility of people and goods;

''(B) improve the safety of the transportation system with respect to catastrophic—

''(i) natural disasters; or

''(ii) disasters caused by human activity; and

''(C) contribute to the economic vitality of the area in which the project is being carried out.

''(g) FEDERAL SHARE.—Amounts provided by the Delta Regional Authority to carry out a project under this section shall be applied to the non-Federal share required by section 120.

''(h) AVAILABILITY OF FUNDS.—Amounts made available to carry out this section shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code (as amended by section 1814(b)), is amended by adding at the end the following:

''178. Delta Region transportation development program.''.

SEC. 1825. MULTISTATE INTERNATIONAL CORRIDOR DEVELOPMENT PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a program to develop international trade corridors to facilitate the movement of freight from international ports of entry and inland ports through and to the interior of the United States.

(b) ELIGIBLE RECIPIENTS.—State transportation departments and metropolitan planning organizations shall be eligible to receive and administer funds provided under the program.

(c) ELIGIBLE ACTIVITIES.—The Secretary shall make allocations under this program for any activity eligible for funding under title 23, United States Code, including multistate highway and multistate multimodal planning and project construction.

(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—All activities funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required by sections 134 and 135 of title 23, United States Code.

(e) SELECTION CRITERIA.—The Secretary shall only select projects for corridors—

(1) that have significant levels or increases in truck and traffic volume relating to international freight movement;

(2) connect to at least 1 international terminus or inland port;

(3) traverse at least 3 States; and

(4) are identified by section 115(c) of the Intermodal 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 that emphasize multimodal planning, including planning for operational improvements that increase mobility, freight productivity, access to marine ports, safety, and security while enhancing the environment.

(g) FEDERAL SHARE.—The Federal share required for any study carried out under this section shall be available for obligation in the same manner as if the funds were apportioned under chapter I of title 23, United States Code.

SEC. 1826. AUTHORIZATION OF CONTRACT AUTHORITY FOR STATES WITH INDIAN RESERVATIONS.

Section 1214(d) of the Transportation Equity Act for the 21st Century (23 U.S.C. 202 note; 112 Stat. 206) is amended—

(1) in paragraph (1), by inserting ''(except Arizona)'' after ''each State''; and

(2) in paragraph (5)(A), by striking ''$1,500,000 for each of fiscal years 1998 through 2003'' and inserting ''$1,800,000 for each of fiscal years 2004 through 2009''.

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;

(H) $2,000,000 for fiscal year 2005 shall be remain available until expended for asphalt and asphalt-related reclamation research at the South Dakota School of Mines; and

(I) $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

''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) integrated, interoperable emergency 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) integrated, interoperable emergency 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 nonrecurring 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.

''§ 512. Transportation analysis simulation system

''(a) CONTINUATION OF TRANSIMS DEVELOPMENT.—

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

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

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

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

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

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

''(1) to further develop TRANSIMS for additional applications, including—

''(A) congestion analyses;

''(B) major investment studies;

''(C) economic impact analyses;

''(D) alternative analyses;

''(E) freight movement studies;

''(F) emergency evacuation studies;

''(G) port studies; and

''(H) airport access studies;

''(2) provide training and technical assistance with respect to the implementation and application of TRANSIMS to States, local governments, and metropolitan planning organizations with responsibility for travel modeling;

''(3) develop methods to simulate the national transportation infrastructure as a single, integrated system for the movement of individuals and goods;

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

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

''(d) FUNDING.—Of the amounts made available under section 2001(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 for each of fiscal years 2004 through 2009, the Secretary shall use $1,000,000 to carry out this section.

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

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

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

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

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

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

(a) DEFINITIONS.—In this section:

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

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

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

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

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

(b) PRIORITY AREAS OF EFFORT.—

(1) STATISTICAL STANDARDS.—The Secretary shall direct the Bureau to assume the role of the lead agency in working with other agencies of the Department to establish, by not later 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.

SEC. 2105. TRANSPORTATION TECHNOLOGY INNOVATION AND DEMONSTRATION PROGRAM.

(a) IN GENERAL.—Section 5117(b)(3) of the Transportation Equity Act for the 21st Century (112 Stat. 449; 112 Stat. 864; 115 Stat. 2330) is amended—

(1) in subparagraph (B)—

(A) in clause (i)—

(i) in the first sentence—

(I) by striking ''Build an'' and inserting ''Build or integrate an''; and

(II) by striking ''$2,000,000'' and inserting ''$2,500,000''; and

(ii) in the second sentence—

(I) by striking ''300,000 and that'' and inserting ''300,000,''; and

(II) by inserting before the period at the end the following: '', and includes major transportation corridors serving that metropolitan area'';

(B) in clause (ii), by striking all that follows ''will be'' and inserting ''reinvested in the intelligent transportation infrastructure system.'';

(C) by striking clause (iii); and

(D) by redesignating clauses (iv) and (v) as clauses (iii) and (iv), respectively;

(2) in subparagraph (C)(ii), by striking ''July 1, 2002'' and inserting ''the date that is 180 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003'';

(3) in subparagraph (E), by striking clause (ii) and inserting the following:

''(ii) The term ''follow-on deployment areas'' means the metropolitan areas of Albany, Atlanta, Austin, Baltimore, Birmingham, Boston, Burlington Vermont, Charlotte, Chicago, Cleveland, Columbus, Dallas/Ft. Worth, Denver, Detroit, Greensboro, Hartford, Houston, Indianapolis, Jacksonville, Kansas City, Las Vegas, Los Angeles, Louisville, Miami, Milwaukee, Minneapolis-St. Paul, Nashville, New Orleans, New York/Northern New Jersey, Norfolk, Northern Kentucky/Cincinnati, Oklahoma City, Orlando, Philadelphia, Phoenix, Pittsburgh, Portland, Providence, Raleigh, Richmond, Sacramento, Salt Lake, San Diego, San Francisco, San Jose, St. Louis, Seattle, Tampa, Tucson, Tulsa, and Washington, District of Columbia.'';

(4) in subparagraph (F)—

(A) by striking ''Of the amounts'' and inserting the following:

''(i) THIS ACT.—Of the amounts''; and

(B) by adding at the end the following:

''(ii) SAFETEA.—There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) $5,000,000 for each fiscal year to carry out this paragraph.

''(iii) AVAILABILITY; NO REDUCTION OR SETASIDE.—Amounts made available by this subparagraph—

''(I) shall remain available until expended; and

''(II) shall not be subject to any reduction or setaside.''; and

(5) by adding at the end the following:

''(H) USE OF RIGHTS-OF-WAY.—

''(i) IN GENERAL.—An intelligent transportation system project described in paragraph (3) or (6) that involves privately owned intelligent transportation system components and is carried out using funds made available from the Highway Trust Fund shall not be subject to any law (including a regulation) of

a State or political subdivision of a State prohibiting or regulating commercial activities in the rights-of-way of a highway for which Federal-aid highway funds have been used for planning, design, construction, or maintenance, if the Secretary determines that such use is in the public interest.

''(ii) EFFECT OF SUBPARAGRAPH.—Nothing in this subparagraph affects the authority of a State or political subdivision of a State to regulate highway safety.''.

(b) CONFORMING AMENDMENT.—Section 5204 of the Transportation Equity Act for the 21st Century (112 Stat. 453) is amended by striking subsection (k) (112 Stat. 2681–478).

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, which are coordinated with other modes of transportation, that maximize the efficient, secure, and safe mobility of individuals and minimize environmental impacts.''.

(b) GENERAL FINDINGS.—Section 5301(b)(1) is amended—

(1) by striking ''70 percent'' and inserting ''two-thirds''; and

(2) by striking ''urban areas'' and inserting ''urbanized areas''.

(c) PRESERVING THE ENVIRONMENT.—Section 5301(e) is amended—

(1) by striking ''an urban'' and inserting ''a''; and

(2) by striking ''under sections 5309 and 5310 of this title''.

(d) GENERAL PURPOSES.—Section 5301(f) is amended—

(1) in paragraph (1)—

(A) by striking ''improved mass'' and inserting ''improved public''; and

(B) by striking ''public and private mass transportation companies'' and inserting ''public transportation companies and private companies engaged in public transportation'';

(2) in paragraph (2)—

(A) by striking ''urban mass'' and inserting ''public''; and

(B) by striking ''public and private mass transportation companies'' and inserting ''public transportation companies and private companies engaged in public transportation'';

(3) in paragraph (3)—

(A) by striking ''urban mass'' and inserting ''public''; and

(B) by striking ''public or private mass transportation companies'' and inserting ''public transportation companies or private companies engaged in public transportation''; and

(4) in paragraph (5), by striking ''urban mass'' and inserting ''public''.

SEC. 3004. DEFINITIONS.

Section 5302(a) is amended—

(1) in paragraph (1)—

(A) in subparagraph (G)(i), by inserting ''including the intercity bus and intercity rail portions of such facility or mall,'' after ''transportation mall,'';

(B) in subparagraph (G)(ii), by inserting '', except for the intercity bus portion of intermodal facilities or malls,'' after ''commercial revenue-producing facility'';

(C) in subparagraph (H)—

(i) by striking ''and'' after ''innovative'' and inserting ''or''; and

(ii) by striking ''or'' after the semicolon at the end;

(D) in subparagraph (I), by striking the period at the end and inserting a semicolon; and

(E) by adding at the end the following:

''(J) crime prevention and security, including—

''(i) projects to refine and develop security and emergency response plans; or

''(ii) projects to detect chemical or biological agents in public transportation;

''(K) conducting emergency response drills with public transportation agencies and local first response agencies or security training for public transportation employees, except for expenses relating to operations; or

''(L) establishing a debt service reserve, made up of deposits with a bondholder's trustee, to ensure the timely payment of principal and interest on bonds issued by a grant recipient to finance an eligible project under this chapter.'';

(2) by 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 bus or 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 AND PROGRAMS.—To accomplish the objectives described in section 5301(a), each metropolitan planning organization, in cooperation with the State and public transportation operators, shall develop transportation plans and programs for metropolitan planning areas of the State in which it is located.

''(2) CONTENTS.—The plans and programs developed under paragraph (1) for each metropolitan planning area shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing the plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

''(4) PLANNING AND PROJECT DEVELOPMENT.—The metropolitan planning organization, the State Department of Transportation, and the appropriate public transportation provider shall agree upon the approaches that will be used to evaluate alternatives and identify transportation improvements that address the most complex problems and pressing transportation needs in the metropolitan area.

''(c) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

''(1) IN GENERAL.—To carry out the transportation planning process under this section, a metropolitan planning organization shall be designated for each urbanized area—

''(A) by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area); or

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

''(2) STRUCTURE.—Each metropolitan planning organization designated under paragraph (1) that serves an area identified as a transportation management area shall consist of—

''(A) local elected officials;

''(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and

''(C) appropriate State officials.

''(3) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

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

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

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

''(5) REDESIGNATION PROCEDURES.—A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the existing planning area population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area) as appropriate to carry out this section.

''(6) DESIGNATION OF MORE THAN 1 METROPOLITAN PLANNING ORGANIZATION.—More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 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 (including the protection of habitat, water quality, and agricultural and forest land, while minimizing invasive species), promoting energy conservation, and promoting consistency between transportation improvements and State and local land use planning and economic development patterns (including minimizing adverse health effects from mobile source air pollution and promoting the linkage of the transportation and development goals of the metropolitan area);

''(F) enhancing the integration and connectivity of the transportation system, across and between modes, for people and freight, including through services provided by public and private operators;

''(G) promoting efficient system management and operation; and

''(H) emphasizing the preservation and efficient use of the existing transportation system, including services provided by public and private operators.

''(2) SELECTION OF FACTORS.—After soliciting and considering any relevant public comments, the metropolitan planning organization shall determine which of the factors described in paragraph (1) are most appropriate to consider.

''(3) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under title 23, this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a transportation improvement plan, a project or strategy, or the certification of a planning process.

''(h) DEVELOPMENT OF TRANSPORTATION PLAN.—

''(1) IN GENERAL.—

''(A) REQUIREMENT.—Each metropolitan planning organization shall develop a transportation plan for its metropolitan planning area in accordance with this subsection, and update such plan—

''(i) not less frequently than once every 4 years in areas designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)), and in areas that were nonattainment that have been redesignated as attainment, in accordance with paragraph (3) of such section, with a maintenance plan under section 175A of the Clean Air Act (42 U.S.C. 7505a); or

''(ii) not less frequently than once every 5 years in areas designated as attainment, as defined in section 107(d) of the Clean Air Act.

''(B) COORDINATION FACTORS.—In developing the transportation plan under this section, each metropolitan planning organization shall consider the factors described in subsection (f) over a 20-year forecast period.

''(C) FINANCIAL ESTIMATES.—For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

''(2) MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—A transportation plan under this subsection shall include a discussion of—

''(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetland, and other environmental functions; and

''(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

''(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

''(3) CONTENTS.— A transportation plan under this subsection shall be in a form that the Secretary determines to be appropriate and shall contain—

''(A) an identification of transportation facilities, including major roadways, transit, multimodal and intermodal facilities, intermodal connectors, and other relevant facilities identified by the metropolitan planning organization, which should function as an integrated metropolitan transportation system, emphasizing those facilities that serve important national and regional transportation functions;

''(B) a financial plan that—

''(i) demonstrates how the adopted transportation plan can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan;

''(iii) recommends any additional financing strategies for needed projects and programs; and

''(iv) may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if approved by the Secretary and reasonable additional resources beyond those identified in the financial plan were available;

''(C) operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods;

''(D) capital investment and other strategies to preserve the existing metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs; and

''(E) proposed transportation and transit enhancement activities.

''(4) CONSULTATION.—

''(A) IN GENERAL.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

''(B) ISSUES.—The consultation shall involve—

''(i) comparison of transportation plans with State conservation plans or with maps, if available;

''(ii) comparison of transportation plans to inventories of natural or historic resources, if available; or

''(iii) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkage areas.

''(5) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas in 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.

''(6) APPROVAL OF THE TRANSPORTATION PLAN.—Each transportation plan prepared by a metropolitan planning organization shall be—

''(A) approved by the metropolitan planning organization; and

''(B) submitted to the Governor for information purposes at such time and in such manner as the Secretary may reasonably require.

''(i) PARTICIPATION BY INTERESTED PARTIES.—

''(1) DEVELOPMENT OF PARTICIPATION PLAN.—Not less frequently than every 4 years, each metropolitan planning organization shall develop and adopt a plan for participation in the process for developing the metropolitan transportation plan and programs by—

''(A) citizens;

''(B) affected public agencies;

''(C) representatives of public transportation employees;

''(D) freight shippers;

''(E) providers of freight transportation services;

''(F) private providers of transportation;

''(G) representatives of users of public transit;

''(H) representatives of users of pedestrian walkways and bicycle transportation facilities; and

''(I) other interested parties.

''(2) CONTENTS OF PARTICIPATION PLAN.—The participation plan—

''(A) shall be developed in a manner the Secretary determines to be appropriate;

''(B) shall be developed in consultation with all interested parties; and

''(C) shall provide that all interested parties have reasonable opportunities to comment on—

''(i) the process for developing the transportation plan; and

''(ii) the contents of the transportation plan.

''(3) METHODS.—The participation plan shall provide that the metropolitan planning organization shall, to the maximum extent practicable—

''(A) hold any public meetings at convenient and accessible locations and times;

''(B) employ visualization techniques to describe plans; and

''(C) make public information available in electronically accessible format and means, such as the World Wide Web.

''(4) CERTIFICATION.—Before the metropolitan planning organizations approve a transportation plan or program, each metropolitan planning organization shall certify that it has complied with the requirements of the participation plan it has adopted.

''(j) TRANSPORTATION IMPROVEMENT PROGRAM.—

''(1) DEVELOPMENT AND UPDATE.—

''(A) IN GENERAL.—In cooperation with the State and affected operators of public transportation, a metropolitan planning organization designated for a metropolitan planning area shall develop a transportation improvement program for the area.

''(B) PARTICIPATION.—In developing the transportation improvement program, the metropolitan planning organization, in cooperation with the Governor and any affected operator of public transportation, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i).

