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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, May 23, 2005, at 12:30 p.m.

Senate

FRIDAY, MAY 20, 2005

The Senate met at 9:31 a.m. and was called to order by the Honorable JOHNNY ISAKSON, a Senator from the State of Georgia.

The PRESIDING OFFICER. The guest Chaplain, Dr. Alan N. Keiran, Office of the Chaplain of the Senate, will lead the Senate in prayer.

PRAYER

The guest Chaplain offered the following prayer:

Let us pray.

God of second and third chances, help us to be as patient with each other as You are with us. Even as You forgive us when we don't deserve it, give us the grace to show mercy to others. As You see what we can become instead of who we are, infuse us with optimism so we may become all You want us to be.

God, the times require wisdom and courage. Give our Senators the wisdom not to mortgage the future for today's ephemeral successes, but strengthen them to stand for what is right and good and lasting. As You gave Your life for us, each day make us willing to die ourselves for the good of the many. We pray in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHNNY ISAKSON 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 bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 20, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHNNY ISAKSON, a Senator from the State of Georgia, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. ISAKSON thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Colorado is recognized.

SCHEDULE

Mr. ALLARD. Mr. President, today, the Senate will resume consideration of the nomination of Priscilla Owen to be a circuit judge for the Fifth Circuit. This will be the third consecutive day of debate on this well-qualified nominee. We have had a good debate on the Owen nomination, with a number of Members, on both sides of the aisle, speaking on the issue. As the majority leader announced yesterday, we will be seeking a unanimous consent agreement to set a time certain for a confirmation vote on the Owen nomination. If an objection is raised to a time agreement, a cloture motion will be filed later today.

Also, as announced by the leader, there will be no rollcall votes today. The next rollcall vote will be on Monday, and that vote will likely be in relation to a motion to instruct in order to request the presence of absent Senators. Additional votes are possible on Monday, and the leader will update that schedule on Monday.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

NOMINATION OF PRISCILLA RICHMAN OWEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT—RESUMED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session for the consideration of calendar No. 71, which the clerk will report.

The bill clerk read the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

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

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

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

The bill clerk proceeded to call the roll.

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

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

The Senator from Georgia.

Mr. ISAKSON. Mr. President, I rise this morning to continue the debate with regard to the confirmation or advice and consent on the approval or denial of judges nominated by the President of the United States. I have listened to most of the debate and have participated in some of it. I have found something to be very interesting. We have not talked much about whether these seven, upon which a filibuster has been threatened, are qualified. We, instead, have argued as to whether something that was never used for 214 years is or is not a tradition.

So I thought this morning I would talk about one of these seven. We obviously are debating Priscilla Owen, from the Presiding Officer's home State of Texas. But I want to direct my remarks to Janice Rogers Brown, of California, who also has been threatened to be filibustered and not allowed to get a vote, up or down.

I thought, in preparing my remarks, I would research those who do not think she should get a vote and what they are saying about her record so I could at least come to the floor and debate what we really should be debating, and that is the qualifications of that judge. I went to a number of Web sites, and I found something very common that you usually find in this type of an issue. I found a couple of quotes, repeated over and over again, as exemplary of why Janice Rogers Brown is not in the mainstream.

So what I thought I would do today in my time is take those quotes and the sense from those two speeches she gave and ask the question, Is she out of the mainstream? For, you see, the two quotes that are used so much on the Web sites to disparage Justice Brown are two quotes from two speeches, both of which I have read, which I find to be quite remarkable. Both were made in the year 2000, and both are fundamentally about the beliefs of Janice Rogers Brown.

So I would like to analyze those two quotes for a second and ask us to ask the question, Is Janice Rogers Brown in the mainstream or is she not?

The first quote is from August 12, 2000, in a speech she made, entitled ''Fifty Ways To Lose Your Freedom.'' I apologize to the Chair. I am going to read precisely so I do not miss a word. This is a quote used to say she is not in the mainstream—one of them. She said:

> Some things are apparent. Where government moves in, community retreats, civil society disintegrates and our ability to control our own destiny atrophies. The result is: families under siege; war in the streets; unapologetic expropriation of property; the precipitous decline of the rule of law; the rapid rise of corruption; the loss of civility and the triumph of deceit. The result is a debased, debauched culture which finds moral depravity entertaining and virtue contemptible.

That is a strong statement, but it sits there on its own without any thought or context to the speech that was made because the speech by Mrs. Brown was her belief in the innate goodness of people. What she refers to in her speech as to natural law is that we are born knowing right from wrong and good from evil. Her point is that when Government becomes so big, so intrusive, and so pervasive, it can do all of the things that she listed. And as to those things she listed, some people say that is not a mainstream statement. So I ask myself, let's look at those things she said could happen as we lose our freedom.

She said families are ''under siege.'' I think that is a fair statement in contemporary 21st century. Divorce continues to be up. Child abuse grows. Obviously, that has been a problem.

She talks about ''war in the streets.'' We do not have war in the streets, but we have gangs in the streets. We have crime in our streets.

''Expropriation of property.'' I look at the assault on private property rights, something we debate in this Senate; on ''the rule of law,'' where today it seems, in many cases, the whole goal is to avoid the rule rather than follow it.

''The triumph of deceit.'' Even in corporate America, look at WorldCom, a statement of deceit to represent a value that did not exist.

A ''debased culture.'' Well, I am a product of the 1950s and 1940s and 1960s, when I grew up, similar to Mrs. Brown. I do not know if this is a good example or not, but in the 1950s, when I was growing up, ''Father Knows Best'' was the No. 1 show. Today, it is ''Desperate Housewives.'' I think that tells us something about the direction we may have gone in terms of the value of entertainment.

And then let's talk about ''virtue'' for a second and finding it ''contemptible.'' We are in a time where Justices have ruled that ''under God'' does not belong in the Pledge of Allegiance and ''obscenity'' is in the eye of the beholder. Somewhere along the way, Janice Brown makes a very good point. When Government grows so large that it permeates every facet of society, and there are not restraints upon it, then the natural law of what we know as good and evil or right and wrong really loses its momentum.

Janice Brown made another comment in that speech which I found remarkable because it fundamentally talks about what she believes in terms of democracy and freedom. I want to quote that. She wrote:

> Freedom and democracy are not synonymous. Indeed, one of the grave errors of American foreign policy is the assumption that merely installing the forms of a regime like ours—without its foundation—will automatically lead to freedom, stability, and prosperity.

Is that out of the mainstream? I don't think so. Janice Rogers Brown was saying: You just can't say you are something unless you have fundamental foundations and values to underpin that. That is what has made this democracy of ours so great. That is why our freedom has endured, because we are built on fundamental foundations of right and wrong.

I, for one, as I consider whether I would give advice and consent on a justice to one of the highest courts in our Nation, like somebody who has that fundamental belief in natural law, that fundamental belief in right and wrong, and that fundamental belief that by human nature we are good people, and that freedom of good people, governed by natural law, is the greatest freedom of all.

There is a second quote that has been used over and over on Web sites. I want to share that quote, if I may. It is from another speech she made, although it is in the speech I mentioned on ''Fifty Ways to Lose Your Freedom.'' It is also given and quoted from a speech made in the year 2000 in April to the Federalist Society called ''A Whiter Shade of Pale.''

> My grandparents' generation thought being on the government dole was disgraceful, a blight on honor. Today's senior citizens blithely cannibalize their grandchildren because they have a right to so much ''free'' stuff as a political system will permit them to extract . . . Big government is . . . [t]he choice of multinational corporations and single moms, for regulated industries and rugged [midwesterners], and militant senior citizens.

That quote is cited to say that she is not in the mainstream, without explanation and out of context. I wanted to analyze it for a second. I am a little older than Janice Rogers Brown, but we are of the same generation. We are contemporaries. I was born in the early 1940s, she in the late 1940s. My grandparents found the Government dole contemptible as well, just as hers. My grandparents were sharecroppers, just as hers. In fact, my grandfather, for whom I am named, was a pretty successful tobacco warehouse man in Coffee County, GA, who lost it all in the Depression and sharecropped. During the summers in the 1950s, my mom would send me down there to work on the farm with him. I heard him say many times he never wanted to have to be on the Government dole.

That was not out of the mainstream then, and it is not out of the mainstream now. All of us want to find the prosperity of individual initiative and live and work in a country whose system of justice honors the greatest success that any of us can achieve.

But she made another good point when she talked about big government is, in many cases, the choice of multinational corporations and single moms. Taken out of context, somebody might say: Is that in the mainstream? Well, she is pointing out what you and I see

every day, and that is both single moms and multinational corporations have their own lobbies here to lobby us. In terms of corporations, that may be for tax treatment or regulation. In terms of single moms, it may be for benefits. But the bigger government grows, the more pervasive it gets, the more those lobbies may grow.

And she says for regulated industries and rugged midwesterners. Yesterday I had a meeting with an energy company that is regulated, and rugged midwesterners—including Senators in this body—are out for ethanol benefits all the time. And she was pointing out that how big government can get and how pervasive it may be can make all of us possibly too dependent on that big government.

As far as the statement about senior citizens cannibalizing their children's future, I understand why somebody might say that is a strong statement. But the debate of the day, outside of this issue of the filibuster, is about Social Security, and the debate to follow that will be about Medicare, and the fact that the two combined, of which I, a senior citizen, will very shortly benefit from, will, if not reformed, cannibalize my grandchildren's future.

Janice Rogers Brown is not only not out of the mainstream, somebody might have even called her a prophet in the year 2000 when she made both of these speeches. The analogy she drew and the conclusions she made are now the contemporary issues of the day.

I did a radio interview this morning in my State of Georgia to one of the most listened to stations in the city of Atlanta. I was asked by the host: Mr. ISAKSON, you were in the minority in the Georgia Legislature for years and were the leader for 8. Do you understand Mr. REID and the minority's point on the filibuster?

My answer was: Yes, I understand it. When I was in the minority in that role in the legislature, I tried to take every advantage of every rule. But there is a point in time at which you do what is right. You do what the master rule tells you to do.

For us, the master rule is the Constitution. And in article II of that Constitution, it delegates to the President the authority to appoint Justices to the Supreme Court and several courts created thereunder, and it gives the Senate the responsibility to advise and consent, advice and consent that is not delineated in any way in that sentence or in that document to require anything other than a simple majority.

In fact, there are seven places in the Constitution where it says we have to have a supermajority: Impeachment is one, ratifying the Constitution. Sometimes it is two-thirds; sometimes it is three-fourths in terms of the States ratifying the Constitution. The Constitution is specific. It is specific on judges that the Senate advises and consents, without designation of a supermajority.