''(C) UPDATES.—The transportation improvement program shall be updated not less than once every 4 years and shall be approved by the metropolitan planning organization and the Governor.

''(D) FUNDING ESTIMATE.—In developing the transportation improvement program, the metropolitan planning organization, operators of public transportation, and the State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

''(E) PROJECT ADVANCEMENT.—Projects listed in the transportation improvement program may be selected for advancement consistent with the project selection requirements.

''(F) MAJOR AMENDMENTS.—Major amendments to the list described in subparagraph (E), including the addition, deletion, or concept and scope change of a regionally significant project, may not be advanced without—

''(i) appropriate public involvement;

''(ii) financial planning;

''(iii) transportation conformity analyses; and

''(iv) a finding by the Federal Highway Administration and Federal Transit Administration that the amended plan was produced in a manner consistent with this section.

''(2) INCLUDED PROJECTS.—

''(A) PROJECTS UNDER CHAPTER 1 OF TITLE 23 AND THIS CHAPTER.—A transportation improvement program developed under this section for a metropolitan area shall include the projects and strategies within the metropolitan area that are proposed for funding under chapter 1 of title 23 and this chapter.

''(B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the metropolitan transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not regionally significant shall be grouped in 1 line item or identified individually in the metropolitan transportation improvement program.

''(3) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—Except as otherwise provided under subsection (k)(4), the selection of federally funded projects in metropolitan planning areas shall be carried out, from the approved transportation plan—

''(i) by the State, in the case of projects under chapter 1 of title 23 or section 5308, 5310, 5311, or 5317 of this title;

''(ii) by the designated recipient, in the case of projects under section 5307; and

''(iii) in cooperation with the metropolitan planning organization.

''(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, a project may be advanced from the transportation improvement program in place of another project in the same transportation improvement program without the approval of the Secretary.

''(4) PUBLICATION REQUIREMENTS.—

''(A) PUBLICATION OF TRANSPORTATION IMPROVEMENT PROGRAM.—A transportation improvement program involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review, including, to the maximum extent practicable, in electronically accessible formats and means, such as the World Wide Web.

''(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding 4 years shall be published or otherwise made available for public review by the cooperative effort of the State, transit operator, and the metropolitan planning organization. This listing shall be consistent with the funding categories identified in the transportation improvement program.

''(C) RULEMAKING.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 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.

''(k) TRANSPORTATION MANAGEMENT AREAS.—

''(1) REQUIRED IDENTIFICATION.—The Secretary shall identify each urbanized area with a population of more than 200,000 individuals as a transportation management area.

''(2) TRANSPORTATION PLANS AND PROGRAMS.—Transportation plans and programs for a metropolitan planning area serving a transportation management area shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and transit operators.

''(3) CONGESTION MANAGEMENT SYSTEM.—

''(A) IN GENERAL.—The transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 and this chapter through the use of travel demand reduction and operational management strategies.

''(B) PHASE-IN SCHEDULE.—The Secretary shall establish a phase-in schedule that provides for full compliance with the requirements of this section not later than 1 year after the identification of transportation management areas under paragraph (1).

''(4) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—All federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under title 23 (except for projects carried out on the National Highway System and projects carried out under the bridge program or the interstate maintenance program) or under this chapter shall be selected for implementation from the approved transportation improvement program by the metropolitan planning organization designated for the area in consultation with the State and any affected public transit operator.

''(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects on the National Highway System carried out within the boundaries of a metropolitan planning area serving a transportation management area and projects carried out within such boundaries under the bridge program or the interstate maintenance program under title 23 shall be selected for implementation from the approved transportation improvement program by the State in cooperation with the metropolitan planning organization designated for the area.

''(5) CERTIFICATION.—

''(A) IN GENERAL.—The Secretary shall—

''(i) ensure that the metropolitan planning process of a metropolitan planning organization serving a transportation management area is being carried out in accordance with Federal law; and

''(ii) subject to subparagraph (B), certify, not less frequently than once every 4 years in nonattainment and maintenance areas (as defined under the Clean Air Act) and not less frequently than once every 5 years in attainment areas (as defined under such Act), that the requirements of this paragraph are met with respect to the metropolitan planning process.

''(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

''(i) the transportation planning process complies with the requirements of this section and all other applicable Federal law; and

''(ii) a transportation plan and a transportation improvement program for the metropolitan planning area have been approved by the metropolitan planning organization and the Governor.

''(C) PENALTY FOR FAILING TO CERTIFY.—

''(i) WITHHOLDING PROJECT FUNDS.—If the metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold any funds otherwise available to the metropolitan planning area for projects funded under title 23 and this chapter.

''(ii) RESTORATION OF WITHHELD FUNDS.—Any funds withheld under clause (i) shall be restored to the metropolitan planning area when the metropolitan planning process is certified by the Secretary.

''(D) REVIEW OF CERTIFICATION.—In making a certification under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

''(l) ABBREVIATED PLANS FOR CERTAIN AREAS.—

''(1) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and transportation improvement program for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, after considering the complexity of transportation problems in the area.

''(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

''(m) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

''(1) IN GENERAL.—Notwithstanding any other provisions of title 23 or this chapter, Federal funds may not be advanced for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) for any highway project that will result in a significant increase in carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

''(2) APPLICABILITY.—This subsection applies to any nonattainment area within the metropolitan planning area boundaries determined under subsection (d).

''(n) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project that is not eligible under title 23 or this chapter.

''(o) AVAILABILITY OF FUNDS.—Funds set aside under section 104(f) of title 23 or section 5308 of this title shall be available to carry out this section.

''(p) CONTINUATION OF CURRENT REVIEW PRACTICE.—Any decision by the Secretary concerning a plan or program described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''.

SEC. 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 (including the protection of habitat, water quality, and agricultural and forest land, while minimizing invasive species), promote energy conservation, promote consistency between transportation improvements and State and local land use planning and economic development patterns, and improve the quality of life (including minimizing adverse health effects from mobile source air pollution and promoting the linkage of the transportation and development goals of the State);

''(F) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

''(G) promote efficient system management and operation; and

''(H) emphasize the preservation and efficient use of the existing transportation system.

''(2) SELECTION OF PROJECTS AND STRATEGIES.—After soliciting and considering any relevant public comments, the State shall determine which of the projects and strategies described in paragraph (1) are most appropriate.

''(3) MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—A transportation plan under this subsection shall include a discussion of—

''(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetland, and other environmental functions; and

''(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

''(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

''(4) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor described in paragraph (1) shall not be reviewable by any court under title 23, this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a Plan, a Program, a project or strategy, or the certification of a planning process.

''(e) ADDITIONAL REQUIREMENTS.—In carrying out planning under this section, each State shall consider—

''(1) with respect to nonmetropolitan areas, the concerns of affected local officials with responsibility for transportation;

''(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

''(3) coordination of Plans, Programs, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

''(f) STATEWIDE TRANSPORTATION PLAN.—

''(1) DEVELOPMENT.—Each State shall develop a Plan, with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN PLANNING AREAS.—The Plan shall be developed for each metropolitan planning area in the State in cooperation with the metropolitan planning organization designated for the metropolitan planning area under section 5303.

''(B) NONMETROPOLITAN AREAS.—With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in consultation with affected nonmetropolitan officials with responsibility for transportation. The consultation process shall not require the review or approval of the Secretary.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(D) CONSULTATION, COMPARISON, AND CONSIDERATION.—

''(i) IN GENERAL.—The Plan shall be developed, as appropriate, in consultation with State and local agencies responsible for—

''(I) land use management;

''(II) natural resources;

''(III) environmental protection;

''(IV) conservation; and

''(V) historic preservation.

''(ii) COMPARISON AND CONSIDERATION.—Consultation under clause (i) shall involve—

''(I) comparison of transportation plans to State conservation plans or maps, if available;

''(II) comparison of transportation plans to inventories of natural or historic resources, if available; or

''(III) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkage areas.

''(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the Plan, the State shall—

''(A) provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, providers of

freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed Plan; and

''(B) to the maximum extent practicable—

''(i) hold any public meetings at convenient and accessible locations and times;

''(ii) employ visualization techniques to describe plans; and

''(iii) make public information available in electronically accessible format and means, such as the World Wide Web.

''(4) MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—A Plan shall include a discussion of—

''(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetlands, and other environmental functions; and

''(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

''(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

''(5) TRANSPORTATION STRATEGIES.—A Plan shall identify transportation strategies necessary to efficiently serve the mobility needs of people.

''(6) FINANCIAL PLAN.—The Plan may include a financial plan that—

''(A) demonstrates how the adopted Plan can be implemented;

''(B) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Plan;

''(C) recommends any additional financing strategies for needed projects and programs; and

''(D) may include, for illustrative purposes, additional projects that would be included in the adopted Plan if reasonable additional resources beyond those identified in the financial plan were available.

''(7) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects described in paragraph (6)(D).

''(8) EXISTING SYSTEM.—The Plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

''(9) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each Plan prepared by a State shall be published or otherwise made available, including, to the maximum extent practicable, in electronically accessible formats and means, such as the World Wide Web.

''(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—

''(1) DEVELOPMENT.—Each State shall develop a Program for all areas of the State.

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN PLANNING AREAS.—With respect to each metropolitan planning area in the State, the Program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan planning area under section 5303.

''(B) NONMETROPOLITAN AREAS.—With respect to each nonmetropolitan area in the State, the Program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation. The consultation process shall not require the review or approval of the Secretary.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Program shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the Program, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transit, representatives of users of pedestrian walkways and bicycle transportation facilities, and other interested parties with a reasonable opportunity to comment on the proposed Program.

''(4) INCLUDED PROJECTS.—

''(A) IN GENERAL.—A Program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

''(B) LISTING OF PROJECTS.—

''(i) IN GENERAL.—The Program shall cover a minimum of 4 years, identify projects by year, be fiscally constrained by year, and be updated not less than once every 4 years.

''(ii) PUBLICATION.—An annual listing of projects for which funds have been obligated in the preceding 4 years in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review. The listing shall be consistent with the funding categories identified in each metropolitan transportation improvement program.

''(C) INDIVIDUAL IDENTIFICATION.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually.

''(D) CONSISTENCY WITH STATEWIDE TRANSPORTATION PLAN.—Each project included in the list described in subparagraph (B) shall be—

''(i) consistent with the Plan developed under this section for the State;

''(ii) identical to the project or phase of the project as described in each year of the approved metropolitan transportation improvement program; and

''(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act (42 U.S.C. 7401 et seq.), if the project is carried out in an area designated as nonattainment for ozone or carbon monoxide under that Act.

''(E) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The Program shall not include a project, or an identified phase of a project, unless full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(F) FINANCIAL PLAN.—The Program may include a financial plan that—

''(i) demonstrates how the approved Program can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Program;

''(iii) recommends any additional financing strategies for needed projects and programs; and

''(iv) may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

''(G) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

''(i) NO REQUIRED SELECTION.—Notwithstanding subparagraph (F), a State shall not be required to select any project from the illustrative list of additional projects described in subparagraph (F)(iv).

''(ii) REQUIRED APPROVAL BY THE SECRETARY.—A State shall not include any project from the illustrative list of additional projects described in subparagraph (F)(iv) in an approved Program without the approval of the Secretary.

''(H) PRIORITIES.—The Program shall reflect the priorities for programming and expenditures of funds, including transportation and transit enhancement activities, required by title 23 and this chapter, and transportation control measures included in the State's air quality implementation plan.

''(5) PROJECT SELECTION FOR AREAS WITH FEWER THAN 50,000 INDIVIDUALS.—

''(A) IN GENERAL.—Each State, in cooperation with the affected nonmetropolitan local officials with responsibility for transportation, shall select projects to be carried out in areas with fewer than 50,000 individuals from the approved Program (excluding projects carried out under the National Highway System, the bridge program, or the interstate maintenance program under title 23 or sections 5310 and 5311 of this title).

''(B) CERTAIN PROGRAMS.—Each State, in consultation with the affected nonmetropolitan local officials with responsibility for transportation, shall select, from the approved Program, projects to be carried out in areas with fewer than 50,000 individuals under the National Highway System, the bridge program, or the Interstate maintenance program under title 23 or under sections 5310 and 5311 of this title.

''(6) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL.—A Program developed under this subsection shall be reviewed and based on a current planning finding approved by the Secretary not less frequently than once every 4 years.

''(7) PLANNING FINDING.—Not less frequently than once every 4 years, the Secretary shall determine whether the transportation planning process through which Plans and Programs are developed are consistent with this section and section 5303.

''(8) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, a project included in the approved Program may be advanced in place of another project in the program without the approval of the Secretary.

''(h) FUNDING.—Funds set aside pursuant to section 104(i) of title 23 and 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 or subrecipient located in an urbanized area shall be subject to all terms, conditions, requirements, and provisions that the Secretary determines to be necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in the value of real property resulting from the project assisted under this section.

''(B) GRANTEE NOT IN URBANIZED AREA.—The Secretary shall require that any grants awarded under this section to a recipient or subrecipient not located in an urbanized area shall be subject to the same terms, conditions, requirements, and provisions as a recipient or subrecipient of assistance under section 5311.

''(C) SUBRECIPIENT.—The Secretary shall require that any private, nonprofit organization that is a subrecipient of a grant awarded under this section shall be subject to the same terms, conditions, requirements, and provisions as a subrecipient of assistance under section 5310.

''(D) STATEWIDE TRANSIT PROVIDER GRANTEES.—A statewide transit provider that receives a grant under this section shall be subject to the terms, conditions, requirements, and provisions of this section or section 5311, consistent with the scope and purpose of the grant and the location of the project.''; and

(3) by adding at the end the following:

''(3) CERTIFICATION.—An applicant that has submitted the certifications required under subparagraphs (A), (B), (C), and (H) of section 5307(d)(1) shall be deemed to have provided sufficient information upon which the Secretary may make the findings required under this subsection.''.

(c) DEFINED TERM.—Section 5309(b) is amended to read as follows:

''(b) DEFINED TERM.—As used in this section, the term 'alternatives analysis' means a study conducted as part of the transportation planning process required under sections 5303 and 5304, which includes—

''(1) an assessment of a wide range of public transportation alternatives designed to address a transportation problem in a corridor or subarea;

''(2) sufficient information to enable the Secretary to make the findings of project justification and local financial commitment required under this section;

''(3) the selection of a locally preferred alternative; and

''(4) the adoption of the locally preferred alternative as part of the long-range transportation plan required under section 5303.''.

(d) GRANT REQUIREMENTS.—Section 5309(d) is amended to read as follows:

''(d) GRANT REQUIREMENTS.—The Secretary may not approve a grant for a project under this section unless the Secretary determines that—

''(1) the project is part of an approved transportation plan and program of projects required under sections 5303, 5304, and 5306; and

''(2) the applicant has, or will have—

''(A) the legal, financial, and technical capacity to carry out the project, including safety and security aspects of the project;

''(B) satisfactory continuing control over the use of the equipment or facilities; and

''(C) the capability and willingness to maintain the equipment or facilities.''.

(e) MAJOR CAPITAL INVESTMENT PROJECTS OF $75,000,000 OR MORE.—Section 5309(e) is amended to read as follows:

''(e) MAJOR CAPITAL INVESTMENT PROJECTS OF $75,000,000 OR MORE.—

''(1) FULL FUNDING GRANT AGREEMENT.—The Secretary shall enter into a full funding grant agreement, based on the evaluations and ratings required under this subsection, with each grantee receiving not less than $75,000,000 under this subsection for a new fixed guideway capital project that—

''(A) is authorized for final design and construction; and

''(B) has been rated as medium, medium-high, or high, in accordance with paragraph (5)(B).

''(2) DETERMINATIONS.—The Secretary may not award a grant under this subsection for a new fixed guideway capital project unless the Secretary determines that the proposed project is—

''(A) based on the results of an alternatives analysis and preliminary engineering;

''(B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost-effectiveness, operating efficiencies, economic development effects, and public transportation supportive land use patterns and policies; and

''(C) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct the project, and maintain and operate the entire public transportation system, while ensuring that the extent and quality of existing public transportation services are not degraded.