For the public who listens to the debate about filibusters and tradition, that really is the issue. The rule of the Senate invoking cloture that requires 60 votes to bring up a simple majority vote is the application of a rule to supersede the constitutional dictate that this Senate vote up or down on Janice Rogers Brown and Priscilla Owen. That is ultimately the issue. To me, it is that simple.

Another reason I chose to talk about Janice Rogers Brown is because she is a daughter of the South. Because of the admiration I have for her—she and I grew up in the same South. We grew up in the most significant change that part of the country ever went through, when civil rights changed, beginning with Brown v. Board of Education in 1954, and I, as a student in school, went through that transition where the schools were integrated. And in college, while I studied political science, the debate in this body and the most famous filibuster of all was about the civil rights laws that were passed in the 1960s.

Janice Rogers Brown was born at a time and in a year where her ascension to the bench on the Supreme Court of California or the Federal courts would not have seemed possible because of the rules of the day in the South. But she and I grew through a time where this Congress—in fact, this Senate—saw fit to memorialize the civil rights laws and equalize the treatment of every American.

That is why I believe Janice Rogers Brown deserves a vote up or down. I care and I respect how any Member of this body will vote. But voting not to vote, to deny someone the opportunity to which they have been nominated by the President, elected by a majority of the electors in the last election, is not right. It is not, as Janice Rogers Brown referred to it, the natural law. We all know basically the difference in right and wrong. Denying that vote is wrong.

My remarks this morning are to say simply to those who would say that Janice Rogers Brown is not in the mainstream: I ask you to do what I have done. Read her speeches that are quoted. Read them all. When you read the speech ''Fifty Ways to Lose Your Freedom,'' don't read the 1 paragraph out of context; read all 18 pages and read it a second time. Understand that this is a woman who wants everybody to understand that she believes in right and wrong. She believes in the appropriate role of Government. She believes in empowerment of the individual. Every thought of all these quotes ends up being based in that very fact, the natural law of the belief of human beings in right and wrong and the empowerment of the individual. I hope Janice Brown is in the mainstream because I believe that is what the mainstream believes. And those who think it is not have to believe the opposite, which is less power of the individual and shades of gray when it comes to right and wrong. We need on the bench those who see things clearly and speak their mind.

In my meeting with Janice Rogers Brown, I told her I was going to speak about her because I had been so impressed with her record and because I had gone back and read those speeches. She told me this at the end of our meeting: I respect anyone voting either way on me. In fact, in a way, I am glad my speeches are now being read. They should know what I think, and they should know what I believe. I should know how they feel.

I hope sometime after next Tuesday, after we finally come, hopefully, to a vote on Priscilla Owen, we will come to a vote on Janice Rogers Brown, and we will find confirmed to another court another justice who believes in the power of the individual and the difference in right and wrong.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DODD. Mr. President, it is with no small measure of reluctance that I rise on the floor of the Senate to speak on the matter of extended debate, the filibuster rule. I certainly wish—and I believe many of my colleagues on both sides of the proverbial aisle wish—we were engaging in some other matter. Certainly, there are other matters that are far more pressing in the eyes of the American public than the discussion we have been having over these last several days and will have over this weekend and early into next week.

As is the tradition of this institution, the majority has the right to set the agenda, and they are doing so, obviously, with their insistence upon this particular debate and preoccupation with changing the Senate rules with a simple majority. Eliminating the extended debate rule of this institution when it comes to judicial nominations is a matter of grave importance. I can think of no other issue that I have been engaged in over the years that has as many profound implications for how this institution will function in the years to come if the majority prevails in its desire to change these rules.

Like many others, I wish we were debating the issues here and trying to do something more about gasoline prices, education, and health care. In a sense, we are engaging in a filibuster, I suppose, in terms of our ability and willingness to engage in debate on the matters that are most pressing to the American public.

We are a unique institution. There have been 1,884 of us who have served here in 217 or 218 years. It is a rather small group when you think of it—a Nation of more than two centuries in age and yet not even 2,000 people have been so fortunate as to have been chosen by their respective States to sit

and represent their interests in this unique institution we call the Senate.

So I begin this discussion by admitting to my colleagues that this is no passing matter of interest to any of us here. It is one of the most important debates we are ever apt to have. In fact, it may be the most important. Even for those who just arrived here 1 or 2 years ago, or 4 or 5 years ago, the outcome of this debate will have profound and long-term implications for the ability of this institution to continue to play the important role it has in the history of our Nation.

We have all been honored by our constituents with the privilege of serving here, and we have all come to learn that the Senate is not simply a place where we come to work every day; it is a supreme monument, in my view, to human civilization. It is one of mankind's most noble achievements, the establishment of the Senate. It is unique in all the world in many ways as a place founded on timeless and time-tested principles: respect for human freedom, respect for minority rights, and checks on the tendency of any leader or party to accumulate and abuse power.

The majority leader of the Senate, like the rest of us, is one of its temporary stewards. He is, like the rest of us, a transient member of this enduring institution. He proposes to change the Senate rules to eliminate the right of extended debate with respect to judicial nominations. He is considering doing so by a procedure that, in my view, is outside of the rules of the Senate. I take the floor to discuss and debate this proposal. In doing so, I engage with our colleagues in a practice that is as old as the Senate itself.

I know other colleagues have come to the floor in recent days and hours to debate this proposal. Some have spoken in support and others in opposition. Our debate is in keeping with the deliberative rules and practices that have been a hallmark of this institution since it was conceived during that steamy Philadelphia summer 218 years ago.

This is not just a matter of professional interest for me either; it is intensely personal as well. I vividly recall as a young boy sitting in the Senate gallery watching my father, a Member of this institution, and his colleagues debate the great issues of their time. They were passionate debates, and the use of the filibuster was very much in play. Civil rights, war, poverty, and other issues were demanding the attention of this institution.

I remember, as well, as a teenager sitting on the floor of the Senate, where these young men and women sit today, as a Senate page during some of the civil rights debates of the early 1960s. We watched Senators such as Lyndon Johnson, Everett Dirksen, Paul Douglas, and Jacob Javits. We watched them debate sometimes with great passion and vehemence. We watched them negotiate, as well. They were well schooled in the art of advocacy and equally well schooled in the art of compromise. They understood the obligation of party, but they were no less committed to fulfilling their obligations to this great Senate and the country in which they lived.

I particularly recall watching the Senator for whom our first office building, the Russell Building, is named. The Presiding Officer, of course, knows of this individual as well as any member here. Senator Russell led a very determined minority, insisting on the right to be heard on the issue of civil rights. Theirs was not a popular position. My father and others vehemently opposed the position of Senator Richard Russell—despite their great friendship, I might add. My father and others were frustrated at the possible ability of Senator Russell and a minority of Senators to defeat civil rights legislation. Senators who supported civil rights—my father included—did indeed protest the use of extended debate by their adversaries. They even attempted to lower the threshold of Senators required to end such debate. One could hardly blame them, I suppose. Tens of millions of Americans were being systematically and often brutally denied their basic rights.

Using Senate rules and practices to block civil rights legislation was understandably seen by many Senators—most, in fact—as an affront to American values. Nevertheless, efforts to eliminate the rights of the minority to engage in extended debate with respect to civil rights legislation ultimately failed. The noble cause of racial equality ultimately prevailed in the Senate, and so did the practice that for so long thwarted its triumph.

Therein resides the central paradox and the towering majesty, I might add, of this great institution, the Senate. What makes this place so revered and unique is what can simultaneously gall us about it the most—the practice of extended debate. From 1789 until 1917, 128 years, this practice of extended debate, if you will, was absolute in its scope. All Senators had to consent—all of them—to close debate on any matter at all. For a subsequent period of 58 years, two-thirds of the Senate was required to end debate—though only on a ''pending measure,'' meaning a legislative matter.

It would not be until 1949 that something less than unanimous consent would be required to close debate on nominations—1949, a little more than 50 years ago. Currently, three-fifths of the Senators, of course, chosen and sworn are required to close debate on any matter. A motion to proceed to the consideration of a change in Senate rules requires an even higher threshold—two-thirds of Senators—to close debate.

As far as I know, the proposal of the present majority leader to require a simple majority to close debate is without precedent. There is not a single rule allowing a bare majority to force a vote on a judicial nomination. Certainly, his proposal would, if successful, fundamentally alter the nature of the Senate and the balance of power as created by the Framers of the Constitution.

Part of the difficulty here is the fact that over 50 percent of this body has primarily served under one set of circumstances. Thirty-six members of the 55 in the majority have primarily served in the majority. Close to half of the Democrats in this body have primarily served in the minority. I have served in this institution for a quarter century, since 1981. I have served in this body under every imaginable configuration in its relationship to the House of Representatives and the Presidency. I have served in both Houses. I have served when this institution was held by the Democrats and the House by Republicans, and the reverse, when the House was held by Democrats and this institution by Republicans. I have served under both Democratic and Republican administrations.

You need to serve here under different circumstances, I say with all due respect to my colleagues who have been here a limited amount of time, to appreciate how this institution functions. You need to sit there and be a minority member to understand the importance of minority rights. You need to be there as a majority member to understand the importance of setting the agenda. But it is almost impossible, I say with all due respect, to understand the delicacies and the rhythms of this institution if you have just been here a limited amount of time, serving under one set of circumstances. That, in a sense, is one of the problems.

It is also a problem that too many of our Members have come from the other body, the House of Representatives. I am included. The other body has become highly divisive. It is highly partisan, with reasons and faults on both sides. But Members who have come from that institution to this institution too often bring some of that luggage, in effect, some of that passion that existed in the House, and have allowed it to contaminate this institution. We need to stop it.

Too often, over the last number of days, I have heard Members cite speeches given by other Members here. In my earlier days here, that would have never happened. You might debate with one other Member and remind them of something they said earlier, but a sort of free-flowing attack on other Members of the Senate does this institution ill service, in my view. We ought to have more respect for this place, for the role it has played historically, and the role it will play, and get back to the business of doing what the Senate does best.

One of the reasons the extended debate rule is so important is because it forces us to sit down and negotiate with one another, not because we want to but because we have to. I have

helped pass many pieces of legislation in my 24 years here, both as a majority and minority Member of this institution. I have never helped pass a single bill worth talking about that didn't have a Republican as a lead cosponsor. I don't know of a single piece of legislation here that didn't have a Republican and a Democrat in the lead. We need to sit down and work with each other. The rules of this institution have required that. That is why we exist. Why have a bicameral legislative body, two Chambers? What were the Framers thinking about 218 years ago? They understood the possibility of a tyranny of the majority. And yet, they fully endorsed the idea that in a democratic process, there ought to be a legislative body where the majority would rule.

So the House of Representatives was created to guarantee the rights of the majority would prevail. But they also understood there were dangers inherent in that, and that there ought to be as part of that legislative process another institution that would serve as a cooling environment for the passions of the day. So the Framers—at the suggestion of two Senators from Connecticut, I might add, the State I am privileged to represent, Roger Sherman and Will Oliver Ellsworth; hence the compromise is called the Connecticut Compromise—sat down and said: There is a danger if we don't adopt a separate institution as part of the legislative branch where the rights of the minority will also prevail, where you must listen to the other side in a democracy, pay attention to the other side.

In fact, minority interests, we have learned, historically have been on the right side of the issue on many occasions in our history. Had there not been a place called the Senate, we might never have enjoyed the privilege of seeing our country recognize the value of those positions over time.

This institution and its rules have given this country remarkable leadership over these 218 years, and central to that rule has been the extended debate clause, which forces Senators to sit down and work with one another. That is why we have a 6-year term. That is why only one-third of us are up every 2 years. That is why we have a term longer than the President or the House Members. That is what the Framers had in mind. They were worried about too much control residing in one branch or the other. So they created this remarkable institution.

I say this again with all due respect. I listened to our colleague from Hawaii, Senator INOUYE, who gave his maiden speech on the floor of the Senate supporting the filibuster rule during the civil rights debates. The first thing he said in that debate was: I am most reluctant to get up because I understand the tradition of this institution of taking a little time before you get up as a new Member and talk about what needs to be done.

I am not suggesting people ought to go back to the 19th century, or early 20th century, and sit back and wait and bide their time. But it is important to learn how this place functions. There are rules here, clearly. But there is something beyond rules; there are traditions that are not written down in any book anyplace but which make the place function. When you read Robert Caro's book ''Master of the Senate,'' about Lyndon Johnson and the golden age of the Senate, the days of Calhoun and Clay and Webster, the days in the early 1950s, when giants served here and engaged in the great debates of their times, it was not necessarily the rules of the Senate that created those great moments in history; it was the quality of the individuals here who respected the rules and worked within them, because they understood the value of this institution.

That is what worries me so much about this debate. We are not paying attention to each other here. We have come to believe, I suppose, that the sum of the special interests in this country equals the national interests. They never have and they never will, in a sense. We need to focus on the history of this place, the role we can play, and the importance this institution can play in the years ahead. As I said at the outset, we are only stewards here.

I have been here a quarter of a century. It is a fraction in time. And what do we do with our time? When our tenure is over and our legacy is written, the history of our service, the question will be asked—what did we do with our time? We do not get a chance every day to make a huge difference. There are only going to come a handful of opportunities that will be of great value when you look back on your service and think of the best moments you had.

Some of the best moments, I promise, for those recently arriving in the Senate, will be the moments when you stood up and defied, in a sense, the passions of the day, the trend of the day, and said: I am going to do something different. I am going to step out of the predictable role and try and do something people may not expect.

Over my service here, those Members who have done that are the ones who have enjoyed their service and look back on their service with the greatest sense of pride.

This institution deserves some leaders today who are willing to stand up and protect it and defend it. I know passions are running high. I know the temperature is getting hotter and hotter by the day. But this issue we are debating will probably fade in memory. It will be hard to recall a few years from now what it was we were debating when the filibuster rule was involved. I do not minimize this issue of judicial nominations. I respect my colleagues who feel passionately about this issue. But I promise them, within a matter of months or years, you will be hard pressed to recall the names of the people involved or exactly where they were going to serve, on what bench.

Yet the rules we change will profoundly affect how we are going to engage effectively in the other matters that come before us. If the majority decide they simply do not like the rules in any one Congress and change it with a simple majority, then the rules will mean almost nothing if they can change them with 51 votes.

The reason our Founders set such a high standard over the years is because they wanted some perpetuity to those rules. And if, after all of this, we are able to say with regard to extended debate that you are going to eliminate that as well, then obviously there is a fear this same procedure, this elimination of extended debate, will also be used to limit debate on other matters beyond judicial nominations. Once you set the precedent, it is not that long a leap to go from judicial nominations to substantive matters.

Throughout our history, the right of extended debate has never been seriously questioned, in my view, as other than a vital foundation of our Republic. It has been the catalyst for achieving the most remarkable feature of our civilization: the degree to which we have been able to provide our citizens with great freedom and great stability.

The Senate was created, in the words of James Madison, ''first to protect the people against their rulers; secondly to protect the people against the transient impressions into which they might be led. . . .''

He went on to say:

> The use of the Senate is to consist in its proceeding with more coolness, with more system, with more wisdom, than the popular branch.

The word ''Senate'' comes from the Latin word ''senatus,'' wise men, wise people. We always associate wisdom with tenure, with service, with experience, and the people who have had life experiences and bring them to this institution. That is the word ''Senate,'' that is what it means.

In order to carry out this mission, of course, the Framers endowed this institution with a few extremely important qualities and powers. First, as I mentioned, the Framers gave Senators terms of office, as I mentioned, three times longer than House Members and one-third longer than the President's.

Second, as I mentioned as well, the Framers ensured that only one-third of the Senate stands for election every 2 years, thereby making it a continuing body.

Next, the Framers created a body dramatically different from the House. Each State would be represented by two Senators no matter how small or large, ensuring that the interests of smaller States would not be trampled upon by the more popular jurisdictions.

And, finally, the Founders insulated the Senate from sanction for debate by explicitly granting it the power to ''determine the rules of its own proceedings.''

These constitutionally mandated attributes have proven extraordinarily

successful in ensuring the Senate is a bulwark against popular passions that move in time from the left to the right, back and forth. None of us can predict within a matter of days, hours, weeks, months, how the country's popular opinion moves and changes. And yet having a place where those passions are not going to dictate the outcome every day is essential to the stability of this great Republic, in my view.

With these great rights come responsibilities, of course. The Senate was given special powers to try impeachments, ratify treaties, and, most critically for our purposes today, to confirm nominees. Perhaps nowhere other than in the advice and consent responsibility of the Senate, laid out in article II, section 2 of the Constitution, do we see the Framers' keen preoccupation not only to respect the principle of majority rule but, as important, to limit the possibility of an overreaching Executive and the tyranny of the majority.

The President nominates, but the President's power is balanced and checked by the power of the Senate to provide advice and consent. Remember, Mr. President, what were the personal experiences of the Framers? They came off an experience where one individual, a king, had made exclusive decisions that affected the lives of millions of people, and they were suspicious of an awful lot of power being accumulated in too small a place or too few hands.

With respect to the judiciary, the third and separate equal branch of Government, the powers of the President and the Senate are deliberately and carefully counterimposed. Robert Caro, the author whom I cited earlier, has observed that very point. Caro says in his book:

> . . . [I]n creating the new nation, its Founding Fathers, the Framers of its Constitution, gave its legislature . . . not only its own powers, specified and sweeping . . . but also powers designed to make the Congress independent of the President and to restrain and act as a check on his authority, [including] power to approve appointments, even the appointments made within his own Administration. . . . And the most potent of these restraining powers the Framers gave to the Senate. . . . The power to approve Presidential appointments was given to the Senate alone; a President could nominate and appoint ambassadors, Supreme Court Justices, and other officers of the United States, but only ''with the Advice and Consent of the Senate.''

The proposal contemplated by the majority leader would, with all due respect to the leader, in my view, undermine the Senate's role in our constitutional democracy. I know that has been said by many others. It would surrender enormous power to the Executive and upset, in our view, the system of checks and balances created by the Framers.

It would have us move to a majority cloture rule on that portion of our business that girds the independence of the judicial bench.

There is an irony to this proposal that cannot go unstated, and should not go unexamined. It proposes to limit the Senate's exercise of its power in the matter of nominations rather than legislation. Yet one can argue convincingly that it is precisely in the area of nominations—particularly judicial nominations—that the Framers intended that power to be most utilized.

We must remember that during the Constitutional Convention, only after lengthy debate was the power to appoint judges committed to the President as well as to the Senate.

In the closing days of that Convention, the draft provision in the Constitution still read as follows:

> The Senate of the United States shall have the power to . . . appoint . . . Judges of the Supreme Court.

On four separate occasions, proposals were made to include the President in the process for selecting judges. And on four occasions in those closing days, those proposals were rejected. Why? John Rutledge of South Carolina said it best: ''The people will think we are leaning too much toward monarchy'' if the President is given free rein to appoint judges.

The final compromise was characterized by Gouverneur Morris of Pennsylvania as giving the Senate the power ''to appoint Judges nominated to them by the President.'' In Federalist Paper No. 76, Hamilton explained the Senate's review would prevent the President from appointing judges to be ''the obsequious instruments of his pleasure.'' As Federalist No. 78 confirms, the Founders were determined to protect the independence and the integrity of the courts, and they believed the chief threat to the independence and integrity of our courts was a President who had nearly unchecked authority to appoint judges.

Against this backdrop, it is, indeed, ironic and troubling to this Senator that the majority leader now suggests that we restrict deliberation, debate, and the rights of the minority with respect to the nominations process, and thereby enhance the ability of the majority to turn this Senate into a rubberstamp for Presidential nominees, Democratic or Republican.

The majority leader and his supporters refer to this effort as the constitutional option. Yet in the name of the Constitution, they are advocating a change that defies the history of the very document they claim to honor. They eagerly lecture this body about preserving fidelity to the original intent of the Framers. Yet they now act with reckless disregard, in my view, for that intent.

At its most fundamental, this Senate is a testament to the rights of the minority. Small States, such as mine—I suggest even the Presiding Officer's State falls into this category—we have an equal say to California, Texas, Illinois, and New York, and the Senate's tradition and its rules protect debate and guarantee that we cannot be trampled upon, overrun by larger jurisdictions. That is part of our unique character.

This tradition of extended debate to preserve minority rights as smaller States offends no constitutional edict at all. In fact, it endorses it. In the words of former Chief Justice Burger, ''there is nothing in the language of the Constitution, or history, or cases that requires that a majority always prevail on every issue.''

Nor is there any place in the Constitution entitling anyone—judicial nominees included—to a so-called up-or-down vote on the floor of this institution.