''(3) EVALUATION OF PROJECT JUSTIFICATION.—In making the determinations under paragraph (2)(B) for a major capital investment grant, the Secretary shall analyze, evaluate, and consider—

''(A) the results of the alternatives analysis and preliminary engineering for the proposed project;

''(B) the reliability of the forecasts of costs and utilization made by the recipient and the contractors to the recipient;

''(C) the direct and indirect costs of relevant alternatives;

''(D) factors such as—

''(i) congestion relief;

''(ii) improved mobility;

''(iii) air pollution;

''(iv) noise pollution;

''(v) energy consumption; and

''(vi) all associated ancillary and mitigation costs necessary to carry out each alternative analyzed;

''(E) reductions in local infrastructure costs achieved through compact land use development and positive impacts on the capacity, utilization, or longevity of other surface transportation assets and facilities;

''(F) the cost of suburban sprawl;

''(G) the degree to which the project increases the mobility of the public transportation dependent population or promotes economic development;

''(H) population density and current transit ridership in the transportation corridor;

''(I) the technical capability of the grant recipient to construct the project;

''(J) any adjustment to the project justification necessary to reflect differences in local land, construction, and operating costs; and

''(K) other factors that the Secretary determines to be appropriate to carry out this chapter.

''(4) EVALUATION OF LOCAL FINANCIAL COMMITMENT.—

''(A) IN GENERAL.—In evaluating a project under paragraph (2)(C), the Secretary shall require that—

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

''(ii) each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable; and

''(iii) local resources are available to recapitalize and operate the overall proposed public transportation system, including essential feeder bus and other services necessary to achieve the projected ridership levels, while ensuring that the extent and quality of existing public transportation services are not degraded.

''(B) EVALUATION CRITERIA.—In assessing the stability, reliability, and availability of proposed sources of local financing under paragraph (2)(C), the Secretary shall consider—

''(i) the reliability of the forecasts of costs and utilization made by the recipient and the contractors to the recipient;

''(ii) existing grant commitments;

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

''(iv) any debt obligation that exists, or is proposed by the recipient, for the proposed project or other public transportation purpose; and

''(v) the extent to which the project has a local financial commitment that exceeds the required non-Federal share of the cost of the project, provided that if the Secretary gives priority to financing projects that include more than the non-Federal share required under subsection (h), the Secretary shall give equal consideration to differences in the fiscal capacity of State and local governments.

''(5) PROJECT ADVANCEMENT AND RATINGS.—

''(A) PROJECT ADVANCEMENT.—A proposed project under this subsection shall not advance from alternatives analysis to preliminary engineering or from preliminary engineering to final design and construction unless the Secretary determines that the project meets the requirements of this section and there is a reasonable likelihood that the project will continue to meet such requirements.

''(B) RATINGS.—In making a determination under subparagraph (A), the Secretary shall evaluate and rate the project on a 5-point scale (high, medium-high, medium, medium-low, or low) based on the results of the alternatives analysis, the project justification criteria, and the degree of local financial commitment, as required under this subsection. In rating the projects, the Secretary shall provide, in addition to the overall project rating, individual ratings for each of the criteria established by regulation.

''(6) APPLICABILITY.—This subsection shall not apply to projects for which the Secretary has issued a letter of intent or entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 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 or Indian tribe that receives a Federal transit program grant directly from the Federal Government.

''(2) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, a nonprofit organization, or a private operator of public transportation or intercity bus service that receives Federal transit program grant funds indirectly through a recipient.''.

(b) GENERAL AUTHORITY.—Section 5311(b) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) GRANTS AUTHORIZED.—Except as provided under paragraph (2), the Secretary may award grants under this section to recipients located in areas other than urbanized areas for—

''(A) public transportation capital projects;

''(B) operating costs of equipment and facilities for use in public transportation; and

''(C) the acquisition of public transportation services.'';

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following:

''(2) STATE PROGRAM.—

''(A) IN GENERAL.—A project eligible for a grant under this section shall be included in a State program for public transportation service projects, including agreements with private providers of public transportation service.

''(B) SUBMISSION TO SECRETARY.—Each State shall annually submit the program described in subparagraph (A) to the Secretary.

''(C) APPROVAL.—The Secretary may not approve the program unless the Secretary determines that—

''(i) the program provides a fair distribution of amounts in the State; and

''(ii) the program provides the maximum feasible coordination of public transportation service assisted under this section with transportation service assisted by other Federal sources.'';

(4) in paragraph (3), as redesignated—

(A) by striking ''(3) The Secretary of Transportation'' and inserting the following:

''(3) RURAL TRANSPORTATION ASSISTANCE PROGRAM.—

''(A) ESTABLISHMENT.—The Secretary'';

(B) by striking ''make'' and inserting ''use not more than 2 percent of the amount made available to carry out this section to award''; and

(C) by adding at the end the following:

''(B) DATA COLLECTION.—

''(i) REPORT.—Each grantee under this section shall submit an annual report to the Secretary containing information on capital investment, operations, and service provided with funds received under this section, including—

''(I) total annual revenue;

''(II) sources of revenue;

''(III) total annual operating costs;

''(IV) total annual capital costs;

''(V) fleet size and type, and related facilities;

''(VI) revenue vehicle miles; and

''(VII) ridership.''; and

(5) by adding after paragraph (3) the following:

''(4) Of the amount made available to carry out paragraph (3)—

''(A) not more than 15 percent may be used to carry out projects of a national scope; and

''(B) any amounts not used under subparagraph (A) shall be allocated to the States.''.

(c) APPORTIONMENTS.—Section 5311(c) is amended to read as follows:

''(c) APPORTIONMENTS.—

''(1) PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(F) of section 5338, the following amounts shall be apportioned for grants to Indian tribes for any purpose eligible under this section, under such terms and conditions as may be established by the Secretary:

''(A) $6,000,000 for fiscal year 2005.

''(B) $8,000,000 for fiscal year 2006.

''(C) $10,000,000 for fiscal year 2007.

''(D) $12,000,000 for fiscal year 2008.

''(E) $15,000,000 for fiscal year 2009.

''(2) REMAINING AMOUNTS.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(F) of section 5338 that are not apportioned under paragraph (1)—

''(A) 20 percent shall be apportioned to the States in accordance with paragraph (3); and

''(B) 80 percent shall be apportioned to the States in accordance with paragraph (4).

''(3) APPORTIONMENTS BASED ON LAND AREA IN NONURBANIZED AREAS.—

''(A) IN GENERAL.—Subject to subparagraph (B), each State shall receive an amount that is equal to the amount apportioned under paragraph (2)(A) multiplied by the ratio of the land area in areas other than urbanized areas in that State and divided by the land area in all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.

''(B) MAXIMUM APPORTIONMENT.—No State shall receive more than 5 percent of the amount apportioned under this paragraph.

''(4) APPORTIONMENTS BASED ON POPULATION IN NONURBANIZED AREAS.—Each State shall receive an amount equal to the amount apportioned under paragraph (2)(B) multiplied by the ratio of the population of areas other than urbanized areas in that State divided by the population of all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.''.

(d) USE FOR ADMINISTRATIVE, PLANNING, AND TECHNICAL ASSISTANCE.—Section 5311(e) is amended—

(1) by striking ''AND TECHNICAL ASSISTANCE.—(1) The Secretary of Transportation'' and inserting '', PLANNING, AND TECHNICAL ASSISTANCE.—The Secretary'';

(2) by striking ''to a recipient''; and

(3) by striking paragraph (2).

(e) INTERCITY BUS TRANSPORTATION.—Section 5311(f) is amended—

(1) in paragraph (1)—

(A) by striking ''(1)'' and inserting the following:

''(1) IN GENERAL.—''; and

(B) by striking ''after September 30, 1993,''; and

(2) in paragraph (2)—

(A) by striking ''A State'' and inserting ''After consultation with affected intercity bus service providers, a State''; and

(B) by striking ''of Transportation''.

(f) 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.'';

(D) in paragraph (4)—

(i) by striking subparagraph (B); and

(ii) by redesignating subparagraph (C) as subparagraph (B); and

(E) by adding at the end the following:

''(6) MEDICAL TRANSPORTATION DEMONSTRATION GRANTS.—

''(A) GRANTS AUTHORIZED.—The Secretary may award demonstration grants, from funds made available under paragraph (1), to eligible entities to provide transportation services to individuals to access dialysis treatments and other medical treatments for renal disease.

''(B) ELIGIBLE ENTITIES.—An entity shall be eligible to receive a grant under this paragraph if the entity—

''(i) meets the conditions described in section 501(c)(3) of the Internal Revenue Code of 1986; or

''(ii) is an agency of a State or unit of local government.

''(C) USE OF FUNDS.—Grant funds received under this paragraph may be used to provide transportation services to individuals to access dialysis treatments and other medical treatments for renal disease.

''(D) APPLICATION.—

''(i) IN GENERAL.—Each eligible entity desiring a grant under this paragraph shall submit an application to the Secretary at such time, at such place, and containing such information as the Secretary may reasonably require.

''(ii) SELECTION OF GRANTEES.—In awarding grants under this paragraph, the Secretary shall give preference to eligible entities from communities with—

''(I) high incidence of renal disease; and

''(II) limited access to dialysis facilities.

''(E) RULEMAKING.—The Secretary shall issue regulations to implement and administer the grant program established under this paragraph.

''(F) REPORT.—The Secretary shall submit a report on the results of the demonstration projects funded under this paragraph to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.''; and

(2) by amending subsection (b) to read as follows:

''(b) 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.''.

(c) NATIONAL TECHNICAL ASSISTANCE CENTER FOR SENIOR TRANSPORTATION; ALTERNATIVE FUELS STUDY.—Section 5314 is amended by adding at the end the following:

''(c) NATIONAL TECHNICAL ASSISTANCE CENTER FOR SENIOR TRANSPORTATION.—

''(1) ESTABLISHMENT.—The Secretary shall award grants to a national not-for-profit organization for the establishment and maintenance of a national technical assistance center.

''(2) ELIGIBILITY.—An organization shall be eligible to receive the grant under paragraph (1) if the organization—

''(A) focuses significantly on serving the needs of the elderly;

''(B) has demonstrated knowledge and expertise in senior transportation policy and planning issues;

''(C) has affiliates in a majority of the States;

''(D) has the capacity to convene local groups to consult on operation and development of senior transportation programs; and

''(E) has established close working relationships with the Federal Transit Administration and the Administration on Aging.

''(3) USE OF FUNDS.—The national technical assistance center established under this section shall—

''(A) gather best practices from throughout the country and provide such practices to local communities that are implementing senior transportation programs;

''(B) work with teams from local communities to identify how they are successfully meeting the transportation needs of senior and any gaps in services in order to create a plan for an integrated senior transportation program;

''(C) provide resources on ways to pay for senior transportation services;

''(D) create a web site to publicize and circulate information on senior transportation programs;

''(E) establish a clearinghouse for print, video, and audio resources on senior mobility; and

''(F) administer the demonstration grant program established under paragraph (4).

''(4) GRANTS AUTHORIZED.—

''(A) IN GENERAL.—The national technical assistance center established under this section, in consultation with the Federal Transit Administration, shall award senior transportation demonstration grants to—

''(i) local transportation organizations;

''(ii) State agencies;

''(iii) units of local government; and

''(iv) nonprofit organizations.

''(B) USE OF FUNDS.—Grant funds received under this paragraph may be used to—

''(i) evaluate the state of transportation services for senior citizens;

''(ii) recognize barriers to mobility that senior citizens encounter in their communities;

''(iii) establish partnerships and promote coordination among community stakeholders, including public, not-for-profit, and for-profit providers of transportation services for senior citizens;

''(iv) identify future transportation needs of senior citizens within local communities; and

''(v) establish strategies to meet the unique needs of healthy and frail senior citizens.

''(C) SELECTION OF GRANTEES.—The Secretary shall select grantees under this subsection based on a fair representation of various geographical locations throughout the United States.

''(5) ALLOCATIONS.—From the funds made available for each fiscal year under subsections (a)(5)(C)(iv) and (b)(2)(G)(iv) of section 5338, $3,000,000 shall be allocated to carry out this subsection.

''(d) ALTERNATIVE FUELS STUDY.—

''(1) STUDY.—The Secretary shall conduct a study of the actions necessary to facilitate the purchase of increased volumes of alternative fuels (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)) for use in public transit vehicles

''(2) SCOPE OF STUDY.—The study conducted under this subsection shall focus on the incentives necessary to increase the use of alternative fuels in public transit vehicles, including buses, fixed guideway vehicles, and ferries.

''(3) CONTENTS.—The study shall consider—

''(A) the environmental benefits of increased use of alternative fuels in transit vehicles;

''(B) existing opportunities available to transit system operators that encourage the purchase of alternative fuels for transit vehicle operation;

''(C) existing barriers to transit system operators that discourage the purchase of alternative fuels for transit vehicle operation, including situations where alternative fuels that do not require capital improvements to transit vehicles are disadvantaged over fuels that do require such improvements; and

''(D) the necessary levels and type of support necessary to encourage additional use of alternative fuels for transit vehicle operation.

''(4) RECOMMENDATIONS.—The study shall recommend regulatory and legislative alternatives that will result in the increased use of alternative fuels in transit vehicles.

''(5) REPORT.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall submit the study completed under this subsection to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives''.

(c) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading for section 5314 is amended to read as follows:

''§ 5314. National research programs''.

(2) TABLE OF SECTIONS.—The item relating to section 5314 in the table of sections for chapter 53 is amended to read as follows:

''5314. National research programs.''.

SEC. 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.

''(d) PUBLIC TRANSPORTATION SECURITY.—

''(1) IN GENERAL.—Not later than 90 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall enter into a memorandum of understanding with the Secretary of Homeland Security to define and clarify the respective roles and responsibilities of the Department of Transportation and the Department of Homeland Security relating to public transportation security.

''(2) CONTENTS.—The memorandum of understanding described in paragraph (1) shall—

''(A) establish national security standards for public transportation agencies;

''(B) establish funding priorities for grants from the Department of Homeland Security to public transportation agencies;

''(C) create a method of coordination with public transportation agencies on security matters; and

''(D) address any other issues determined to be appropriate by the Secretary and the Secretary of Homeland Security.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5329 in the table of sections for chapter 53 is amended to read as follows:

''5329. Investigation of safety hazards and security risks.''.

SEC. 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 '': *Provided,* That—

''(A) the protective period shall not exceed 4 years; and

''(B) the separation allowance shall not exceed 12 months.''; and

(2) by adding at the end the following:

''(4) An arrangement under this subsection shall not guarantee continuation of employment as a result of a change in private contractors through competitive bidding unless such continuation is otherwise required under subparagraph (A), (B), or (D) of paragraph (2).

''(5) Fair and equitable arrangements to protect the interests of employees utilized by the Secretary of Labor for assistance to purchase like-kind equipment or facilities, and amendments to existing assistance agreements, shall be certified without referral.

''(6) Nothing in this subsection shall affect the level of protection provided to freight railroad employees.''.

SEC. 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;

''(ii) $3,900,000 in fiscal year 2006;

''(iii) $4,200,000 in fiscal year 2007;

''(iv) $4,600,000 in fiscal year 2008; and

''(v) $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. Such forecast shall be based on the population trend for each State between the most recent decennial census and the most recent estimate of population made by the Secretary of Commerce.

''(2) APPORTIONMENTS BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.—

''(A) IN GENERAL.—The Secretary shall apportion amounts to each State under paragraph (1) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the forecast population of all urbanized areas in that State divided by the total forecast population of that State. In making the apportionment under this subparagraph, the Secretary shall utilize any available forecasts made by the State. If no forecasts are available, the Secretary shall utilize data on urbanized areas and total population from the most recent decennial census.

''(B) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under subparagraph (A) shall be apportioned to that State and added to the amount made available for grants under section 5311.

''(3) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to urbanized areas in each State under 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. DISADVANTAGED BUSINESS ENTERPRISE.

Section 1101(b) of the Transportation Equity Act of the 21st Century shall apply to all funds authorized or otherwise made available under this title.

SEC. 3045. 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 I—HIGHWAY SAFETY GRANT PROGRAM

SEC. 4101. SHORT TITLE; AMENDMENT OF TITLE 23, UNITED STATES CODE.

(a) SHORT TITLE.—This subpart 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 subpart 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 subtitle, 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 subpart, 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) AGRESSIVE DRIVING.—Section 402(a) is further amended—

(A) by redesignating clause (6) as clause (8);

(B) by inserting after ''involving school buses,'' at the end of clause (5) the following: ''(6) to reduce aggressive driving and to educate drivers about defensive driving, (7) to reduce accidents resulting from fatigued and distracted drivers, including distractions arising from the use of electronic devices in vehicles,''; and

(C) by inserting ''aggressive driving, distracted driving,'' after ''school bus accidents,''.

(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.

''(5) RESEARCH ON DISTRACTED, INATTENTIVE, AND FATIGUED DRIVERS.—In conducting research under subsection (a)(3), the Secretary shall carry out not less than 5 demonstration projects to evaluate new and innovative means of combatting traffic system problems caused by distracted, inattentive, or fatigued drivers. The demonstration projects shall be in addition to any other research carried out under this subsection.

''(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, 2002.

''(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, 2002, 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 this title.''.

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) assesses the system used by the State for tracking drivers who are arrested or convicted for violation of laws prohibiting impaired operation of motor vehicles;

''(ii) identifies ways to improve the system, as well as to enhance the capability of the system to provide information in coordination with impaired operator information systems of other States; and

''(iii) develops a strategic plan that sets forth the actions to be taken and the resources necessary to achieve the identified improvements and to enhance the capability for coordination with the systems of other States.

''(C) A program meets the requirements of this subparagraph only if, in each of fiscal years 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.—(A) 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) ASSESSMENT.—In the first year of operation, the States shall assess the number of court systems in its jurisdiction that are consistently performing the DWI Court functions.

''(D) PLAN.—In the second year of operation, the State shall develop a strategic

plan for increasing the number of courts performing the DWI function.

''(E) PROGRESS.—In subsequent years of operation, the State shall demonstrate progress in increasing the number of DWI Courts and in increasing the number of high-risk offenders participating in and successfully completing DWI Court agreements.

''(d) USES OF GRANTS.—Grants made under this section may be used for programs and activities described in subsection (c) and to defray the following costs:

''(1) Labor costs, management costs, and equipment procurement costs for the high-visibility, Statewide law enforcement campaigns under subsection (c)(1).

''(2) The costs of the training of law enforcement personnel and the procurement of technology and equipment, such as and including video equipment and passive alcohol sensors, to counter directly impaired operation of motor vehicles.

''(3) The costs of public awareness, advertising, and educational campaigns that publicize use of sobriety check points or increased law enforcement efforts to counter impaired operation of motor vehicles.

''(4) The costs of public awareness, advertising, and educational campaigns that target impaired operation of motor vehicles by persons under 34 years of age.

''(5) The costs of the development and implementation of a State impaired operator information system described in subsection (c)(3).

''(6) The costs of operating programs that impound the vehicle of an individual arrested as an impaired operator of a motor vehicle for not less than 12 hours after the operator is arrested.

''(e) ADDITIONAL AUTHORITIES FOR CERTAIN AUTHORIZED USES.—

''(1) COMBINATION OF GRANT PROCEEDS.—Grant funds used for a campaign under subsection (d)(3) may be combined, or expended in coordination, with proceeds of grants under section 402 of this title.

''(2) COORDINATION OF USES.—Grant funds used for a campaign under paragraph (3) or (4) of subsection (d) may be expended—

''(A) in coordination with employers, schools, entities in the hospitality industry, and nonprofit traffic safety groups; and

''(B) in coordination with sporting events and concerts and other entertainment events.

''(f) FUNDING.—

''(1) IN GENERAL.—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).

''(g) USE OF FUNDS BY HIGH FATALITY-RATE STATES.—

''(1) REQUIRED USES.—At least ½ of the amounts allocated to States under subsection (f)(2) shall be used for the program described in subsection (c)(1).

''(2) REQUIREMENT FOR PLAN.—A State receiving an allocation of grant funds under subsection (f)(2) shall expend those funds only after consulting with the Administrator of the National Highway Traffic Safety Administration regarding such expenditures.

''(h) DEFINITIONS.—In this section:

''(1) IMPAIRED OPERATOR.—The term 'impaired operator' means a person who, while operating a motor vehicle—

''(A) has a blood alcohol content of 0.08 percent or higher; or

''(B) is under the influence of a controlled substance.

''(2) IMPAIRED DRIVING-RELATED FATALITY RATE.—The term 'impaired driving-related fatality rate' means the rate of 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 date of 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) DATA ON USE OF ELECTRONIC DEVICES.—The model data elements required under paragraph (1) shall include data elements, as determined appropriate by the Secretary in consultation with the States and with appropriate elements of the law enforcement community, on the impact on traffic safety of the use of electronic devices while driving.

''(3) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all other sources for highway

safety data programs at or above the average level of such expenditures maintained by such State in the 2 fiscal years preceding the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2003.

''(4) FEDERAL SHARE.—The Federal share of the cost of adopting and implementing in a fiscal year a State program described in subsection (a) may not exceed 80 percent.

''(5) LIMITATION ON USE OF GRANT PROCEEDS.—A State may use the proceeds of a grant received under this section only to implement the program described in subsection (a) for which the grant is made.

''(e) APPLICABILITY OF CHAPTER 1.—Section 402(d) of this title shall apply in the administration of this section.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 4 is amended by adding at the end the following:

''412. State traffic safety information system improvements.''.

SEC. 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 Highway Safety Grant Program 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 II—SPECIFIC VEHICLE SAFETY-RELATED RULINGS

SEC. 4151. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise specifically provided, whenever in this subpart 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 4153, 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 4112 of this Act, is amended by adding at the end the following:

''§ 414. 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:

''414. 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 of title 49, United States Code—

(1) $130,500,000 for fiscal year 2004;

(2) $133,500,000 for fiscal year 2005;

(3) $133,600,000 for fiscal year 2006;

(4) $134,500,000 for fiscal year 2007;

(5) $138,000,000 for fiscal year 2008; and

(6) $141,000,000 for fiscal year 2009.

PART III—MISCELLANEOUS PROVISIONS

SEC. 4171. DRIVER LICENSING AND EDUCATION.

(a) NATIONAL OFFICE OF DRIVER LICENSING AND EDUCATION.—Section 105 of title 49, United States Code, is amended by adding at the end the following new subsection:

''(f)(1) There is a National Office of Driver Licensing and Education in the National Highway Traffic Safety Administration.

''(2) The head of the National Office of Driver Licensing and Education is the Director.

''(3) The functions of the National Office of Driver Licensing and Education are as follows:

''(A) To provide States with services for coordinating the motor vehicle driver training and licensing programs of the States.

''(B) To develop and make available to the States a recommended comprehensive model for motor vehicle driver education and graduated licensing that incorporates the best practices in driver education and graduated licensing, including best practices with respect to—

''(i) vehicle handling and crash avoidance;

''(ii) driver behavior and risk reduction;

''(iii) roadway features and associated safety implications;

''(iv) roadway interactions involving all types of vehicles and road users, such as car-truck and pedestrian-car interactions;

''(v) parent education; and

''(vi) other issues identified by the Director.

''(C) To carry out such research (pursuant to cooperative agreements or otherwise) and undertake such other activities as the Director determines appropriate to develop and, on an ongoing basis, improve the recommended comprehensive model.

''(D) To provide States with technical assistance for the implementation and deployment of the motor vehicle driver education and licensing comprehensive model recommended under subparagraph (B).

''(E) To develop and recommend to the States methods for harmonizing the presentation of motor vehicle driver education and licensing with the requirements of multistage graduated licensing systems, including systems described in section 410(c)(4) of title 23, and to demonstrate and evaluate the effectiveness of those methods in selected States.

''(F) To assist States with the development and implementation of programs to certify driver education instructors, including the development and implementation of proposed uniform certification standards.

''(G) To provide States with financial assistance under section 412 of title 23 for—

''(i) the implementation of the motor vehicle driver education and licensing comprehensive model recommended under subparagraph (B);

''(ii) the establishment or improved administration of multistage graduated licensing systems; and

''(iii) the support of other improvements in motor vehicle driver education and licensing programs.

''(H) To evaluate the effectiveness of the comprehensive model recommended under subparagraph (B).

''(I) To examine different options for delivering driver education in the States.

''(J) To perform such other functions relating to motor vehicle driver education or licensing as the Secretary may require.

''(4) Not later than 42 months after the date of the enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, the Director shall submit to Congress a report on the progress made by the National Office of Driver Licensing and Education with respect to the functions under paragraph (3).''.

(b) GRANT PROGRAM FOR IMPROVEMENT OF DRIVER EDUCATION AND LICENSING.—

(1) AUTHORITY.—

(A) IN GENERAL.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

''SEC. 412. DRIVER EDUCATION AND LICENSING.

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Secretary shall carry out a program to provide States, by grant, with financial assistance to support the improvement of motor vehicle driver education programs and the establishment and improved administration of graduated licensing systems, including systems described in section 410(c)(4) of this title.

''(2) ADMINISTRATIVE OFFICE.—The Secretary shall administer the program under this section through the Director of the National Office of Driver Licensing and Education.

''(b) ELIGIBILITY REQUIREMENTS.—

''(1) REGULATIONS.—The Secretary shall prescribe in regulations the eligibility requirements, application and approval procedures and standards, and authorized uses of grant proceeds for the grant program under this section. The regulations shall, at a minimum, authorize use of grant proceeds for the following activities:

''(A) Quality assurance testing, including follow-up testing to monitor the effectiveness of—

''(i) driver licensing and education programs;

''(ii) instructor certification testing; and

''(iii) other statistical research designed to evaluate the performance of driver education and licensing programs.

''(B) Improvement of motor vehicle driver education curricula.

''(C) Training of instructors for motor vehicle driver education programs.

''(D) Testing and evaluation of motor vehicle driver performance.

''(E) Public education and outreach regarding motor vehicle driver education and licensing.

''(F) Improvements with respect to State graduated licensing programs, as well as related enforcement activities.

''(2) CONSULTATION REQUIREMENT.—In prescribing the regulations, the Secretary shall consult with the following:

''(A) The Administrator of the National Highway Traffic Safety Administration.

''(B) The heads of such other departments and agencies of the United States as the Secretary considers appropriate on the basis of relevant interests or expertise.

''(C) Appropriate officials of the governments of States and political subdivisions of States.

''(D) Other relevant experts.

''(c) MAXIMUM AMOUNT OF GRANT.—The maximum amount of a grant of financial assistance for a program, project, or activity under this section may not exceed 75 percent of the total cost of such program, project, or activity.''.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''412. Driver education and licensing.''.

(2) TIME FOR PROMULGATION OF REGULATIONS.—The Secretary of Transportation shall promulgate the regulations under section 412(b) of title 23, United States Code (as added by paragraph (1)), not later than October 1, 2005.

(c) GRANT PROGRAM FOR PUBLIC AWARENESS OF ORGAN DONATION THROUGH DRIVER LICENSING PROGRAMS.—

(1) AUTHORITY.—

(A) IN GENERAL.—Chapter 4 of title 23, United States Code (as amended by subsection (b)), is further amended by adding at the end the following new section:

''SEC. 413. ORGAN DONATION THROUGH DRIVER LICENSING.

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Secretary shall carry out a program to provide eligible recipients, by grant, with financial assistance to carry out campaigns to increase public awareness of, and training on, authority and procedures under State law to provide for the donation of organs through a declaration recorded on a motor vehicle driver license.

''(2) ADMINISTRATIVE OFFICE.—The Secretary shall administer the program under this section through the Director of the National Office of Driver Licensing and Education.

''(b) ELIGIBILITY REQUIREMENTS.—

''(1) REGULATIONS.—The Secretary shall prescribe in regulations the eligibility requirements, application and approval procedures and standards, and authorized uses of grant proceeds for the grant program under this section.

''(2) CONSULTATION REQUIREMENT.—In prescribing the regulations, the Secretary shall consult with the following:

''(A) The Administrator of the National Highway Traffic Safety Administration.

''(B) The heads of such other departments and agencies of the United States as the Secretary considers appropriate on the basis of relevant interests or expertise.

''(C) Appropriate officials of the governments of States and political subdivisions of States.

''(D) Representatives of private sector organizations recognized for relevant expertise.''.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''413. Organ donation through driver licensing.''.

(2) TIME FOR PROMULGATION OF REGULATIONS.—The Secretary of Transportation shall promulgate the regulations under section 413(b) of title 23, United States Code (as added by paragraph (1)), not later than October 1, 2005.

(d) STUDY OF NATIONAL DRIVER EDUCATION STANDARDS.—

(1) REQUIREMENT FOR STUDY.—The Secretary of Transportation shall carry out a study to determine whether the establishment and imposition of nationwide minimum standards of motor vehicle driver education would improve national highway traffic safety or the performance and legal compliance of novice drivers.

(2) TIME FOR COMPLETION OF STUDY.—The Secretary shall complete the study not later than 2 years after the date of the enactment of this Act.

(3) REPORT.—The Secretary shall publish a report on the results of the study under this section not later than 2 years after the study is completed.

(e) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts available to carry out section 403 of title 23, United States Code, for each of the fiscal years 2005 through 2010, $5,000,000 may be made available for each such fiscal year to carry out sections 412 and 413 of title 23, United States Code (as added by subsections (b) and (c), respectively).

SEC. 4172. AMENDMENT OF AUTOMOBILE INFORMATION DISCLOSURE ACT.

(a) SAFETY LABELING REQUIREMENT.—Section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232) is amended by adding at the end the following:

''(g) if one or more safety ratings for such automobile have been assigned and formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program, information about safety ratings that—

''(1) includes a graphic depiction of the number of stars that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion from stars indicating the unattained safety rating;

''(2) refers to frontal impact crash tests, side impact crash tests, and rollover resistance tests (whether or not such automobile has been assigned a safety rating for such tests), including statements that—

''(A) frontal impact crash test ratings are based on risk of head and chest injury;

''(B) side impact crash test ratings are based on risk of chest injury; and

''(C) rollover resistance ratings are based on risk of rollover in the event of a single automobile crash;

''(3) is presented in a legible, visible, and prominent fashion and covers at least—

''(A) 8 percent of the total area of the label; or

''(B) an area with a minimum length of 4½ inches and a minimum height of 3½ inches; and

''(4) contains a heading titled 'Government Safety Information' and a disclaimer including the following text: 'Star ratings for frontal impact crash tests can only be compared to other vehicles in the same weight class and those plus or minus 250 pounds. Side impact and rollover ratings can be compared across all vehicle weights and classes. For more information on safety and testing, please visit http://www.nhtsa.dot.gov'; and

''(h) if an automobile has not been tested by the National Highway Traffic Safety Administration under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect.''.

(b) REGULATIONS.—Not later than January 1, 2005, the Secretary of Transportation shall prescribe regulations to implement the labeling requirements under subsections (g) and (h) of section 3 of such Act (as added by subsection (a)).

(c) CONFORMING AND TECHNICAL AMENDMENTS.—Section 3 of such Act is further amended—

(1) in subsection (e), by striking ''and'' after the semicolon; and

(2) in subsection (f)—

(A) by adding ''and'' at the end of paragraph (3); and

(B) by striking the period at the end and inserting a semicolon.

(d) APPLICABILITY.—The labeling requirements under subsections (g) and (h) of section 3 of such Act (as added by subsection (a)), and the regulations prescribed under subsection (b), shall apply to new automobiles delivered on or after—

(1) September 1, 2005, if the regulations under subsection (b) are prescribed not later than August 31, 2004; or

(2) September 1, 2006, if the regulations under subsection (b) are prescribed after August 31, 2004.

SEC. 4173. CHILD SAFETY.

(a) INCORPORATION OF CHILD DUMMIES IN SAFETY TESTS.—

(1) RULEMAKING REQUIRED.—Not later than 2 years after the date of the enactment of this Act, the Administrator of the National Highway Traffic Safety Administration shall conduct a rulemaking to increase utilization of child dummies, including Hybrid-III child dummies, in motor vehicle safety tests, including crash tests, conducted by the Administration.