It has been noted by the Democrats in this debate that there were some 69 nominations sent by President Clinton to the Judiciary Committee, appellate and district court judges, for which none of them were given a hearing. Some said that is a form of filibuster. I agree, it is.

There is nothing, I argue to my Democratic friends, that said President Clinton had an absolute right for those nominees to have a hearing in the Judiciary Committee. He had an obligation to send us nominees. We had no obligation to guarantee them a hearing in the Senate of the United States, any more than President Bush's nominees necessarily have an absolutely right to a simple up-or-down vote in this Chamber. Neither side is right in that regard.

The Senate, under Republican control during President Clinton's tenure, was exercising its rights. I did not like the outcome. I did not like the result. But the Senate Judiciary Committee had a right not to give them a hearing.

Democrats today argue—I think with equal cause—that these nominees have no right to an up-or-down vote any more than President Clinton's nominees had a right to a hearing. That is exactly what the Framers were saying. That is exactly what the people wanted when they wrote the provisions of our Constitution creating the Senate.

In addition, nowhere does the Constitution or record of the Constitutional Convention say or even suggest that the advice and consent function of the Senate should be less with respect to judicial nominees than other nominees.

The reason there is no such distinction is simple: it is illogical on its face. How can anyone argue that we should have the right to extended debate with respect to some obscure agency nominee who can serve for a couple of years, but that we should not have that right with regard to lifetime appointments to the Federal bench? Such an outcome not only defies the history of the Convention, it defies logic. And this is called the ''constitutional option''? To call it by this name, in my view, dishonors the genius of those men who conceived the Constitution.

The majority leader's proposal will, without question, diminish the Senate's power in relation to the Executive, and in so doing will diminish the power of each and every Senator, regardless of party, to stand up for his or her State.

Let me say to those who have been here only serving in the majority, only serving under a Republican President—my wish as a Democrat is that this would happen more quickly—I do not know when it will happen, but it will happen, I promise you. If you are here long enough, you will serve in the minority. You will serve with a Democratic President. And for those of you who want to absolutely guarantee that Presidents can guarantee a right on their nominees coming up here, you will rue the day when it comes. You will rue the day, and you will look back on this debate and wonder why there were not more people standing up reminding each other of the importance of this institution and what the Framers had in mind in trying to protect us against absolute guarantees for nominees to lifetime appointments which no other appointees in our entire Federal system enjoy.

If my colleagues do not know this from their own experiences, I suggest they consider the experience of one of our colleagues, a Republican, who a few weeks ago ran into the problem. He announced at the beginning of the week his intention to place a hold on nominees to a certain commission. By the end of the week, the President had recess-appointed each and every one of those nominees. The considered views of our Republican colleague were of no consequence. They were disregarded out of hand.

Do any of us think this or any other President will be more or even just as likely to consider our views on judicial nominations if we surrender power to this President or any future President? I for one do not. Colleagues, if that happens, if we cede power to the Executive, you may never get it back.

Of all the issues that we will face in this and future Congresses, from war and economic growth, to health and education, none is more important than this debate because how we resolve this issue will in many respects determine how, indeed, we resolve all the others.

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

Mr. DODD. I ask for 1 additional minute, if I may.

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

Mr. DODD. I thank the Chair.

As I said a few minutes ago, those of us fortunate to serve in this body are but its temporary custodians. We are stewards of an institution governed by rules that have withstood the test of more than two centuries in time. Now is not the moment to scrap such rules simply to achieve objectives that are, in essence, transient and partisan in nature, even though they are deeply felt by their proponents.

I know of no other branch of government, in this or any other nation for that matter, that would willingly surrender power to another branch. This is a moment for Senators, as Senators, to stand up for the Senate.

The disagreements we have today will likely be forgotten. They will fade like so many grainy snapshots into the dim recesses of our collective national memory. But to change the rules of the Senate, to do so by evading rather than abiding by the rules of this Chamber, would do lasting damage not only to this institution but to the Republic it has served so long and so well.

Future generations will not remember why those rules have been changed, but they will live each and every day with the consequences of this decision. I urge my colleagues to reject this proposal and let us get back to the business of functioning as the Senate should.

I thank the Chair.

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

The Senator from Texas.

Mr. CORNYN. I thank the Chair.

Mr. President, people who are following the debate on the Senate floor about this nominee, Priscilla Owen, might be forgiven if they think the sky is falling or perhaps the end is coming for the Senate as a unique institution in American Government, or somehow that the nuclear option is going to simply blow the place up and all of us with it.

I think you can read an awful lot into the rhetoric that is being used and the tone that is being used during this debate to see what it is all about. I worry, as well, that when we talk about statistics, when we talk about what percentage of President Bush's nominees were confirmed, which ones were not, how President Clinton's nominees were treated, what percentages were confirmed, what percentages were not, that we fall into the deplorable habit of treating people like mere statistics. But I would only add that one violation of the Constitution is one too many. And when it comes to giving an up-or-down vote to a President's judicial nominee, which has happened for 214 years up until 4 years ago this last May 9, we are simply talking about treating people as they deserve to be treated—with respect. We are talking about treating Presidents who have won national elections with the respect they deserve, not as a rubberstamp but to provide the advice and consent that the Constitution contemplates when it comes to judicial nominees.

You would think the end is near for this institution listening to some of the rhetoric, when all we are talking about is trying to restore this 214 years of unbroken tradition of providing an up-or-down vote for any nominee who enjoys bipartisan majority support in this Chamber as this nominee, Priscilla Owen, does.

If you want to talk about statistics—and our friends on the other side of the aisle have—they have time and time again essentially argued this is payback for how they perceive Republicans treated nominees of President Clinton. And one of the names they mention is Richard Paez, who was nominated by President Clinton, who was ultimately confirmed by less than 60 votes of the Senate. All we are asking is that Priscilla Owen be treated with the same courtesy and according to the same standard that Richard Paez was treated when he was given an up-or-down vote and was confirmed by less than 60 votes.

A number of my colleagues on this side of the aisle have done an excellent job of presenting, in a comprehensive fashion, the legal and constitutional framework that exists for the Senate's authority to determine its own rules, and that is really all we are talking about—the Senate determining its own rules. I believe the case that has been made for the Senate continuing to do that is a strong one. In fact, that is why Senators on the other side of the aisle, including the former Democrat majority leader, the senior Senator from West Virginia, the senior Senator from Massachusetts, and the senior Senator from New York, have all stated in the past as recently as 2 years ago that, of course, a majority of Senators has the power to set rules, precedents, and procedures. Indeed, that is why the power of the Senate majority to set rules, precedents, and procedures has sometimes been referred to as the Byrd option, or otherwise, the constitutional option.

But let me begin my remarks by making a simple point I made last night, and let me reiterate it. I much prefer the bipartisan option to the Byrd option. America works better, the Senate works better, and our constituents are better served when we act in a bipartisan and cooperative manner. I would much prefer to wake up each day not anticipating the battles in this Chamber but, rather, to anticipating the opportunity to do what I came here to do, and that is to serve the interests of my constituents and the Nation by trying to get things done, trying to solve problems. That is why I believe we were sent here. I have done my best to take advantage of every opportunity I have seen in order to work in a bipartisan manner. I would simply choose collaboration over contention any day of the week.

But we know that bipartisanship is a two-way street, that you cannot claim to be bipartisan when a partisan minority seeks to obstruct, and has successfully obstructed for the last 4 years, a bipartisan majority from getting a simple up-or-down vote for nominees such as Priscilla Owen. In order to have true bipartisanship, both sides must agree to treat each other fairly and apply the same rules and standards regardless of who happens to be President, whether it is a Republican or Democrat, and regardless of who is in the majority, whether it is a Republican or Democrat majority. But bipartisanship, we know, is difficult when long held understandings and the willingness to abide by basic agreements and principles have unraveled so badly as it has these last 4 years.

What are we to do when these basic principles and commitments and understandings have simply unraveled so badly? What are we to do when Senate and constitutional traditions are abandoned for the first time in more than 2 centuries; when both sides once agreed that nominees would never be blocked by the filibuster, and then one side says, well, that agreement never existed; when our colleagues on the other side of the aisle boast in fundraising letters to their donors of their ''unprecedented'' obstruction and then come to the Senate floor and claim that precedent is on their side and that somehow this side, the bipartisan majority, is somehow blowing up the Senate by exercising a ''nuclear option''? What are we to do when the former Democrat majority leader claims on one day that the filibuster is somehow sacrosanct and sacred to the Founders and then demonstrates by his own words that he has successfully killed filibusters in the past on the Senate floor?

In 1995 he stated:

I have seen filibusters. I have helped to break them. The filibuster was broken, back, neck, legs and arms.

Finally, what are we to do, Mr. President, when they claim on one day that all they seek is more time to debate a nomination, and then claim on another day there are not enough hours in the universe to debate the nomination? Indeed, as we stand here 4 years after this fine nominee was proposed, we know there has been more than adequate time for debate. There has been a lot of debate. But this is not about debate. This is not about the Senate's traditions. This is about raw political power of a partisan minority to obstruct a bipartisan majority from exercising the power conferred upon that bipartisan majority by the Constitution.

It is clear that a partisan minority is now seeking to impose a new requirement during these last 4 years, that nominees will not be confirmed without the support of at least 60 Senators. This, by their own admission—at least at one point by their own admission—is wholly unprecedented in Senate history. But thinking about it, Mr. President, the reason they have now sought to adopt this double standard and this increased threshold before a nominee can even get a vote, the reason for it is simple, and that is because the case for opposing this fine nominee, Priscilla Owen and her fellow nominees, is so weak that the only way they can hope to defeat their nominations is by applying a double standard and changing the rules. That is the only way they can hope to win—this partisan minority. We have heard a lot of talk about some of the decisions this judge has made when she served on the Texas Supreme Court, as she still does. I think the distinguished Senator from Georgia, who is currently occupying the Chair, spoke eloquently about another nominee, Janice Rogers Brown, who is also accused of ''being out of the mainstream'' and shown how thin and baseless that allegation is—and by the way, Janice Rogers Brown is accused of being out of the mainstream for exercising her first amendment right as an American citizen in a speech, two speeches, not in the course of her judicial decisionmaking. Does that mean that citizens should somehow be constrained in what they can talk about lest they be deemed disqualified to serve as a Federal judge later on because some Senator or some group of Senators think that they are ''outside of the mainstream''? I hope not.