(2) CRITERIA.—In conducting the rulemaking under subsection (a), the Administrator shall select motor vehicle safety tests in which the inclusion of child dummies will lead to—

(A) increased understanding of crash dynamics with respect to children; and

(B) measurably improved child safety.

(3) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Transportation shall publish a report regarding the implementation of this section.

(b) CHILD SAFETY IN ROLLOVER CRASHES.—

(1) CONSUMER INFORMATION PROGRAM.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Transportation shall implement a consumer information program relating to child safety in rollover crashes. The Secretary shall make information related to the program available to the public following completion of the program.

(2) CHILD DUMMY DEVELOPMENT.—

(A) IN GENERAL.—The Administrator of the National Highway Traffic Safety Administration shall initiate the development of a biofidelic child crash test dummy capable of measuring injury forces in a simulated rollover crash.

(B) REPORTS.—The Secretary shall submit to Congress a report on progress related to such development—

(i) not later than 1 year after the date of the enactment of this Act; and

(ii) not later than 3 years after the date of the enactment of this Act.

(c) REPORT ON ENHANCED VEHICLE SAFETY TECHNOLOGIES.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Transportation shall submit to Congress a report that describes, evaluates, and determines the relative effectiveness of—

(1) currently available and emerging technologies, including auto-reverse functions

and child-safe window switches, that are designed to prevent and reduce the number of injuries and deaths to children left unattended inside parked motor vehicles, including injuries and deaths that result from hyperthermia or are related to power windows or power sunroofs; and

(2) currently available and emerging technologies that are designed to improve the performance of safety belts with respect to the safety of occupants aged between 4 and 8 years old.

(d) COMPLETION OF RULEMAKING REGARDING POWER WINDOWS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Transportation shall—

(1) complete the rulemaking initiated by the National Highway Traffic Safety Administration that is ongoing on the date of the enactment of this Act and relates to a requirement that window switches be designed to reduce the accidental closing by children of power windows; and

(2) issue performance-based regulations to take effect not later than September 1, 2006, requiring that window switches or related technologies be designed to prevent the accidental closing by children of power windows.

(e) DATABASE ON INJURIES AND DEATHS IN NONTRAFFIC, NONCRASH EVENTS.—

(1) IN GENERAL.—The Secretary of Transportation shall establish a new database of, and collect data regarding, injuries and deaths in nontraffic, noncrash events involving motor vehicles. The database shall include information regarding—

(A) the number, types, and proximate causes of injuries and deaths resulting from such events;

(B) the characteristics of motor vehicles involved in such events;

(C) the characteristics of the motor vehicle operators and victims involved in such events; and

(D) the presence or absence in motor vehicles involved in such events of advanced technologies designed to prevent such injuries and deaths.

(2) RULEMAKING.—The Secretary shall conduct a rulemaking regarding how to structure and compile the database.

(3) AVAILABILITY.—The Secretary shall make the database available to the public.

SEC. 4174. SAFE INTERSECTIONS.

(a) IN GENERAL.—Chapter 2 of title 18, United States Code, is amended by adding at the end the following:

"§ 39. Traffic signal preemption transmitters

''(a) OFFENSES.—

''(1) SALE.—A person who provides for sale to unauthorized users a traffic signal preemption transmitter in or affecting interstate or foreign commerce shall be fined not more than $10,000, imprisoned not more than 1 year, or both.

''(2) POSSESSION.—A person who is an unauthorized user in possession of a traffic signal preemption transmitter in or affecting interstate or foreign commerce shall be fined not more than $10,000, imprisoned not more than 6 months, or both.

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

''(1) TRAFFIC SIGNAL PREEMPTION TRANSMITTER.—The term 'traffic signal preemption transmitter' means any device or mechanism that can change a traffic signal's phase.

''(2) UNAUTHORIZED USER.—The term 'unauthorized user' means a user of a traffic signal preemption transmitter who is not a government approved user.''.

(b) CHAPTER ANALYSIS.—The chapter analysis for chapter 2 of title 18, United States Code, is amended by adding at the end the following:

''39. Traffic signal preemption transmitters.''.

SEC. 4175. 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.

Subtitle B—Motor Carrier Safety and Unified Carrier Registration

PART I—ADMINISTRATIVE MATTERS

SEC. 4201. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED STATES CODE.

(a) SHORT TITLE.—This subtitle 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 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. 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 the following:

(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, section 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 subtitle 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 II—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 part.

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 1⅛ 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—

(A) by inserting ''(1)'' after ''ACTIVITIES.—''; and

(B) by adding at the end the following:

''(2) NEW ENTRANT MOTOR CARRIER AUDIT FUNDS.—From the amounts designated under section 31104(f)(4), the Secretary may allocate new entrant motor carrier audit funds to States and local governments without requiring a matching contribution from such States or local governments.''.

(3) Section 31104(a) is amended to read as follows:

''(a) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out section 31102:

''(1) Not more than $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 of 1999. The Secretary may allocate the funds appropriated for such grants in a fiscal year among the eligible States whose applications for grants have been approved, under criteria established by the Secretary.

''(c) MAINTENANCE OF EXPENDITURES.—Except as otherwise provided in subsection (e), the Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of United States Government amounts, for the operation of the commercial driver's license program will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years before October 1, 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.''.

(d) CONFORMING AMENDMENT.—The chapter analysis for chapter 311 is amended by inserting after the item relating to section 31148 the following:

''31149. Medical program.''.

(e) 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 the Motor Carrier Safety Reauthorization Act of 2004, 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.

PART III—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 I—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 to categories of information in accordance with regulations prescribed by the Secretary.

''(3) A release of information pursuant to a determination under paragraph (1) of this subsection shall not be treated as a release of such information to the public for purposes of section 552 of title 5.''.

SEC. 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.''.

''(d) CREDIT TO APPROPRIATIONS.—The Secretary may credit to any appropriation to carry out this chapter an amount received from a State, political subdivision of a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, political subdivision, Indian tribe, or other authority or entity.

''(e) AVAILABILITY OF AMOUNTS.—Amounts available under subsections (a) and (b) of this section shall remain available until expended.''.

SEC. 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 II—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 III—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, is amended to read as follows:

''CHAPTER 57—SANITARY FOOD TRANSPORTATION

''§ 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 subtitle may be cited as the ''Sport Fishing and Recreational Boating Safety Act''.

PART I—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 subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Act entitled ''An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes,'' approved August 9, 1950 (64 Stat. 430; 16 U.S.C. 777 et seq.).

SEC. 4522. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 3 (16 U.S.C. 777b) is amended—

(1) by striking ''the succeeding fiscal year.'' in the third sentence and inserting ''succeeding fiscal years.''; and

(2) by striking ''in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport and recreation.'' and inserting ''to supplement the 55.3 percent of each annual appropriation to be apportioned among the States, as provided for in section 4(b) of this title.''.

(b) CONFORMING AMENDMENTS.—

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

(A) by striking ''Sport Fish Restoration Account'' and inserting ''Sport Fish Restoration Trust Fund''; and

(B) by striking ''that Account'' and inserting ''that Trust Fund, except as provided in section 9504(c) of the Internal Revenue Code of 1986''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) take effect on October 1, 2004.

SEC. 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 II—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 III—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 IV—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 I—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 BUILD AMERICA CORPORATION.

There is established a nonprofit corporation, to be known as the ''Build America Corporation''. The Build America Corporation is not an agency or establishment of the United States Government. The purpose of the Corporation is to support qualified projects described in section 4603(c)(2) through the issuance of Build America bonds. The Corporation shall be subject, to the extent consistent with this section, to the laws of the State of Delaware applicable to corporations not for profit.

SEC. 4603. FEDERAL BONDS FOR TRANSPORTATION INFRASTRUCTURE.

(a) USE OF BOND PROCEEDS.—The proceeds from the sale of—

(1) 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), and

(2) any Build America bonds issued by the Build America Corporation as authorized by section 4602,

may be used to fund a qualified project if the Secretary of Transportation determines that the qualified project is a cost-effective alternative for efficiently maximizing mobility of individuals and goods.

(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 described in subsection (c)(1) 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—

(1) IN GENERAL.—Except as provided in paragraph (2), 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.

(2) BUILD AMERICA CORPORATION PROJECTS.—

(A) IN GENERAL.—With respect to any Build America bonds issued by the Build America Corporation as authorized by section 4602, the term ''qualified project'' means any—

(i) qualified highway project,

(ii) qualified public transportation project, and

(iii) congestion relief project,

proposed by 1 or more States and approved by the Build America Corporation, which meets the requirements under clauses (i), (ii), and (iii) of subparagraph (D).

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

(C) QUALIFIED PUBLIC TRANSPORTATION PROJECT.—The term ''qualified public transportation project'' means a project for public transportation facilities or other facilities which are eligible for assistance under chapter 53 of title 49, United States Code.

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

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

(ii) give preference to projects with national or regional significance, including any projects sponsored by a coalition of States or a combination of States and private sector entities, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system.

(D) ADDITIONAL REQUIREMENTS FOR QUALIFIED PROJECTS.—For purposes of subparagraph (A)—

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

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

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

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

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

PART II—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 III—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. USE OF CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT FUNDS FOR BOSTON TO PORTLAND PASSENGER RAIL SERVICE.

Notwithstanding any other provision of law, funds authorized to be appropriated under section 1101(5) that are made available to the State of Maine may be used to support, through December 15, 2006, the operation of passenger rail service between Boston, Massachusetts, and Portland, Maine.

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'', and

(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. 4601–11(b)) is amended—

(A) by striking ''2003'' and inserting ''2007'', and

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

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

(1) by striking ''2007'' in subparagraph (C)(ii) and inserting ''2010'', and

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

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

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

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

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

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

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

''(ii) $10,000,000 for Xstars, and

''(iii) $10,000,000 for xfirs, and

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

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

SEC. 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), (6), and (7) as paragraphs (2), (3), (4), (5), and (6), respectively.

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

(c) CONFORMING AMENDMENTS.—

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

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

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

(4) Paragraph (2) of section 9504(b), as amended by section 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.—

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

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

(b) CONFORMING AMENDMENTS.—

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

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

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

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

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

PART II—DYED FUEL

SEC. 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.

SEC. 5246. ELECTRONIC REPORTING.

(a) IN GENERAL.—Section 4101(d), as amended by section 5273 of this Act, is amended by adding at the end the following new sentence: ''Any person who is required to report under this subsection and who has 25 or more reportable transactions in a month shall file such report in electronic format.''.

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

PART V—IMPORTS

SEC. 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.

Subtitle H—Additional Revenue Provisions

PART I—ADMINISTRATIVE PROVISIONS

SEC. 5671. EXTENSION OF IRS USER FEES.

(a) IN GENERAL.—Section 7528(c) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''September 30, 2013''.

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

SEC. 5672. CLARIFICATION OF RULES FOR PAYMENT OF ESTIMATED TAX FOR CERTAIN DEEMED ASSET SALES.

(a) IN GENERAL.—Paragraph (13) of section 338(h) (relating to tax on deemed sale not taken into account for estimated tax purposes) is amended by adding at the end the following: ''The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transactions occurring after the date of the enactment of this Act.

SEC. 5673. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

(B) by inserting ''full or partial'' after ''facilitate''.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159, as amended by this Act, is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and inserting after subsection (c) the following new subsection:

''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.''.

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

PART II—FINANCIAL INSTRUMENTS

SEC. 5675. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.

(a) IN GENERAL.—Section 1286 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.—In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.''.

(b) CROSS REFERENCE.—Subsection (e) of section 305 is amended by adding at the end the following new paragraph:

''(7) CROSS REFERENCE.—

"For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to purchases and dispositions after the date of the enactment of this Act.

SEC. 5676. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERSHIPS AND S CORPORATIONS.

(a) IN GENERAL.—Section 168(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

''(8) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—

''(A) IN GENERAL.—This subsection shall apply to partnerships and S corporations in the same manner as it applies to C corporations.

''(B) ALLOCATIONS TO CERTAIN CORPORATE PARTNERS.—If a C corporation is a partner in a partnership—

''(i) the corporation's allocable share of indebtedness and interest income of the partnership shall be taken into account in applying this subsection to the corporation, and

''(ii) if a deduction is not disallowed under this subsection with respect to any interest expense of the partnership, this subsection shall be applied separately in determining whether a deduction is allowable to the corporation with respect to the corporation's allocable share of such interest expense.''.

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

SEC. 5677. RECOGNITION OF CANCELLATION OF INDEBTEDNESS INCOME REALIZED ON SATISFACTION OF DEBT WITH PARTNERSHIP INTEREST.

(a) IN GENERAL.—Paragraph (8) of section 108(e) (relating to general rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)) is amended to read as follows:

''(8) INDEBTEDNESS SATISFIED BY CORPORATE STOCK OR PARTNERSHIP INTEREST.—For purposes of determining income of a debtor from discharge of indebtedness, if—

''(A) a debtor corporation transfers stock, or

''(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act.

SEC. 5678. MODIFICATION OF STRADDLE RULES.

(a) RULES RELATING TO IDENTIFIED STRADDLES.—

(1) IN GENERAL.—Subparagraph (A) of section 1092(a)(2) (relating to special rule for identified straddles) is amended to read as follows:

''(A) IN GENERAL.—In the case of any straddle which is an identified straddle—

''(i) paragraph (1) shall not apply with respect to identified positions comprising the identified straddle,

''(ii) if there is any loss with respect to any identified position of the identified straddle, the basis of each of the identified offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions, and

''(iii) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.''.

(2) IDENTIFIED STRADDLE.—Section 1092(a)(2)(B) (defining identified straddle) is amended—

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

''(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and'', and

(B) by adding at the end the following new flush sentence:

''The Secretary shall prescribe regulations which specify the proper methods for clearly identifying a straddle as an identified straddle (and the positions comprising such straddle), which specify the rules for the application of this section for a taxpayer which fails to properly identify the positions of an identified straddle, and which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle.''.

(3) UNRECOGNIZED GAIN.—Section 1092(a)(3) (defining unrecognized gain) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) SPECIAL RULE FOR IDENTIFIED STRADDLES.—For purposes of paragraph (2)(A)(ii), the unrecognized gain with respect to any identified offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.''

(4) CONFORMING AMENDMENT.—Section 1092(c)(2) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(b) PHYSICALLY SETTLED POSITIONS.—Section 1092(d) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(8) SPECIAL RULES FOR PHYSICALLY SETTLED POSITIONS.—For purposes of subsection (a), if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

''(A) terminated the position for its fair market value immediately before the settlement, and

''(B) sold the property so delivered by the taxpayer at its fair market value.''.

(c) REPEAL OF STOCK EXCEPTION.—

(1) IN GENERAL.—Section 1092(d)(3) is repealed.

(2) CONFORMING AMENDMENT.—Section 1258(d)(1) is amended by striking ''; except that the term 'personal property' shall include stock''.

(d) REPEAL OF QUALIFIED COVERED CALL EXCEPTION.—Section 1092(c)(4) is amended by adding at the end the following new subparagraph:

''(I) TERMINATION.—This paragraph shall not apply to any position established on or after the date of the enactment of this subparagraph.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to positions established on or after the date of the enactment of this Act.

SEC. 5679. DENIAL OF INSTALLMENT SALE TREATMENT FOR ALL READILY TRADEABLE DEBT.

(a) IN GENERAL.—Section 453(f)(4)(B) (relating to purchaser evidences of indebtedness payable on demand or readily tradeable) is amended by striking ''is issued by a corporation or a government or political subdivision thereof and''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales occurring on or after the date of the enactment of this Act.

PART III—CORPORATIONS AND PARTNERSHIPS

SEC. 5680. MODIFICATION OF TREATMENT OF TRANSFERS TO CREDITORS IN DIVISIVE REORGANIZATIONS.

(a) IN GENERAL.—Section 361(b)(3) (relating to treatment of transfers to creditors) is amended by adding at the end the following new sentence: ''In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred.''.

(b) LIABILITIES IN EXCESS OF BASIS.—Section 357(c)(1)(B) is amended by inserting ''with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355'' after ''section 368(a)(1)(D)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act.

SEC. 5681. CLARIFICATION OF DEFINITION OF NONQUALIFIED PREFERRED STOCK.

(a) IN GENERAL.—Section 351(g)(3)(A) is amended by adding at the end the following: ''Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions after May 14, 2003.

SEC. 5682. MODIFICATION OF DEFINITION OF CONTROLLED GROUP OF CORPORATIONS.

(a) IN GENERAL.—Section 1563(a)(2) (relating to brother-sister controlled group) is amended by striking ''possessing—'' and all that follows through ''(B)'' and inserting ''possessing''.

(b) APPLICATION OF EXISTING RULES TO OTHER CODE PROVISIONS.—Section 1563(f) (relating to other definitions and rules) is amended by adding at the end the following new paragraph:

''(5) BROTHER-SISTER CONTROLLED GROUP DEFINITION FOR PROVISIONS OTHER THAN THIS PART.—

''(A) IN GENERAL.—Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

'(2) BROTHER-SISTER CONTROLLED GROUP.—Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2) stock possessing—

'(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the

total value of shares of all classes of stock, of each corporation, and

'(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.'

''(B) APPLICABLE PROVISION.—For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).''.

(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. 5683. MANDATORY BASIS ADJUSTMENTS IN CONNECTION WITH PARTNERSHIP DISTRIBUTIONS AND TRANSFERS OF PARTNERSHIP INTERESTS.

(a) IN GENERAL.—Section 754 is repealed.

(b) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY.—Section 734 is amended—

(1) by striking '', with respect to which the election provided in section 754 is in effect,'' in the matter preceding paragraph (1) of subsection (b),

(2) by striking ''(as adjusted by section 732(d))'' both places it appears in subsection (b),

(3) by striking the last sentence of subsection (b),

(4) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively, and

(5) by striking ''**OPTIONAL**'' in the heading.

(c) ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY.—Section 743 is amended—

(1) by striking ''with respect to which the election provided in section 754 is in effect'' in the matter preceding paragraph (1) of subsection (b),

(2) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively,

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

''(c) ELECTION TO ADJUST BASIS FOR TRANSFERS UPON DEATH OF PARTNER.—Subsection (a) shall not apply and no adjustments shall be made in the case of any transfer of an interest in a partnership upon the death of a partner unless an election to do so is made by the partnership. Such an election shall apply with respect to all such transfers of interests in the partnership. Any election under section 754 in effect on the date of the enactment of this subsection shall constitute an election made under this subsection. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.'', and

(4) by striking ''**OPTIONAL**'' in the heading.

(d) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 732 is repealed.

(2) Section 755(a) is amended—

(A) by striking ''section 734(b) (relating to the optional adjustment'' and inserting ''section 734(a) (relating to the adjustment'', and

(B) by striking ''section 743(b) (relating to the optional adjustment'' and inserting ''section 743(a) (relating to the adjustment''.

(3) Section 761(e)(2) is amended by striking ''optional''.

(4) Section 774(a) is amended by striking ''743(b)'' both places it appears and inserting ''743(a)''.

(5) The item relating to section 734 in the table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking ''Optional''.

(6) The item relating to section 743 in the table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking ''Optional''.

(e) EFFECTIVE DATES.—

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

(2) REPEAL OF SECTION 732(d).—The amendments made by subsections (b)(2) and (d)(1) shall apply to—

(A) except as provided in subparagraph (B), transfers made after the date of the enactment of this Act, and

(B) in the case of any transfer made on or before such date to which section 732(d) applies, distributions made after the date which is 2 years after such date of enactment.

SEC. 5684. CLASS LIVES FOR UTILITY GRADING COSTS.

(a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E) (defining 15-year property) 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) initial clearing and grading land improvements with respect to gas utility property.''.

(b) ELECTRIC UTILITY PROPERTY.—Section 168(e)(3) is amended by adding at the end the following new subparagraph:

''(F) 20-YEAR PROPERTY.—The term '20-year property' means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.''.

(c) CONFORMING AMENDMENTS.—The table contained in section 168(g)(3)(B) is amended—

(1) by inserting ''or (E)(iv)'' after ''(E)(iii)'', and

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

''(F) ..... 25''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 5685. CONSISTENT AMORTIZATION OF PERIODS FOR INTANGIBLES.

(a) START-UP EXPENDITURES.—

(1) ALLOWANCE OF DEDUCTION.—Paragraph (1) of section 195(b) (relating to start-up expenditures) is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

''(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

''(i) the amount of start-up expenditures with respect to the active trade or business, or

''(ii) $5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed $50,000, and

''(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 195 is amended by striking ''AMORTIZE'' and inserting ''DEDUCT'' in the heading.

(b) ORGANIZATIONAL EXPENDITURES.—Subsection (a) of section 248 (relating to organizational expenditures) is amended to read as follows:

''(a) ELECTION TO DEDUCT.—If a corporation elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenditures—

''(1) the corporation shall be allowed a deduction for the taxable year in which the corporation begins business in an amount equal to the lesser of—

''(A) the amount of organizational expenditures with respect to the taxpayer, or

''(B) $5,000, reduced (but not below zero) by the amount by which such organizational expenditures exceed $50,000, and

''(2) the remainder of such organizational expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the corporation begins business.''.

(c) TREATMENT OF ORGANIZATIONAL AND SYNDICATION FEES OR PARTNERSHIPS.—

(1) IN GENERAL.—Section 709(b) (relating to amortization of organization fees) is amended by redesignating paragraph (2) as paragraph (3) and by amending paragraph (1) to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

''(A) the taxpayer shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

''(i) the amount of organizational expenses with respect to the partnership, or

''(ii) $5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed $50,000, and

''(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.

''(2) DISPOSITIONS BEFORE CLOSE OF AMORTIZATION PERIOD.—In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 709 is amended by striking ''AMORTIZATION'' and inserting ''DEDUCTION'' in the heading.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

Subtitle I—Tax-Exempt Financing of Highway Projects and Rail-Truck Transfer Facilities

SEC. 5691. TAX-EXEMPT FINANCING OF HIGHWAY PROJECTS AND RAIL-TRUCK TRANSFER FACILITIES.

(a) TREATMENT AS EXEMPT FACILITY BOND.—Subsection (a) of section 142 (relating to exempt facility bond) is amended by striking ''or'' at the end of paragraph (12), by striking the period at the end of paragraph (13), and by adding at the end the following:

''(14) qualified highway facilities, or

''(15) qualified surface freight transfer facilities.''.

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

''(l) QUALIFIED HIGHWAY AND SURFACE FREIGHT TRANSFER FACILITIES.—

''(1) QUALIFIED HIGHWAY FACILITIES.—For purposes of subsection (a)(14), the term 'qualified highway facilities' means—

''(A) any surface transportation project which receives Federal assistance under title 23, United States Code (as in effect on the date of the enactment of this subsection), or

''(B) any project for an international bridge or tunnel for which an international

entity authorized under Federal or State law is responsible and which receives Federal assistance under such title 23.

''(2) QUALIFIED SURFACE FREIGHT TRANSFER FACILITIES.—For purposes of subsection (a)(15), the term 'qualified surface freight transfer facilities' means facilities for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under either title 23 or title 49, United States Code (as in effect on the date of the enactment of this subsection).

''(3) AGGREGATE FACE AMOUNT OF TAX-EXEMPT FINANCING FOR FACILITIES.—

''(A) IN GENERAL.—An issue shall not be treated as an issue described in subsection (a)(14) or (a)(15) if the aggregate face amount of bonds issued by any State pursuant thereto (when added to the aggregate face amount of bonds previously so issued) exceeds $15,000,000,000.

''(B) ALLOCATION BY SECRETARY OF TRANSPORTATION.—The Secretary of Transportation shall allocate the amount described in subparagraph (A) among eligible projects described in subsections (a)(14) and (a)(15) in such manner as the Secretary determines appropriate.''.

(c) EXEMPTION FROM GENERAL STATE VOLUME CAPS.—Paragraph (3) of section 146(g) of the Internal Revenue Code of 1986 (relating to exception for certain bonds) is amended by striking ''or (13)'' and all that follows through the end of the paragraph and inserting ''(13), (14), or (15) of section 142(a), and''.

(d) EFFECTIVE DATE.—The amendments made by this section apply to bonds issued after the date of the enactment of this Act.

SEC. 5692. ADDITION OF VACCINES AGAINST HEPATITIS A TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4132(a)(1) (defining taxable vaccine) is amended by redesignating subparagraphs (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and (M), respectively, and by inserting after subparagraph (H) the following new subparagraph:

''(I) Any vaccine against hepatitis A.''.

(b) CONFORMING AMENDMENT.—Section 9510(c)(1)(A) is amended by striking ''October 18, 2000'' and inserting ''the date of the enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004''.

(c) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendments made by this section shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 5693. ADDITION OF VACCINES AGAINST INFLUENZA TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4132(a)(1) (defining taxable vaccine), as amended by section 5692 of this Act, is amended by adding at the end the following new subparagraph:

''(N) Any trivalent vaccine against influenza.''.

(b) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendment made by this section shall apply to sales and uses on or after the later of—

(A) the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act, or

(B) the date on which the Secretary of Health and Human Services lists any vaccine against influenza for purposes of compensation for any vaccine-related injury or death through the Vaccine Injury Compensation Trust Fund.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 5694. EXTENSION OF AMORTIZATION OF INTANGIBLES TO SPORTS FRANCHISES.

(a) IN GENERAL.—Section 197(e) (relating to exceptions to definition of section 197 intangible) is amended by striking paragraph (6) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 1056 (relating to basis limitation for player contracts transferred in connection with the sale of a franchise) is repealed.

(B) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1056.

(2) Section 1245(a) (relating to gain from disposition of certain depreciable property) is amended by striking paragraph (4).

(3) Section 1253 (relating to transfers of franchises, trademarks, and trade names) is amended by striking subsection (e).

(c) EFFECTIVE DATES.—

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

(2) SECTION 1245.—The amendment made by subsection (b)(2) shall apply to franchises acquired after the date of the enactment of this Act.

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, $7,265,877,000;

(2) for fiscal year 2005, $8,650,000,000;

(3) for fiscal year 2006, $9,085,123,000;

(4) for fiscal year 2007, $9,600,000,000;

(5) for fiscal year 2008, $10,490,000,000; and

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

For the purpose of this subsection, the term ''obligation limitations'' means the sum of budget authority and obligation limitations.

TITLE VII—MISCELLANEOUS PROVISIONS

SEC. 7001. REIMBURSEMENT OF CERTAIN TRANSPORTATION COSTS INCURRED BY MEMBERS OF THE UNITED STATES ARMED FORCES ON REST AND RECUPERATION LEAVE.

The Secretary of Defense shall reimburse a member of the United States Armed Forces (out of funds available for the Armed Forces for operation and maintenance for the relevant fiscal year) for transportation expenses incurred by such member for 1 round trip by such member between 2 locations within the United States in connection with leave taken under the Central Command Rest and Recuperation Leave Program during the period beginning on September 25, 2003, and ending on December 18, 2003.

TITLE VIII—SOLID WASTE DISPOSAL

SEC. 8001. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

(a) IN GENERAL.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) is amended by adding at the end the following:

''SEC. 6005. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

''(a) DEFINITIONS.—In this section:

''(1) AGENCY HEAD.—The term 'agency head' means—

''(A) the Secretary of Transportation; and

''(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

''(2) CEMENT OR CONCRETE PROJECT.—The term 'cement or concrete project' means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

''(A) involves the procurement of cement or concrete; and

''(B) is carried out in whole or in part using Federal funds.

''(3) RECOVERED MINERAL COMPONENT.—The term 'recovered mineral component' means—

''(A) ground granulated blast furnace slag;

''(B) coal combustion fly ash; and

''(C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

''(b) IMPLEMENTATION OF REQUIREMENTS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

''(2) PRIORITY.—In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

''(3) CONFORMANCE.—The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

''(c) FULL IMPLEMENTATION STUDY.—

''(1) IN GENERAL.—The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

''(2) MATTERS TO BE ADDRESSED.—The study shall—

''(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

''(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

''(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

''(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

''(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

''(3) REPORT.—Not later than 30 months after the date of enactment of this section, the Administrator shall submit to Congress a report on the study.

''(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the release of the report in accordance with subsection (c)(3), take additional actions authorized under

this Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

''(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

''(2) eliminate barriers identified under subsection (c).

''(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding after the item relating to section 6004 the following:

''Sec. 6005. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.''.

SEC. 8002. USE OF GRANULAR MINE TAILINGS.

(a) IN GENERAL.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) (as amended by section 8001(a)) is amended by adding at the end the following:

''SEC. 6006. USE OF GRANULAR MINE TAILINGS.

''(a) MINE TAILINGS.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Administrator, in consultation with the Secretary of Transportation and heads of other Federal agencies, shall establish criteria (including an evaluation of whether to establish a numerical standard for concentration of lead and other hazardous substances) for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as 'chat', for—

''(A) cement or concrete projects; and

''(B) transportation construction projects (including transportation construction projects involving the use of asphalt) that are carried out, in whole or in part, using Federal funds.

''(2) REQUIREMENTS.—In establishing criteria under paragraph (1), the Administrator shall consider—

''(A) the current and previous uses of granular mine tailings as an aggregate for asphalt; and

''(B) any environmental and public health risks and benefits derived from the removal, transportation, and use in transportation projects of granular mine tailings.

''(3) PUBLIC PARTICIPATION.—In establishing the criteria under paragraph (1), the Administrator shall solicit and consider comments from the public.

''(4) APPLICABILITY OF CRITERIA.—On the establishment of the criteria under paragraph (1), any use of the granular mine tailings described in paragraph (1) in a transportation project that is carried out, in whole or in part, using Federal funds, shall meet the criteria established under paragraph (1).

''(b) EFFECT OF SECTIONS.—Nothing in this section or section 6005 affects any requirement of any law (including a regulation) in effect on the date of enactment of this section.''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 8001(b)) is amended by adding after the item relating to section 6005 the following:

''Sec. 6006. Use of granular mine tailings.''.

Passed the Senate February 12, 2004.

Attest:

AUTHORIZING USE OF ROTUNDA OF CAPITOL BY JOINT CONGRESSIONAL COMMITTEE ON INAUGURAL CEREMONIES

ESTABLISHING JOINT CONGRESSIONAL COMMITTEE ON INAUGURAL CEREMONIES

Mr. MCCONNELL. I ask unanimous consent that the Senate proceed to the immediate consideration of the following Senate concurrent resolutions which were introduced today en bloc: S. Con. Res. 93 and S. Con. Res. 94.

The PRESIDING OFFICER. The clerk will report the concurrent resolutions by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 93) authorizing the use of the rotunda of the Capitol by the Joint Congressional Committee on Inaugural Ceremonies.

A concurrent resolution (S. Con. Res. 94) establishing the Joint Congressional Committee on Inaugural Ceremonies.

There being no objection, the Senate proceeded to consider the concurrent resolutions.

Mr. MCCONNELL. I ask unanimous consent that the resolutions be agreed to, the motions to reconsider be laid upon the table en bloc, and any statements relating to the resolutions be printed in the RECORD.

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

The concurrent resolutions (S. Con. Res 93 and S. Con. Res. 94) were agreed to, as follows:

S. CON. RES. 93

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. USE OF THE ROTUNDA OF THE CAPITOL BY THE JOINT CONGRESSIONAL COMMITTEE ON INAUGURAL CEREMONIES.

The rotunda of the United States Capitol is authorized to be used on January 20, 2005, by the Joint Congressional Committee on Inaugural Ceremonies in connection with the proceedings and ceremonies conducted for the inauguration of the President-elect and the Vice President-elect of the United States.

S. CON. RES. 94

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. ESTABLISHMENT OF JOINT COMMITTEE.

There is established a Joint Congressional Committee on Inaugural Ceremonies (in this resolution referred to as the ''joint committee''), consisting of 3 Senators and 3 Members of the House of Representatives appointed by the President of the Senate and the Speaker of the House of Representatives, respectively. The joint committee is authorized to make the necessary arrangements for the inauguration of the President-elect and the Vice President-elect of the United States.