A number of Senators have mentioned the case called Montgomery Independent School District v. Davis. This is one of the cases they cite as an example for Justice Owen ''being out of the mainstream.'' But, of course, I doubt they have read the opinion. This is about a schoolteacher a local school board dismissed because of her poor performance and because of her abusive language toward her students. This teacher admitted that she had referred to her students as little blank blank blanks—a four-letter expletive that I will not repeat on the floor of this body. When confronted with this statement, she justified the use of this expletive to schoolchildren, mind you, on the bizarre ground that she uses that same language when talking to her own children—clearly unacceptable conduct.

The senior Senator from New York has said that this teacher was wrongly dismissed. Other Senators criticized Justice Owen about this case as well. I have children. Many Senators have children. Certainly the people across America who have children understand. Are Justice Owen's opponents really arguing that this teacher's opponents acted inappropriately, that she was wrongly dismissed for using that language and mistreating her students in such a way?

If you read the opinion, as I doubt the critics have, preferring, rather, to speak off of talking points written by political consultants who engage in character assassination for their profession, Justice Owen simply said that the local school board was justified in dismissing the teacher—hardly a decision which is out of the mainstream.

As it turned out, the majority of the court disagreed and held that the school board could not dismiss the teacher, on legal grounds. But Justice Owen's dissenting opinion simply concluded that the majority:

. . . allows a State hearing examiner to make policy decisions that the Legislature intended that local school boards make.

She also argued that the majority ''misinterpreted the Education Code.''

This partisan minority in the Senate has accused Justice Priscilla Owen of judicial activism. But the people of America understand what judicial activism is and, conversely, what it is not. The American people understand a controversial judicial activist decision when they see one, whether it is the radical redefinition of some of our society's most basic institutions, such as marriage; whether it is expelling the Pledge of Allegiance from classrooms of schoolchildren because the phrase ''one nation under God'' is invoked; or whether it is the elimination of the ''three strikes and you are out'' law and other penalties against hardcore convicted criminals; or the forced removal of military recruiters from college campuses. Justice Owen's rulings fall nowhere close to these sort of activist decisions, this category of cases that to me defines the phrase ''judicial activism.''

There is a world of difference between struggling to try to do the job judges are duty-bound to perform—that is, to interpret ambiguous expressions of a statute—there is a world of difference between that and refusing to obey a legislature's objectives altogether and instead substituting that judge's own opinion or own social or political agenda for what the legislature, the elected representatives of the people, had said the law should be.

If the Senate were to follow more than 200 years of consistent tradition, dating back to our Founding Fathers, there would be no question but that this judge, and this fine and decent human being, would be given the up-or-down vote and confirmed for the Fifth Circuit Court of Appeals. President after President after President have gotten their judicial nominees confirmed by a majority vote, not a supermajority vote of 60 votes or more. By their own admission, a partisan minority in this body is using unprecedented tactics to block her nomination. Here again, the reason is simple. As any careful examination of the decisions made by this good judge reveal, the case for the opposition is so weak that the only way they can defeat her nomination is by applying a double standard and changing the rules.

It is not just me who says that a supermajority requirement is unconstitutional and violates the Senate traditions for over 200 years. Legal scholars across the political spectrum have long concluded what we know in this body instinctively—that to change the rules of confirmation, as this partisan minority has done starting 4 years ago, badly politicizes the judiciary and hands over control of the judiciary to special interest groups—something we all ought to want to avoid.

The record is clear: Senate tradition has always been majority vote, and the desire by some to alter those Senate rules has been roundly condemned by legal experts across the political spectrum.

In fact, Lloyd Cutler, who recently passed away, who was really the dean of lawyers, who advised Presidents, both Republican and Democrat, during the course of his professional lifetime, wrote ''The Way to Kill Senate Rule XXII,'' which was published in the Washington Post in 2003. He said:

A strong argument can be made that the requirements of . . . a two-thirds vote to amend the rules are . . . unconstitutional.

Liberal USC law professor Erwin Chemerinsky wrote in 1997, ''Rule XXII''—that is the rule that requires 60 votes in order to get a vote that is being invoked now for the first time in more than 200 years against nominees. We are not talking about legislation, as I know the Chair understands and which has been clear but sometimes gets muddled. Professor Chemerinsky writes:

Rule XXII is unconstitutional in its requirement that change be approved by two-thirds vote to change the Rule. The effect of declaring this unconstitutional is that the current Senate could change rule XXII by majority vote. In other words, a majority of this Senate could eliminate the filibuster if a majority wished to do so.

I believe a majority does wish to do so when it comes to breaking the log-jam over nominees, not with regard to legislation. There is a general consensus, bipartisan consensus in the Senate, that, for our own reasons, it is important to preserve the filibuster for legislation. But, of course, that only affects how we conduct our business, not how we interact with a coordinate department of Government or branch of Government known as the executive branch in exercising advice and consent when it comes to the nominees by a President elected by the American people.

To employ the Byrd option is not a radical move. It would merely be an act of restoration. I say it again. There is nothing radical about the Byrd option, yet our colleagues on the other side of the aisle have called it, not the Byrd option or the constitutional option, but the nuclear option, to suggest that somehow there is something radical about it.

But all we need to do is to look at the senior Senator from West Virginia, who was then majority leader, who used the constitutional option—and this is the reason it is sometimes called the Byrd option—on four occasions—in 1977, in 1979, in 1980, and again in 1987—to establish precedents that changed Senate procedure during a session of Congress. Other leading Senators from the other side of the aisle have, at some times in the past—perhaps not today but in the past—recognized the legitimacy of that procedure, of the Byrd option, including the senior Senator from Massachusetts and the senior Senator from New York, as recently as 2 years ago.

The establishment of Senate rules and procedures by majority vote is commonplace. As a matter of fact, on most days, as the occupant of the chair knows, we operate by unanimous consent; that is, everybody agreeing—or at least no one objecting. The constitutional power of a majority of the Senators to strengthen, improve, and reform Senate rules and procedures is expressly stated in the Constitution. It was unanimously endorsed by the U.S. Supreme Court, and it has been supported and exercised by the Senate on numerous occasions.

For those who may be students of the Constitution, all you have to do is look at article I, section 5, which clearly states that, ''[e]ach House may determine the Rules of its Proceedings.''

The Supreme Court has unanimously held in United States v. Ballin that, unless the Constitution expressly provides for a supermajority vote, the constitutional rule is majority vote. Again, as the Senator from Georgia pointed out earlier this morning, when it comes to amending the Constitution, when it comes to ratifying treaties, it is clear that an explicit supermajority requirement is there. But failing that, where the Constitution is silent about a supermajority requirement, the U.S. Supreme Court said majority rule is the standard.

I point out again, perhaps the most eloquent and learned Member of this body, when it comes to Senate rules and procedures, is the distinguished senior Senator from West Virginia. I know as a new Senator I have watched and listened and tried to learn from him about those Senate rules. He is truly a master of that subject. Yet Senate Democrats have spent considerable time dismissing how the Founders would somehow be offended if a majority of Senators acted to prevent a partisan minority of the Senate from using filibusters against nominees. One of their own, one of the Senate's great historians, this same distinguished senior Senator from West Virginia, stipulated on the Senate floor that our Founders did not tolerate filibusters.

He said:

The rules adopted by the U.S. Senate in April, 1789, included a motion for the previous question. The previous question allowed the Senate to terminate debate. ''Mr. President, I move the previous question'' or in the House ''Mr. Speaker, I move the previous question,'' and if that gains a majority, no further debate, the previous question will be voted on.

As the senior Senator from West Virginia has previously written in his four-volume history of the U.S. Senate:

It is apparent that the Senate in the first Congress disapproved of unlimited debate. In fact, for the first several Congresses, from 1789 to 1806, a majority of Senators always had the power to bring debate to a close through majority vote through the motion for the previous question under Senate Rule IX.

I realize we are getting down into the weeds quite a bit when it comes to parsing Senate rules and the history of the Senate for the American people who might be listening to this debate, but in the end, I believe what we are talking about is the ability in this body to write its own rules and establish its own procedures, which is clearly provided for in the Constitution, and to use procedures that have been used on the other side of the aisle when they were deemed appropriate and when a majority of Senators supported that change.

We are also talking about restoring fundamental fairness to the judicial selection and nomination process. Is there anybody in America today who believes that the way we are handling the confirmation of judges is a good and positive thing? Or do the vast majority of Americans believe, as I do, that it has become unnecessarily contentious and fractious and divisive, and that we need a fresh start when it comes to this process?

I believe a good place to start would be to restore this 200-year tradition, which provides for a majority vote, something that was accepted without any real debate until 4 short years ago when the standard was somehow increased to 60 votes for confirmation rather than the 51 votes which had applied for the entire history of the Senate—4 short years ago.

Finally, it is worthy of note that in addition to the constitutional support I have mentioned, and that of legal scholars and established Senate precedent and tradition, many of the editorial writers in the mainstream media also acknowledge that the Byrd option is not a radical option, that the Senate making its own rules and procedures is not radical, it is what we do.

The New York Times even, by its own admission, in 1995, endorsed a proposal by Senators HARKIN and LIEBERMAN that

. . . would have gone even further than the nuclear option in eliminating the [power of the] filibuster . . .

entirely, including for legislative matters.

We do not propose that. We just propose giving these nominees an up-or-down vote when it comes to the Executive Calendar.

The Austin American-Statesman, in Texas, has recently editorialized that:

a simple majority could change the rule on cloture from a supermajority to 51 votes . . . [and] it has always been a viable political tool.

All we are suggesting.

The Philadelphia Inquirer said:

There is nothing especially sacred about the filibuster.

The Los Angeles Times states:

We urge Republican leaders to press ahead.

They wrote that in an editorial entitled ''Nuke the Filibuster.''

Let me conclude by reiterating what I said at the beginning of my remarks. I would prefer the bipartisan option to the Byrd option any day. America works better, the Senate works better when we do things together in a bipartisan and collaborative way. It is time for us to fix the broken judicial confirmation process. It is time for us to end the blame game, fix the problem, and to move on. It is time to end the wasteful and unnecessary delay in the process of selecting judges that hurts our justice system and harms all Americans.

It is simply intolerable that a partisan minority will not allow a bipartisan majority to conduct the Nation's business. It is intolerable that the standards now change depending on

who is in the White House and which party is the majority party in the Senate. It is intolerable this nominee, this fine and decent human being and this outstanding judge, has waited 4 years for a simple up-or-down vote.

We need a fair process for selecting fair judges after full investigation, full questioning, full debate, and then a vote.