SEC. 2. SUPPORT OF THE JOINT COMMITTEE.

The joint committee—

(1) is authorized to utilize appropriate equipment and the services of appropriate personnel of departments and agencies of the Federal Government, under arrangements between the joint committee and the heads of the departments and agencies, in connection with the inaugural proceedings and ceremonies; and

(2) may accept gifts and donations of goods and services to carry out its responsibilities.

ORDERS FOR FRIDAY, FEBRUARY 27, 2004

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. tomorrow, Friday, February 27. I further ask 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 resume consideration of S. 1805, the gun liability bill.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, it is my understanding that tomorrow the majority will allow a period of morning business that will come sometime during the day. I would ask that the consent be, on the Democratic side, that Senator CONRAD be recognized for 45 minutes, Senator HARKIN for 30 minutes, Senator BYRD for 30 minutes; and, of course, if the majority wants whatever time, in whatever order they wish, they would be interspersed with these speakers, meaning there would be a Republican, a Democrat, as we do all the time.

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

PROGRAM

Mr. MCCONNELL. Mr. President, tomorrow the Senate will resume consideration of S. 1805, the gun liability bill. There will be no rollcall votes tomorrow, and the next vote will occur Monday evening. We will have more to say about Monday's session tomorrow.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. MCCONNELL. 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.

There being no objection, the Senate, at 8:55 p.m., adjourned until Friday, February 27, 2004, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate February 26, 2004:

DEPARTMENT OF COMMERCE

THEODORE WILLIAM KASSINGER, OF MARYLAND, TO BE DEPUTY SECRETARY OF COMMERCE, VICE SAMUEL W. BODMAN, RESIGNED.

DEPARTMENT OF STATE

JOHN J. DANILOVICH, OF CALIFORNIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE FEDERATIVE REPUBLIC OF BRAZIL.

MICHAEL CHRISTIAN POLT, OF TENNESSEE, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO SERBIA AND MONTENEGRO.

MERIT SYSTEMS PROTECTION BOARD

NEIL MCPHIE, OF VIRGINIA, TO BE CHAIRMAN OF THE MERIT SYSTEMS PROTECTION BOARD, VICE SUSANNE T. MARSHALL.

DEPARTMENT OF EDUCATION

EDWARD R. MCPHERSON, OF TEXAS, TO BE UNDER SECRETARY OF EDUCATION, VICE EUGENE HICKOK.

In the Air Force

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 624 AND 1552:

To be colonel

ARTHUR R. HOMER, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 624 AND 1552:

To be lieutenant colonel

WILLIAM R. KENT III, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

LORI J. FINK, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 531 AND 1552:

To be lieutenant colonel

PATRICIA K. COLLINS, 0000
JEFFREY E. SHERWOOD, 0000

THE FOLLOWING NAMED OFFICERS FOR A REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 531:

To be lieutenant colonel

CHRISTOPHER D. BOYER, 0000
MATTHEW E. COOMBS, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be major

RICHARD G. HUTCHISON, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be major

JEFFERY C. SIMS, 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

FLOYD T. CURRY, 0000
JOHN M. DOLAN, 0000
RANDY A. HURTT, 0000
MALCOLM F. KIRSOP, 0000
RAPHAEL F. PERL, 0000
BYRON E. SHORT JR., 0000
RONALD E. TRIGGS, 0000
JEFFREY B. WHEELER, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

JOHN E ARMITSTEAD, 0000
MICHAEL L BRITTON, 0000
WILLIAM L BRUNOLD, 0000
JOHN T DINSMORE, 0000
HENRI P FISCHER, 0000
LAWRENCE M HENDEL, 0000
MELVIN R JACOB, 0000
ALAN J JOHNSON JR., 0000
BONNIE J KOPPELL, 0000
ERNEST E LAMERTHA, 0000
COYSE D MCLEMORE, 0000
JERRY L MILLER, 0000
BILLY R MIMS, 0000
CHARLES M PURINTON JR., 0000
BRANDON K TRAVIS, 0000
ALEXANDER F C WEBSTER, 0000
FRANKLIN E WESTER, 0000
JAMES P WOMACK, 0000
EUGENE R WOOLRIDGE, 0000

CENTERS FOR MEDICARE AND MEDICAID SERVICES

MARK B. MCCLELLEN, OF THE DISTRICT OF COLUMBIA, TO BE ADMINISTRATOR OF THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, VICE THOMAS SCULLY, RESIGNED.

NATIONAL SECURITY EDUCATION BOARD

KIRON KANINA SKINNER, OF PENNSYLVANIA, TO BE A MEMBER OF THE NATIONAL SECURITY EDUCATION BOARD FOR A TERM OF FOUR YEARS, VICE HERSCHELLE S. CHALLENOR.

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS RESERVE TO THE GRADE INDICATED UNDER TITLE 10 U.S.C., SECTION 12203:

To be major general

BRIG. GEN. DOUGLAS V. O'DELL JR., 0000

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be colonel

MICHAEL L. BUNNING, 0000
JAMES J. CARROLL, 0000
WAYNE C. CHEATUM, 0000
MATTHEW R. CHINI, 0000
MICHAEL L. CHYREK, 0000
WILLIAM G. COURTNEY, 0000
FORREST C. CUNNINGHAM, 0000
STEVEN R. DEANDA, 0000
PAUL W. FISHER, 0000
ROGER L. GIBSON, 0000
DANNY J. GLOVER, 0000
CARROLL H. GREENE III, 0000
RANDALL S. HAGAN, 0000
KENNETH E. HALL, 0000
MARK S. HOLDEN, 0000
ARTHUR S. KAMINSKI, 0000
JAMES E. MCCLAIN, 0000
DAVID J. MIETZNER, 0000
CAROLYN L. MILLER, 0000
KEVIN P. MULLIGAN, 0000
DEBRA M. NIEMEYER, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS 24 AND 531:

To be lieutenant colonel

RAAN R. AALGAARD, 0000
JOSEPH D. ABEL, 0000
JOSEPH A. ABRIGO, 0000
ELIZABETH F. ADAMS, 0000
JAMES S. ADAMSKI, 0000
BRIAN T. ADKINS, 0000
KRISTOPHER J. ALDEN, 0000
MICHAEL D. ALFORD, 0000
CHARLES T. ALLEN, 0000
DEVIN S. ALLEN, 0000
MARK E. ALLEN, 0000
MARK P. ALLEN, 0000
SCOT T. ALLEN, 0000
MICHAEL W. ALLIN, 0000
JAMES W. ALSTON, 0000
DENIO A. ALVARADO, 0000
IGNACIO G. ALVAREZ, 0000
GREGORY C. ANDERS, 0000
DANIEL L. ANDERSON, 0000
JON M. ANDERSON, 0000
MARK RICHARD ANDERSON, 0000
MICHAEL A. ANDERSON, 0000
RICHARD N. ANDERSON, 0000
STEPHEN L. ANDREASEN, 0000
KEITH E. ANDREWS, 0000
BENJAMIN C. ANGUS, 0000
JOHN B. APOSTOLIDES, 0000
ANTHONY R. ARCIERO, 0000
ROBERT G. ARMFIELD, 0000
JOHN E. ARMOUR, 0000
JOHN T. ARNOLD, 0000
DAVID R. ARRIETA, 0000
AMY V. ARWOOD, 0000
MYRON H. ASATO, 0000
TROY A. ASHER, 0000
JAMES M. ASHLEY, 0000
GARY A. ASHWORTH, 0000
CHRISTOPHER B. ATHEARN, 0000
HANS R. AUGUSTUS, 0000
DAVID A. AUPPERLE, 0000
ERIC AXELBANK, 0000
JOSEPH L. BACA, 0000
JOSEPH V. BADALIS, 0000
BRYAN J. BAGLEY, 0000
FREDERICK L. BAIER, 0000
WILLIAM D. BAILEY, 0000
JEFFREY A. BAIR, 0000
JAMES C. BAIRD, 0000
RONALD B. BALDINGER, 0000
CHRISTOPHER BALLARD, 0000
MERRILL D. BALLENGER, 0000
JOHN M. BALZANO, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

LINDSEY O. GRAHAM, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

DONALD L. BUEGE, 0000
JOHN A. CAPARISOS, 0000
RANDY M. CUEVAS, 0000
TYLER S. GUY, 0000
ISAMU MATSUMOTO, 0000
KENNETH G. TOWNSEND, 0000
SAMUEL R. WEINSTEIN, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

ALAN C. DICKERSON, 0000
ROBERT F. FEREK, 0000
VINCENT P. FLORYSHAK, 0000
CATHERINE KEY, 0000
JEFFREY G. LIGHT, 0000
ELEONORE PAUNOVICH, 0000
CAMILLE PHILLIPS, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

WALTER F. BURGHARDT JR., 0000
ALBERTA E. BURLEIGH, 0000
DEBBIE L. DOBSON, 0000
JOSEPH F. GRASSO, 0000
JEFFREY P. HILOVSKY, 0000
JOSEPH F. LONGOFONO, 0000
WILLIAM B. MARTIN, 0000
RICKY K. MARTINEZ, 0000
WILLIAM H. MCALISTER, 0000
CHRISTOPHER L. TAYLOR, 0000
RICHARD M. WALTERS, 0000
PHILLIP Y. YOSHIMURA, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

MONICA M. ALLISONCERUTI, 0000
WENDY E. BRYANT, 0000
JAMES T. FORREST, 0000
RAYMOND J. HARDY JR., 0000
JOHN R. HART, 0000
THOMAS M. HAYES III, 0000
ALISA W. JAMES, 0000
PATRICIA A. KERNS, 0000
STEVEN D. LINDSEY, 0000
MICHAEL R. LUND, 0000
CHARLES R. MANNIX JR., 0000
GEORGE F. MAY, 0000
LISA T. MILLER, 0000
ANN M. MITTERMEYER, 0000
DIXIE A. MORROW, 0000
SAMUEL C. MULLIN III, 0000
THERESA A. NEGRON, 0000
MARTIN C. OBRIEN, 0000
GREGORY G. PARROTT, 0000
DANIEL V. PETERSON, 0000
JAMES R. THOMAS JR., 0000
MARK J. YOST, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

PATRICIA S. ANGELILAMB, 0000
LINDA K. ARNSDORF, 0000
CHRISTINE E. BADER, 0000
CHRISTINE M. BUCHER, 0000
MARY M. CAPPARELLI, 0000
TERRELL A. CUNNINGHAM, 0000
DEBORAH A. DANNEMEYER, 0000
DEBORAH J. DODSON, 0000
EDWINA DORSEY, 0000
MARGARET A. DRAGANAC, 0000
SANDRA L. FINNESSY, 0000
CHRISTINE A. GRYGLIK, 0000
SUSAN H. KADECHKA, 0000
NANCY K. KERSH, 0000
SUSAN M. KNOX, 0000
LYNN A. MCDANIELS, 0000
KENNETH L. MCNEELY, 0000
CONNIE S. MILLER, 0000
KAREN A. NAGAFUCHI, 0000
THERESA A. OSBURN, 0000
DONNA A. RAJOTTE, 0000
MARYGENE RYAN, 0000
SHARON J. THOMAS, 0000
SUSAN K. WALTON, 0000
KATHLEEN L. ZYGOWICZ, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

MICHAEL A. ALDAY, 0000
GNANAMANI ARUL, 0000
JOEL S. BOGNER, 0000
JOSEPH L. DAVIS, 0000
SANDRA D. DICKERSON, 0000
PAUL S. DWAN, 0000
JOHN A. ELLIS, 0000
JAMES W. GUYER, 0000
AIMEE L. HAWLEY, 0000
MARK D. HOPKINS, 0000
MICHAEL F. KELLEY, 0000
RAY L. KUNDEL, 0000
JOHN P. LENIHAN JR., 0000
JAMES M. MCGREEVY, 0000
JAMES E. MILLER, 0000
SUSAN E. NORTHRUP, 0000
VIANMAR G. PASCUAL, 0000
DANIEL Z. PECK, 0000
DANGTUAN PHAM, 0000
ROBERT L. SAUNDERS JR., 0000
DAVID J. SNELL, 0000

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

VIRGINIA A. SCHNEIDER, 0000

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

PERRY L. AMERINE, 0000
JAMES R. PATTERSON, 0000

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

STEWART J. HAZEL, 0000
JILL L. HENDRA, 0000
CHRISTOPHER J. KNAPP, 0000
CLEE E. LLOYD, 0000
WILLIAM W. POND, 0000

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

WILLIAM E. ENRIGHT JR., 0000
JOSEPH P. MOAN, 0000
VICTORIA A. REARDON, 0000
CASSIE A. STROM, 0000
MICHAEL F. VANHOOMISSEN, 0000

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

COLLEN B. HOUGH, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be colonel

NORMA L. ALLGOOD, 0000
DAVID E. ANISMAN, 0000
GARY I. ARISHITA, 0000
STEVEN L. BARNES, 0000
SVEN T. BERG, 0000
MARTIN D. BOMALASKI, 0000
DEAN A. *BRICKER, 0000
ELIZABETH P. CLARK, 0000
RICHARD A. CLARK, 0000
ROBERT B. CONNOR, 0000
STEVEN C. DECOUD, 0000
VICTOR A. FOLARIN, 0000
MICHAEL C. *GORDON, 0000
THOMAS C. *GRAU, 0000
DAVID E. HOLCK, 0000
KENNETH K, KNIGHT, 0000
CHRISTOPHER LEWANDOWSKI, 0000
THOMAS D. FADELL LUNA, 0000
ROBERT E. MANAKER, 0000
KURT D. MCCARTNEY, 0000
LYNN S. MCCURDY, 0000
ROBERT S. MICHAELSON, 0000
PATRICK P. MILES, 0000
RICHARD J. MONTMINY, 0000
DAVID M. OBRIEN, 0000
LORETTA M. OBRIEN, 0000
HERNANDO J. *ORTEGA JR., 0000
JOSEPH V. *PACE, 0000
AUGUST C. PASQUALE III, 0000
TIMOTHY LEE PENDERGRASS, 0000
CHRISTOPHER SARTORI, 0000
JEFFREY A. *SCHIEVENIN, 0000
THOMAS M. SEAY, 0000
TIMOTHY W. SOWIN, 0000
WAYNE K. SUMPTER, 0000
CRESCENCIO TORRES, 0000
MATTHEW P. *WICKLUND, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be colonel

RICHARD C. BATZER, 0000
TIMOTHY L. BRAY, 0000
WILLIAM R. BUHLER, 0000
PAUL N. CARDON, 0000
MICHAEL J. *CONLAN, 0000
MULLEN O. COOVER JR., 0000
DAVID P. DEWITT, 0000
WILLIAM E. DINSE, 0000
WILLIAM J. DUNN, 0000
BRYAN D. DYE, 0000
BLAKE J. EDINGER, 0000
DIANE J. FLINT, 0000
ROBERT F. GAMBLE, 0000
RIDGE M. GILLEY, 0000
LYNN C. HARRIS, 0000
CHARLES A. HIGGINS, 0000
RAY S. JETER, 0000
MICHAEL P. KLEPCZYK, 0000
MICHAEL A. KOCH, 0000
THOMAS S. MARSHALL, 0000
ALAN J. MORITZ, 0000
LARRY P. PARWORTH, 0000
JAMES L. PAUKERT, 0000
DOUGLAS L. RISK, 0000
JANET Y. ROBINSON, 0000
PAUL M. ROGERS, 0000
RIDLEY O. ROSS, 0000
KENT A. SABEY, 0000
PHILLIP R. SANDEFUR, 0000
JEFFREY A. STAPLES, 0000
DANIEL S. *STRECK, 0000
DALE C. THAMES JR., 0000
RICHARD I. VANCE, 0000