Throughout our Nation's more than 200-year history, the constitutional role and the Senate tradition for confirming judges has been majority vote. That tradition must be restored.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Mr. LEVIN. Mr. President, the Senate holds a revered place in the history of the world and in the imagination of people throughout the world. We proudly serve in the world's greatest deliberative body. We say that so often that those words can lose their impact, but we must never lose sight of our profound responsibility to this institution as keepers of its legacy.

The enduring strength and beauty of the U.S. Senate is that we not only operate by rules, but that those rules provide protections for the minority. More than 200 years of Senate rulings have affirmed that this body stands against the ''tyranny of the majority'' that our Founding Fathers cautioned us about.

Today, for temporary political advantage, some would destroy part of what makes the Senate unique. The so-called ''nuclear option'', if implemented, will deface this Senate monument by allowing a majority, for the first time in our history, to operate by fiat instead of by rule.

The issue we are grappling with is a transcendent one, above and beyond the qualifications of a particular judge. We will answer the question: will the rule governing our deliberations be changed by fiat, by an arbitrary ruling which runs head on against Senate Rule XXII. That rule guarantees Senators' right to speak until 60 Senators vote to end debate and is also at the core of our being a deliberative body.

The leadership of the majority party in the Senate has threatened to use an extraordinary and radical parliamentary procedure, the so-called ''nuclear option'', to end filibusters in the Senate. Interpreting a rule which is ambiguous or silent on a matter is one thing. The ''nuclear option'' requires a presiding officer to rule in a way which goes directly against the unambiguous language of Rule XXII.

Whether or not to change the rules is a matter for debate and deliberation, but there should be no question of how to change the rules. That should occur through the procedures laid out in the Senate rules themselves.

Robert Caro, the distinguished historian and author of the landmark work, Master of the Senate, recently wrote a letter to the Chairman and ranking member of the Senate Rules Committee in which he pointed out that:

> The Founders, in their wisdom . . . gave the Senate the power to establish for itself the rules governing exercise of its powers. Unlike the unwieldy House, which had to adopt rules that inhibited debate, the Senate became the true deliberative body that the Framers had envisioned by maintaining the ability of its members to debate as long as necessary to reach a just result.

Caro continued:

> For more than a century, the Senate required unanimous consent to close off debate. The adoption of Rule XXII in 1917 allowed a two-thirds cloture vote on ''measures'', but nominations were not brought under the rule until 1949. In short, two centuries of history rebut any suggestion that either the language or the intent of the Constitution prohibits or counsels against the use of extended debate to resist presidential authority. To the contrary, the nation's Founders depended on the Senate's members to stand up to a popular and powerful president.

The right of extended debate in the Senate is an integral part of our system of checks and balances and an important historic protection of the rights of the minority in our country. But it is not only the filibuster rule and the valuable protections it provides which the ''nuclear option'' is threatening. It is the Senate's rulemaking process and it's the very character of the Senate.

Whether to change Rule XXII has been debated throughout our history and that debate will continue. But, how to change our rules is a totally different matter. The ground rules for doing so, the process for changing the rules, should be defended by us all because that process is laid out in the Senate rules.

Under the so-called ''nuclear option,'' the Presiding Officer of the Senate would arbitrarily end debate. The ruling would be challenged and a simple majority would then be urged to uphold the ruling of the chair. In ruling by fiat, instead of by applying Senate Rule XXII for ending debate, the Presiding Officer would have to ignore the advice of the non-partisan Senate parliamentarian and the Senate's 200 years of precedent.

If Senators want to propose a change in the rules of the Senate, the right way to do so is to follow the procedures in the Senate's rules for changing the Senate's rules, not ripping up the rule book for a momentary advantage.

In previous attempts to change the filibuster rule by breaking the rules, the Senate has refused to do so. The Senate has consistently maintained that changes to Rule XXII governing the right to extended debate must be made in accordance with the Senate rules and cannot be done by decree, by a ruling of the Presiding Officer which needs only to be sustained by a simple majority.

In 1949, Vice President Alben Barkley, contrary to Senate precedent and against the advice of the Senate Parliamentarian, ruled that despite the fact that Rule XXII as it then existed provided only that the ''pending matter'' was subject to cloture, that it also applied to a motion to proceed to the consideration of the bill.

The Senate rejected Vice President Barkley's ruling by a 46–41 vote. Significantly, 23 Democratic Senators, nearly half of the Democrats voting, opposed the ruling by the Vice President of their own party. Later, the Senate, using the process provided by the Senate rules, by a vote of 63–23, adopted a change in Rule XXII to include a motion to proceed.

Vote after vote, decade after decade, the Senate has maintained that changes to the cloture rule must be done in accordance with the existing Senate rules and cannot be done by fiat of the Presiding Officer which needs but a simple majority to be sustained. The history is dry and difficult, but is essential for our understanding of the tenacious way this body has rejected attempts to change the filibuster rule by circumventing the rules. I am setting that history forth in an addendum to these remarks.

The majority leader says that he won't use the ''nuclear option'' except on filibusters of judicial nominations. But, why wouldn't a future majority leader, in pursuit presumably of some lofty purpose, not use a similar arbitrary procedure, the fiat of the Presiding Officer, sustained by a simple majority, to further limit and perhaps eliminate the filibuster or alter other Senate rules for that matter. As a Detroit Free Press editorial asked, '' . . . [W]here does such situational rule changing stop?''

Any future majority could use the ''nuclear option'' to change any of the Senate's rules, if the ''nuclear option'' we are debating is pursued and succeeds. The Senate, almost inevitably, would slide toward becoming a second House of Representatives. That body is tightly controlled by its majority through its Rules Committee which severely limits debate and dictates what amendments can and cannot be offered. The character of the Senate would be destroyed as a uniquely deliberative body as would its role as the defender of rights of the minority and its essential role in the system of checks and balances. Expediency can destroy the uniqueness of this body.

The majority leader has said, ''At the end of the day, one will be left standing: either the Constitution . . . or the filibuster.'' Hopefully, both will be left standing. The only way for that to happen is if the ''nuclear option'' is rejected and we say ''no'' to changing the rules of this body by fiat. Again, the majority leader maintains that he has no intention of eliminating filibusters except on judicial nominations. But, if one accepts the position that the filibuster is unconstitutional for a judicial nomination, why is it not equally unconstitutional for all nominations? And, if the advise and consent clause is read to mandate an up-or-down vote, a future majority leader could by decree decide that the enumerated legislative

powers in Article I also mandate majority up-or-down votes and, for instance, rule out of order supermajority, 60-vote budget points of order.

But, with all due respect to the leader, no rule of the Senate should be dependent for its enforcement on the whims and promises of a majority leader, any majority leader. To leave the fundamental rules of the Senate vulnerable to a change of mind by this majority leader or the whim of a future majority leader undermines the principles of normal procedure and fairness on which we all rely. A rule must bind the Majority Leader and the majority itself. That principle is the bedrock on which the rule of law rests. Playing by the rules is something we all learned as kids in the schools and on the playgrounds of America. Rule XXII is a rule we must live by unless and until it is amended by the procedures in our rules. The ''nuclear option'' would change Rule XXII by decree of the Presiding Officer. An exception to Rule XXII's requirement for sixty votes to end debate on a matter would be created by arbitrary ruling—by decree.

Arthur Vandenberg, one of my predecessors from Michigan is one of the giants of Senate history. His portrait was recently added to the Senate Reception Room outside of this chamber where he joined six other greats of the Senate. Senator Vandenberg, a Republican leader in the Senate, addressed the Senate in 1949 prior to the Senate's rejection of Vice President Barkley's effort to change the cloture rule. His comments speak directly to the situation we find ourselves in and I want to share some of his remarks today.

Senator Vandenberg said,

. . . I continue to believe that the rules of the Senate are as important to equity and order in the Senate as is the Constitution to the life of the Republic, and that those rules should never be changed except by the Senate itself, in the direct fashion prescribed by the rules themselves. One of the immutable truths in Washington's Farewell Address, which cannot be altered even by changing events in a changing world, is the following sentence: 'The Constitution which at any time exists, until changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all'. I respectfully submit,'' Senator Vandenberg said, ''as a basic explanation of my attitude, that I accept this admonition without reservation, and I think it is equally applicable to the situation which Senators here confront, though obviously the comparison cannot be literal. . . . [T]he Father of his Country said to us, by analogy, 'The rules of the Senate which at any time exist, until changed by an explicit and authentic act of the whole Senate, are sacredly obligatory upon all.'

Senator Vandenberg continued:

I have heard it erroneously argued in the cloakrooms that since the Senate rules themselves authorize a change in the rules through due legislative process by a majority vote, it is within the spirit of the rules when we reach the same net result by a majority vote of the Senate upholding a parliamentary ruling of the Vice President which, in effect, changes the rules. This would appear to be some sort of doctrine of amendment by proxy. It is argued that the Senate itself makes the change in both instances by majority vote; and it is asked, What is the difference? Of course, this is really an argument that the end justifies the means.

Senator Vandenberg continued:

I think there is a great and fundamental difference, Mr. President. When a substantive change is made in the rules by sustaining a ruling of the Presiding Officer of the Senate—and that is what I contend is being undertaken here—it does not mean that the rules are permanently changed. It simply means that regardless of precedent or traditional practice, the rules, hereafter, mean whatever the Presiding Officer of the Senate, plus a simple majority of Senators voting at the time, want the rules to mean. We fit the rules to the occasion, instead of fitting the occasion to the rules. Therefore, in the final analysis, under such circumstances, there are no rules except the transient, unregulated wishes of a majority of whatever quorum is temporarily in control of the Senate. That, Mr. President, is not my idea of the greatest deliberative body in the world. . . . No matter how important [the pending issue's] immediate incidence may seem to many today, the integrity of the Senate's rules is our paramount concern, today, tomorrow, and so long as this great institution lives.

Senator Vandenberg continued:

. . . [I] want to be sure that none of my colleagues shall feel under the slightest compunction to vote on a friendship or loyalty basis so far as I am concerned. This is a solemn decision—reaching far beyond the immediate consequence—and it involves just one consideration.

He concluded, with that ''one consideration'':

What do the present Senate rules mean; and for the sake of law and order, shall they be protected in that meaning until changed by the Senate itself in the fashion required by the rules?

In summarizing, he got to what is the root of the nuclear option. He did it almost 60 years ago on a similar occasion, but how prescient are his comments relative to the situation in which we find ourselves today. Senator Vandenberg:

. . . [T]he rules of the Senate as they exist at any given time and as they are clinched by precedents should not be changed substantively by the interpretive action of the Senate's Presiding Officer, even with the transient sanction of an equally transient Senate majority. The rules can be safely changed only by the direct and conscious action of the Senate itself, acting in the fashion prescribed by the rules. Otherwise, no rule in the Senate is worth the paper it is written on, and this so-called ''greatest deliberative body in the world'' is at the mercy of every change in parliamentary authority.

How I wish every Senator would read Senator Vandenberg's speech before we vote on the nuclear option.

In a recent address on this subject, former Senator and Vice President Al Gore recalled the words of Sir Thomas More, the famous British jurist and author:

When More's zealous son-in-law proposed that he would cut down any law in England that served as an obstacle to his hot pursuit of the devil, More replied: ''And when the last law was cut down and the devil turned round on you, where would you hide . . . the laws all being flat? This country is planted thick with laws, from coast to coast . . . and if you cut them down, and you're just the man to do it, do you really think you could stand upright in the winds that would blow then?''

Vice President Gore observed:

The Senate leaders remind me of More's son-in-law. They are now proposing to cut down a rule that has stood for more than two centuries as a protection for unlimited debate. It has been used for devilish purposes on occasion in American history, but far more frequently, it has been used to protect the right of a minority to make its case.

Our former colleagues Senators Malcolm Wallop of Wyoming and Jim McClure of Idaho, both conservative Republicans, recently wrote in the Wall Street Journal:

. . . [I]t is naive to think that what is done to the judicial filibuster will not later be done to its legislative counterpart . . . [E]ven if a Senator were that naive, he or she should take a broader look at Senate procedure. The very reasons being given for allowing a 51-vote majority to shut off debate on judges apply equally well—in fact, they apply more aptly—to the rest of the executive calendar, of which judicial nominations are only one part. That includes all executive branch nominations, even military promotions. Treaties, too, go on the executive calendar, and the arguments in favor of a 51-vote cloture on judicial nominations apply to those diplomatic agreements as well. It is little comfort that treaty ratification requires a two-thirds vote. Without the possibility of a filibuster, a future majority leader could bring up objectionable international commitments with only an hour or two for debate, hardly enough time for opponents to inform the public and rally the citizenry against ratification.

Former Majority Leader George Mitchell, writing in the New York Times, has recalled the words of Senator Margaret Chase Smith, another of the great Senators sent to us from the State of Maine, in her famous ''Declaration of Conscience'' on June 1, 1950, speaking out against the excesses of Senator Joe McCarthy, a Member of her own party:

I don't believe the American people will uphold any political party that puts political exploitation above national interest. Surely we Republicans aren't that desperate for victory . . . While it might be a fleeting victory for the Republican Party, it would be a more lasting defeat for the American people. Surely it would ultimately be suicide for the Republican Party and the two-party system that has protected our American liberties from the dictatorship of a one-party system.

As Senator Mitchell writes:

The circumstances are obviously different; there is no McCarthyism in the current dispute. But the principles of exercising independent judgment and preserving our system of checks and balances are at the heart of the Senate rules debate. Senator Smith embodied independence and understood the Senate's singular place in our system of checks and balances. Our founders created that system to prevent abuse of power and to protect our rights and freedoms. The president's veto power is a check on Congress. The Senate's power to confirm or reject judicial nominees balances the president's authority to nominate them. The proposal by some Republican senators to change rules that have governed the Senate for two centuries now puts that system in danger.

Mr. President, the nuclear option—this extra-legal changing of the Senate

rules—will cause a permanent tear in the Senate fabric because it violates a deeply held American value: playing by the rules. Our rules themselves provide the process for changing the rules. Using it in an arbitrary way—the Presiding Officer ruling by fiat—will produce a deeply embittered and divided Senate because it tears at the heart of the way we operate as a Senate. The Presiding Officer is supposed to be an impartial umpire, not a dictator. He is supposed to apply the rules, not rewrite them.

This Senate is an enduring monument of political history. Its uniqueness is perhaps most embodied in rule XXII, which is at the heart of our being a deliberative body and the source of protection of the minority. I plead with our colleagues: Do not deface this Senate monument by eliminating by fiat that right of the minority. Do not trample on rights so essential to the institution's deliberative nature. Do not deface this Senate monument by amending the rules by fiat. Instead, seek to change our rules, if you deem it wise, according to the procedures set out in our rules. But do not take this fateful, unprecedented, and misguided step that is being proposed.

Few are privileged to serve in this special place. Let those who follow us here look back at what we will do in the fateful days which lie ahead and say that the institution they aspired to was preserved and protected by its present custodians.

The Constitution, in article I, section 5, states that ''Each House may determine the rules of its proceedings . . .'' The rules of the U.S. Senate have protected minority rights and the system of checks and balances through the right of senators to extended debate. Senate rule XXII provides that 60 votes are required to end debate in the Senate and to bring a matter to a vote. It makes no distinction as to whether that matter is legislative, the ratification of a treaty or the confirmation of a nomination. Throughout the Senate's history, our rules, including rule XXII, have served not only to protect the minority, but also to encourage the majority and the minority to work out their differences. That is because to do anything of great significance in the Senate, it is necessary to put together 60 votes forces the majority to deal with at least a part of the minority. As much as any other factor, this has been a bulwark against the most corrosive forms of partisanship.

With respect to nominations, the need to gain the support of at least 60 Senators has historically encouraged presidents of both parties to seek the advice of Senators from both parties, and to select judicial nominees who are in the mainstream and who can attract the support of Members of both parties. That is particularly important because Federal judges have a profound impact on the functioning of our Nation, not only because they have lifetime appointments, but—because they are the final arbiters of the constitutionality of our laws.

During the administration of President Bush, the Senate has, as in the past, been carrying out its constitutional responsibility. Since the start of the current administration, the Senate has confirmed more than 200 of President Bush's judicial nominees. Only 10 of the President's nominees have not been confirmed. That is an approval rate of more than 95 percent. This is a better confirmation rate than was achieved during the Clinton, the senior Bush, and the Reagan administrations. This also stands in stark contrast to what happened during the Clinton administration when more than 60 of President Clinton's judicial nominees were blocked by the Republican majority in the Judiciary Committee from even getting a hearing, much less a confirmation vote.

Some of our Republican colleagues like to assert that filibusters aimed at nominations are unprecedented. They are clearly wrong. Their assertions usually contain carefully crafted hedge words. For example, they refer to ''nominations reaching the Senate floor'' being entitled to an up or down vote. Some of our Republican colleagues refer to ''the Senate tradition of giving nominees an up-or-down vote''. Well, what about those more than 60 Clinton judicial nominations, who were bottled up for years in the Republican controlled Judiciary Committee without being given even a hearing? Blocking nominees in the committee by refusing to give them a hearing is, in effect, filibustering the nomination. When former Foreign Relations Committee Chairman Jesse Helms was opposed to the former President George H.W. Bush's nominee to be U.S. Ambassador to Mexico, William Weld, a former Republican Governor, was an up-or-down vote permitted? No, Senator Helms refused to hold a vote in the Foreign Relations Committee and in that way eventually defeated the nomination. There are many such examples.

And what about the so-called holds that Senators use to delay and as a result deny nominees an up-or-down vote? Just recently, one of our Members placed a hold—an implied threat to filibuster a nomination—blocking an up-or-down vote on President Bush's nominee to head the Base Closing Commission. The President had to get around that hold by giving his nominee a recess appointment, which doesn't require Senate action.

One of the statements that is used to support the nuclear option is that there has never been a successful filibuster of a judicial nominee. That statement flies in the face of the history of the filibuster of the nomination of Abe Fortas to be Chief Justice of the Supreme Court in June of 1968. Republican opponents of the filibuster at that time argued that the Senate has the obligation to be more than a mere rubberstamp for the President. Further, they argued that because Federal judges are lifetime positions, it is even more important to protect the guarantee of the minority's right to speak at length in the Senate on judicial nominations than on legislative matters.

Another Michigan Republican, Senator Robert Griffin, who was the Republican whip, was a leader of the Fortas filibuster. He said at the time:

> Whatever one's view may be concerning the practical effect of Senate rules with respect to the enactment of legislation, there are strong reasons for commending them in the case of a nomination to the Supreme Court.

Senator Griffin argued that:

> If ever there is a time when all Senators should be extremely reluctant to shut off debate, it is when the Senate debates a Supreme Court nomination. If Congress makes a mistake in the enactment of legislation, it can always return to the subject matter and correct the error at a later date. But when a lifetime appointment to the Supreme Court is confirmed by the Senate, the nominee is not answerable thereafter to the Senate or to the people, and an error cannot be easily remedied . . .

After 5 days of extended debate on the Fortas nomination, there was a vote on a cloture motion to end the debate. While a majority did support Fortas, by a vote of 45 to 43, there was not the supermajority needed to end debate. An up-or-down vote was prevented by the successful filibuster, and the nomination was subsequently withdrawn.

So the statement that there has never been ''a successful'' filibuster of a judicial nominee is wrong. But, it is also too clever by half for another reason. There have been many times that Senators have tried to defeat presidential judicial nominees by filibuster, but failed. The fact that they weren't successful in stopping the confirmation isn't relevant. They succeeded in requiring 60 votes to end debate. Supreme Court Justice Stephen Breyer was filibustered when he was nominated for a vacancy on the circuit court by President Carter in 1980. Cloture was invoked by a 68 to 20 vote. Twenty-four Republican Senators voted against cloture, in other words, to continue a filibuster, including some of our present colleagues.

In 2000, the opponents of the nominations of both Marsha Berzon and Richard Paez, nominated to the circuit court by President Clinton, required cloture votes requiring 60 votes to end debate. Cloture was invoked on the Berzon nomination, 86 to 13, and on the Paez nomination, 85 to 14. A number of current Members of the Senate majority voted against cloture and voted to deny them an up-or-down vote.

Even the current majority leader, who proposes the nuclear option to eliminate filibusters on judicial nominations now that a GOP President is in the White House, voted against cloture; he voted to require 60 votes for the Clinton nominee Richard Paez. Many Senators who tried to defeat nominees

by forcing supermajority votes with Clinton judicial nominees, now want to take away by fiat the right of other Senators, under our rules, to exercise that same advise and consent power.

Mr. President, we must be ever mindful of our responsibility to protect the unique role of this institution. I urge my colleagues to reject the reckless course of the nuclear option. I hope that every one of my colleagues will take the time to read the speech of Senator Vandenberg on the floor of this Senate, facing a very similar situation to the one we face, where there was intended to be, and in that case was, a ruling—a ruling—a fiat of the Presiding Officer which would have changed the rules of the Senate.