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

JOHN A. ALEXANDER, 0000
WILLIE ALLEN, 0000
WILLIAM E. ANDERSON JR., 0000
BRUCE D. BABCOCK, 0000
STEVEN T. BECK, 0000
DENNIS R. BLACK, 0000
MICHAEL L. BRICKNER II, 0000
JORGE R. CANTRES, 0000
CHRISTOPHER J. COCHRAN, 0000
STEVEN A. CRAY, 0000
JAMES L. CRUMPTON, 0000
RICHARD J. DENNEE, 0000
WILLIAM K. DUCKETT, 0000
DONALD P. DUNBAR, 0000
LOUIS M. DURKAC, 0000
TRULAN A. EYRE, 0000
MARK K. FOREMAN, 0000
GREGORY C. GRAF, 0000
BILLY T. GRAHAM JR., 0000
JOSEPH P. GRIFFIN, 0000
FLOYD H. HARBIN, 0000
JOSEPH G. HIGGINS, 0000
MICHAEL T. HINMAN, 0000
MARK W. HUGHES, 0000
BENJAMIN F. JABLECKI JR., 0000
JOSEPH A. JETT, 0000
MICHAEL L.KING, 0000
WILLIAM M. KREIGHBAUM, 0000
ENRIQUE LAMOUTTE, 0000
PATRICK L. MARTIN, 0000
JOHN E. MCCOY, 0000
CHARLES R. MELTON, 0000
BRIAN G. NEAL, 0000
PETER NEZAMIS, 0000
TIMOTHY R. OBRIEN, 0000
GRADY L. PATTERSON III, 0000
CHRISTOPHER A. POPE, 0000
RICHARD G. POPPELL, 0000
CARLOS A. QUINONESNIEVES, 0000
PHILIP D. QUINTENZ, 0000
WILLIAM N. REDDEL III, 0000
JOHN J. SAMUHEL, 0000
SIDNEY M. SCARBOROUGH, 0000
HENRY P. SERMONS JR., 0000
WAYNE M. SHANKS, 0000
ROY J. SHETKA, 0000
JOANNA O. SHUMAKER, 0000
ELIZABETH A. STANLEY, 0000
WILLIAM E. STANTON, 0000
ELSON E. STAUGAARD JR., 0000
FRANK J. SULLIVAN, 0000
DAVID A. TORRES, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be lieutenant colonel

TODD B. * ABEL, 0000
BRADLEY S. ABELS, 0000
LAURA K. ABTS, 0000
PAUL J. AFFLECK, 0000
SAKET K. AMBASHT, 0000
KATHLEEN C. AMYOT, 0000
JEFFREY A. * BAILEY, 0000
ALBERT H. * BONNEMA, 0000
MICHELE L. BRENNERVINCENT, 0000
JOHN R. * BRENT, 0000
MARK J. * BROOKS, 0000
MARY T. * BRUEGGEMEYER, 0000
MICHAEL G. BRYAN, 0000
LOUISE M. BRYCE, 0000
JOHN R. BURROUGHS, 0000
BRET D. * BURTON, 0000
EDITH D. * CANBYHAGINO, 0000
CREG A. * CARPENTER, 0000
THOMAS N. * CHEATHAM, 0000
NICOLA A. * CHOATE, 0000
BRANDON D. * CLINT, 0000
CHARLES D. * CLINTON, 0000
MARK R. * COAKWELL, 0000
LUBOV M. COVERDELL, 0000
MARCUS M. * CRANSTON, 0000
RANDOLPH K. * CRIBBS, 0000
BRAIN K. CROWNOVER, 0000
JEANINE M. CZECH, 0000
DEVIN L. * DONNELLY, 0000
PAUL D. * DOUGHTEN, 0000
COLLEEN M. DUGAN, 0000
JAMES R. * ELLIOTT, 0000
HARRY L. ERVIN JR., 0000
RENEE D. ESPINOSA, 0000
SUSAN C. FARRISH, 0000
MERLIN B. FAUSETT, 0000
CAROL M. * FERRUA, 0000
ERIC W. FESTER, 0000
WILLIAM F. * FOODY JR., 0000
KRISTEN A. FULTSGANEY, 0000
JOEL E. * GOLDBERG, 0000
PHILIP L. * GOULD, 0000
STEPHEN U. * HANLON, 0000
ALEXANDER V. HERNANDEZ III, 0000
KAREN A. HEUPEL, 0000
TERRY G. * HOEHNE, 0000
ROBERT G. * HOLCOMB, 0000
CAROL J. * IDDINS, 0000
JAMES L. JABLONSKI II, 0000
KERRY G. JEPSEN, 0000
WILMER T. * JONES III, 0000
JAMES A. * KEENEY, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be lieutenant colonel

DOUGLAS P. * BETHONEY, 0000
KEVIN C. * BOYLE, 0000
SEAN W. * DIGMAN, 0000
LARRY J. * EVANS, 0000
LORI L. * EVERETT, 0000
TOMMY D. * FISHER, 0000
MICHAEL E. * FULTON, 0000
KIMBERLY M. * GILL, 0000
JAMES B. * GRAHAM, 0000
MARK R. HENDERSON, 0000
TODD A. * LINCOLN, 0000
DAVID W. * NUNEZ, 0000
JACOB E. * PALMA, 0000
HYEKYUNG HELENA PAE * PARK, 0000
PHILLIP C. * PORTERA, 0000
ROGER E. * PRADELLI, 0000
DOUGLAS E. * THOMAS, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be major

ADAM M. ANDERSON, 0000
BRETT C. ANDERSON, 0000
PAULA E. ANDERSON, 0000
BRETT M. ANDRES, 0000
ROBERT S. ANDREWS, 0000
MARIA M. ANGLES, 0000
WILLIAM A. ANKNEY, 0000
SHERYL L. ANTHOS, 0000
DANIEL W. ARNOLD, 0000
JORGE ARZOLA, 0000
DIANE M. ASLANIS, 0000
KAREN J. AYERS, 0000
KAREN M. AYOTTE, 0000
CARL W. BAKER II, 0000
SHAROLYN H. BALDWIN, 0000
ELLEN W. BALLERENE, 0000
KIMBERLY M. BALOGH, 0000
MICHAEL A. BARNETT, 0000
SAMUEL B. BARONE, 0000
JEFFREY W. BARR, 0000
JOSE E. BARRERA, 0000
CHRISTOPHER J. BASSETT, 0000
KRISTEN BAUER, 0000
CHAD C. BAUERLY, 0000
ETHAN A. BEAN, 0000
PETRAN J. BEARD, 0000
JEFFREY N. BEEN, 0000
AMY L. BELISLE, 0000
RICHARD W. BENTLEY, 0000
DONALD J. BERNARDINI, 0000
JOHN N. BERRY, 0000
HEIDI C. BERTRAM, 0000
JEFFREY J. BIDINGER, 0000
SCOTT R. BISHOP, 0000
JEFFREY F. BLEAKLEY, 0000
JAMES A. BLEDSOE, 0000
JESSICA J. BLOOM, 0000
ERIK A. BOATMAN, 0000
JAMES V. BODRIE JR., 0000
KEVIN J. BOHNSACK, 0000
DOUGLAS E. BOLER, 0000
WILLIAM S. BOLLING, 0000
DENNIS F. BOND II, 0000
CRAIG D. BOREMAN, 0000
STACEY L. BRANCH, 0000
BRETT D. BRIMHALL, 0000
WILLIAM R. BRODERICK, 0000
JODY L. BROWN, 0000
STEVEN S. BRUMFIELD, 0000
ERIC C. BRUNO, 0000
CHARLES L. BRYANT, 0000
JOHN T. BRYANT, 0000
CRAIG M. BURNWORTH, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be major

MARYA J. BARNES, 0000
ERIC R. BAUGH JR., 0000
GEORGE E. BOUGHAN, 0000
DORON BRESLER, 0000
STEPHEN H. CHARTIER, 0000
JILL A. CHERRY, 0000
KEITH L. CLARK, 0000
FREDERICK A. CONNER, 0000
GREGORY A. CONNER, 0000
MICHELLE D. DULLANTY, 0000
SARAH C. EAGER, 0000
JOSE F. EDUARDO, 0000
JONATHAN D. EVANS, 0000
ANDREW R. FENTON, 0000
TEGRAN O. FRAITES, 0000

DANIEL B. GABRIEL, 0000
MICHAEL T. GARDNER, 0000
CECILIA I. GARIN, 0000
SCOTT W. GEORGE, 0000
DAVID E. HALL, 0000
STEPHEN C. HOLMES, 0000
DENNIS M. HOLT, 0000
LANCE J. KIM, 0000
JAMES D. KISER JR., 0000
MIKELLE L. KUEHN, 0000
XAVIER LEOS, 0000
TRENT E. LOISEAU, 0000
ROBERT K. MCGHEE, 0000
ALI R. MIREMAMI, 0000
BARRY F. MORRIS, 0000
JESSE MURILLO, 0000
ANDREW M. NALIN, 0000
JEANLUC G.C. NIEL, 0000
KYLE W. ODOM, 0000
INAAM A.A. PEDALINO, 0000
MICHAEL J. SILVERMAN, 0000
YOUNG K. SUNG, 0000
SARAT THIKKURISSY, 0000
SARAH A. TRUSCINSKI, 0000
WILLIAM K. TUCKER, 0000
GEORGE S. TUNDER JR., 0000
TODD S. WELLER, 0000
KARYN E. YOUNGCARIGNAN, 0000

IN THE ARMY

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

EDWARD M. WILLIS, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be lieutenant colonel

JAMES R. AGAR II, 0000
JANE E. BAGWELL, 0000
RANDALL J. BAGWELL, 0000
MICHAEL R. BLACK, 0000
EUGENE E. BOWEN JR., 0000
STEVEN M. BRODSKY, 0000
JOHN P. CARRELL, 0000
LARSS G. CELTNIEKS, 0000
DAVID K. DALITION, 0000
DOUGLAS M. DEPEPPE, 0000
THERESA A. GALLAGHER, 0000
TYLER J. HARDER, 0000
CHARLOTTE R. HERRING, 0000
DALE N. JOHNSON, 0000
FRANCIS P. KING, 0000
CARL W. KUHN, 0000
MICHAEL O. LACEY, 0000
DANIEL A. LAURETANO, 0000
STEPHEN J. LUND, 0000
MICHAEL R. LUTTON, 0000
TIMOTHY C. MACDONNELL, 0000
MARK D. MAXWELL, 0000
MICHAEL J. MCHUGH, 0000
THOMAS C. MODESZTO, 0000
FRANKLIN D. RAAB, 0000
MISTI E. RAWLES, 0000
JAMES H. ROBINETTE II, 0000
PAUL T. SALUSSOLIA, 0000
RALPH J. TREMAGLIO III, 0000
DEAN VLAHOPOULOS, 0000
STEVEN B. WEIR, 0000
JOHN B. WELLS III, 0000
NEOMA J. WHITE, 0000
NOEL L. WOODWARD, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS AND FOR REGULAR APPOINTMENT (IDENTIFY BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

To be major

JEREMY A. BALL, 0000
DOUGLAS J.* BECKER, 0000
ROSEANNE M.* BLEAM, 0000
ROBERT A. BORCHERDING, 0000
ROBERT A.* BROADBENT, 0000
STEVEN D.* BRYANT, 0000
MARY E.* CARD, 0000
ERIC R.* CARPENTER, 0000
GEORGE T.* CARTER, 0000
LINDA A.* CHAPMAN, 0000
JONATHAN E.* CHENEY, 0000
CHARLES C.* CHOI, 0000
JOHN H. COOK, 0000
DAVID E.* COOMBS, 0000
TAMI L.* DELLAHUNT, 0000
JAMES H.* DILLON, 0000
RICHARD P. DIMEGLIO, 0000
DANIEL M. FROEHLICH, 0000
DEON M.* GREEN, 0000
JOHN T.* HARRYMAN, 0000
JAMES G.* HARWOOD, 0000
MICHAEL R. HOLLEY, 0000
RUSSELL K.* JACKSON, 0000
MAUREEN A.* KAHN, 0000
ELIZABETH KUBALA, 0000
JONATHAN * LEHNER, 0000
RODNEY R.* LEMAY, 0000
DEAN L.* LYNCH, 0000
ROBERT L.* MANLEY III, 0000
ANDRAS M.* MARTON, 0000
SEAN T.* MCGARRY, 0000
OREN H.* MCKNELLY, 0000
VASCO T. MCRAE, 0000
BRAULIO * MERCADER, 0000
KEVIN J.* MIKOLASHEK, 0000
JEFFREY A. MILLER, 0000
JOSEPH B.* MORSE, 0000
CHARLES C.* ORMSBY JR., 0000
MAANVI M.* PATOIR, 0000
NICOLE E.* RAPONE, 0000
KENNETH J.* RICH, 0000
TRAVIS L.* ROGERS, 0000
BILLY B. RUHLING II, 0000
CARLOS O.* SANTIAGO, 0000
JENNIFER C.* SANTIAGO, 0000
DANIEL P.* SAUMUR, 0000
JOSHUA S. SHUEY, 0000
JAMES J.* TEIXEIRA JR., 0000
JAMES S.* TRIPP, 0000
ECK N.* VAN, 0000
CHRISTIE L.* VAULX, 0000
LISA C.* VIGNA, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

DAVID H. FORDEN, 0000
GERALD E. STONE, 0000

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

RANDY M. ADAIR, 0000
MARK F. BIRK, 0000
DAVID M. ELLIS, 0000
KENNETH L. KELSAY, 0000
KIRKLAND P. MARTIN JR., 0000
ANDREW N. SULLIVAN, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

JOSE GONZALEZ, 0000
EARL E. NASH, 0000
ROGER W. SCAMBLER, 0000
JEFFREY G. YOUNG, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

EDWIN N. LLANTOS, 0000
MANUEL RANGEL JR., 0000
STEVEN J. SKIRNICK, 0000
MATTHEW E. SUTTON, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

THOMAS E. BLAKE, 0000
STEVE K. BRAUND, 0000
JAMES A. GRIFFITHS, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

GERALD A. CUMMINGS, 0000
KEITH E. ENYART, 0000
JOHN M. MCKEON, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

PAUL J. SMITH, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

RICHARD D. BEDFORD, 0000
JAMES D. MCCOY, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

SAMUEL E. DAVIS, 0000
SCOTT D. FRANCOIS, 0000
CHARLES B. SPENCER, 0000
DAVID H. STEPHENS, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

DONALD L. BOHANNON, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

PETER D. CHARBONEAU, 0000
RODNEY W. CLAYTON, 0000
STEVEN R. FREDEEN, 0000
BERNARD J. GRIMES, 0000
ROBERT L. HANOVICH, 0000
THOMAS MCMILLAN, 0000
JOHN A. TANINECZ, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

JOHN M. BISHOP, 0000
CARL F. DAVIS, 0000
DAVID R. GEHRLEIN, 0000
PHILIP W. GRAHAM, 0000
CARLTON D. HAGANS, 0000
JEFFREY P. RUPPERT, 0000
SCOTT E. SCHECHTER, 0000
TIM J. SCHROEDER, 0000
SCOTT A. SHARP, 0000
JOSEPH G. SINESE, 0000
JEFFREY W. SMITH, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

BALWINDAR K. RAWALAYVANDEVOORT, 0000
TROY A. TYRE, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

STEVE E. HOWELL, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

RICHARD K. ROHR, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

WILLIAM E. HIDLE, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

RONALD W. COCHRAN, 0000
JOHNATHAN D. LAWSON, 0000
ROBERT J. MAGERS, 0000
PAUL J. MINER, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

TODD P. OHMAN, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

MICHAEL E. BEAN, 0000
GREGORY G. FRICH, 0000
WLTON S. PITCHFORD, 0000

WITHDRAWALS

Executive message transmitted by the President to the Senate on February 26, 2004, withdrawing from further Senate consideration the following nominations:

JOHN JOSEPH GROSSENBACHER, OF ILLINOIS TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 30, 2004, WHICH WAS SENT TO THE SENATE ON JULY 25, 2003.

JOHN JOSEPH GROSSENBACHER, OF ILLINOIS TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR A TERM EXPIRING JUNE 30, 2009, WHICH WAS SENT TO THE SENATE ON JULY 25, 2003.

SUSANNE T. MARSHALL, OF VIRGINIA, TO BE CHAIRMAN OF THE MERIT SYSTEM PROTECTION BOARD, WHICH WAS SENT TO THE SENATE ON JANUARY 26, 2004.