It is even more clear here than it was then that it is a change in the rules which is involved. Back then, one could have argued that it was only an interpretation of the then-existing rule XXII which was at issue. The majority of the Senate rejected that because, to the majority, it was quite clearly a change in the rules.

Senator Vandenberg and others carried the day with their eloquence about the meaning of this body and its need to live by the rules and to change the rules according to the procedures set forth in the rules. That wisdom is surely as relevant today as it was back then.

I hope all of us will consider the consequences of changing the rules by fiat, by a ruling of the Chair, not guided by the Parliamentarian, who is an objective umpire, not following the precedent of this body, which has faced similar efforts before to change the rules by decree of a Presiding Officer, and which has rejected that course over and over again. If we will take our own history and the meaning of this body into consideration, and to take it to heart, I believe we will do as previous Senates have done, which is to reject an arbitrary approach to adoption or modification of the rules that guide us.

Mr. President, I ask unanimous consent that an addendum to my statement be printed in the RECORD.

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

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

ADDENDUM

In 1953, Senator Clinton Anderson raised a point of order that, under the Constitution, the Senate should be free to adopt its rules at the beginning of a Congress and, until that happened, the Senate would be governed by general parliamentary rules which would allow a simple majority to end debate and adopt new rules. The Senate rejected this effort by a vote of 71–21 at the urging of Majority Leader Robert Taft and Minority Leader Lyndon Johnson. Taft argued that the Senate is a continuing body and that the rules carried over from one Congress to the next. The Senate's rules could be amended at anytime during the Congress but had to be done in accordance with existing Senate Rules which require a supermajority vote to end debate on the rule change.

In 1957, led by then-Majority Leader Lyndon Johnson and Minority Leader Robert Taft, the Senate, by a 55–38 vote, again rejected a similar attempt by Senator Clinton Anderson.

In 1963, Senator Anderson made an attempt to circumvent Rule XXII by a simple majority. He moved to proceed to a resolution, at the beginning of the Congress, to lower the number required for cloture and sought a ruling from Vice President Lyndon Johnson that, under the Constitution, only a simple majority would be needed to end debate at the beginning of a Congress. The Vice President submitted the constitutional question to the Senate, ''Does the majority of the Senate have a right under the Constitution to terminate debate at the beginning of a session and proceed to an immediate vote on a rule change notwithstanding the provisions of the existing Senate rules?'' The Senate tabled the constitutional point of order by a vote of 53–42, again affirming the Senate position that changes to the rules must be considered under the procedures set out by the existing Senate rules.

In 1967, Senator George McGovern moved to proceed to a resolution to amend the cloture rule. Senator McGovern used a compound, self-executing motion which, if adopted, would have automatically cut off debate and required the chair to put the question on the motion to proceed to a majority vote. The motion was out of order on its face and was akin to an unanimous consent agreement in the Senate which would prescribe consideration of a measure, but instead of requiring the consent of all Senators, only a simple majority vote was required. Senator Everett Dirksen made a point of order against the motion and Vice President Hubert Humphrey submitted the constitutional question to the Senate which sustained the Dirksen point of order, thus rejecting the McGovern motion by a vote of 59–37.

In 1969, Senator Frank Church moved to proceed to a similar proposal to reduce the number required to invoke cloture and filed cloture on the motion to proceed. Senator Church then inquired of the Chair, ''If a majority of the Senators present and voting, but less than two-thirds, vote in favor of this motion for cloture, will the motion have been agreed to?'' Vice President Hubert Humphrey responded in the affirmative. The vote for cloture was 51–47, far short of the two-thirds then required under the rules. The Chair announced that the Senate would now proceed under cloture based on a simple majority vote. The decision was immediately appealed and the Senate overturned the decision of the Chair by voting against a motion to sustain the ruling of the chair, 45–53. Among the 53 Senators rejecting the Vice President's ruling were 23 Democrats, members of his own party.

Floyd Riddick, the Parliamentarian Emeritus, who served as the Senate's Parliamentarian from 1964 through 1974, describes the events of that day: ''Vice President Humphrey . . . announced the vote and arbitrarily announced that the motion to invoke cloture was agreed to, just as he had advised he would do in response to a parliamentary inquiry. Senator [Spessard] Holland took an appeal from the ruling of the Chair and the decision of the Chair was reversed. I might say I had advised the vice president that he would never get away with such an announcement . . . I think he felt politically obligated to do that at this stage of the game. The Chair was just not sustained.''

Mr. Riddick, a most authoritative source on the Senate Rules and author of ''Riddick's Procedure'', the volume all Senators consult frequently on the Senate's precedents and practices, added: ''I certainly would not ever question the motives of a vice president. . . . When he raised the question with me if there would be a chance of ruling that a majority vote was sufficient, I said: ''Absolutely no, Mr. President, Rule 22 says it takes two-thirds, and until the rule is amended to allow it I don't see how you could rule that way.''

In 1975, Senators Walter Mondale and James Pearson introduced a resolution to allow cloture with a three-fifths vote of those present and voting. Senator Mondale made several motions over the next several days to proceed to the consideration of the resolution. Similar to 1967, a compound and self-executing motion that would automatically cut off debate on the motion to proceed and require the Chair to put the question if adopted by a simple majority was used. Majority Leader Mike Mansfield raised a point of order against the motion and Vice President Nelson Rockefeller submitted the point of order to the Senate for debate as a constitutional question. While on three separate votes the point of order against the motion to proceed to the resolution was tabled, the Senate never ultimately adopted the motion or ended debate by simple majority vote. The Senate reversed this precedent almost immediately and voted to reconsider the last vote on the motion to table the point of order by a vote of 53–38. When the question recurred on the motion to table the point of order, the Senate voted 40–51 and the motion to table failed—constituting an affirmation by the Senate of the point of order that the Mondale motion violated the Senate's rules.

Later, to eliminate any doubt, the Senate sustained the Mansfield point of order by a vote of 53–43 and went on to consider and ultimately invoke cloture by a vote of 73–21. The Senate then amended Rule XXII under the existing Senate rules.

Some claim that precedents for the ''nuclear option'' were established during Senator Byrd's tenure as Majority Leader. Our distinguished colleague from West Virginia is this body's foremost expert on the Senate's rules. He has, himself, addressed the inaccuracy of that assertions: ''Simply put, no action of mine ever denied a minority of the Senate a right to full debate on the final disposition of a measure or matter pending before the Senate. Not in 1977, not in 1979, not in 1980, or in 1987—the dates cited by critics as grounds for the nuclear option.

The Congressional Research Service confirms that only six amendments have been adopted since the cloture rule was enacted in 1917, and 'each of these changes was made within the framework of the existing or entrenched rules of the Senate, including Rule XXII.'''

Mr. LEVIN. I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, today the Senate Chamber has the feel of a Hollywood stage set. The Senate clock, centered above the Vice President's chair, is in a countdown second by second to the appointed hour and minute when a nuclear explosion may render the Senate inoperative, or at least do substantial damage to this institution. We cannot expect Jimmy Stewart to stride across the center floor to save the day, as he did in ''Mr. Smith Goes to Washington.'' It is up to us, the Members of this body, to save the day. It is up to us to save the Senate. It is up to us to do the job America sent us here to do.

If 100 Members of the Senate, with the same values and common backgrounds, experienced in elected politics, cannot cross the aisle to compromise, what hope is there for the deep-seated disagreements and hatreds in Iraq, Darfur, Laos, the Congo, Ivory Coast, and all around the world?

Today I am renewing my suggestion that the leaders, Senator FRIST and Senator REID, liberate their caucuses to vote without party straitjackets. From extensive discussions I have had with Members on both sides of the aisle, I remain convinced that most Democrats would reject the obstructive tactics of the unprecedented pattern of filibusters, and most Republicans would reject the constitutional or nuclear option to change the Senate rules.

This controversy did not arise because Democrats concluded that Miguel Estrada and nine other of President Bush's circuit court nominees were so unqualified that they should be filibustered. Rather, these systematic filibusters were initiated as payback for Republican treatment of President Clinton's nominees. These filibusters are a culmination of a power struggle between Republicans and Democrats as to which party could control the judicial selection process through partisan maneuvering.

To reach a compromise, the first step is for both parties to concede publicly that both parties are at fault. As debate has raged on the Senate floor for days and really weeks, there has been very little willingness on the part of Senators to acknowledge that the actions of their own party are at fault. I believe that is indispensable if we are to reach a compromise, to start off with the proposition that the division of fault is 50/50.

The pattern of delay arose during the last 2 years of President Reagan's tenure, after the Democrats had gained control of the Senate and the Judiciary Committee in the 1986 election. President Reagan's circuit court nominees were delayed and denied, with some seven denied hearings, and two additional nominees were denied floor votes. The pattern of delay and denial continued through 4 years of President George H.W. Bush's administration. President Bush's lower court nominees waited an average of 100 days to be confirmed, which was about twice as long as had historically been the case.

The Democrats also denied hearings for more nominees. For President Reagan, the number was 30; for Bush senior, the number jumped to 258. When we Republicans won the 1994 election and gained the Senate majority, we exacerbated the pattern of delays and blocking nominees. Over the course of President Clinton's Presidency, the average number of days for the Senate to confirm judicial nominees increased even further to 192 days for district courts and 262 days for circuit courts. Through blue slips and holds, 60 of President Clinton's nominees were blocked, and blocked in key circuits. So it was no surprise when the Democrats were searching for a way to return the favor and to keep vacancies in the same circuit courts because of what they concluded was inappropriate treatment.

When the Democrats initiated the unprecedented move of a pattern of filibusters—and it is true, there had been filibusters in the past, but never a pattern, never a systematic effort, as has been evidenced recently—President Bush responded similarly in an unprecedented move by interim appointments. It had never happened in the history of the Republic that the Senate, even by filibuster, would be greeted by an interim appointment by the President. That impasse was broken when President Bush agreed to refrain from further recess appointments.

Against this background of bitter and angry recriminations, with each party serially trumping the other party to get even or, really, to dominate, it is obvious that the issue does not involve the qualifications of the nominees. In the exchange of offers and counteroffers between Senator FRIST and Senator REID, Democrats have made an offer to avoid a vote on the constitutional or nuclear option by confirming one or perhaps two of the filibustered judges, Priscilla Owen, Janice Rogers Brown, William Pryor, and William Myers, with the choice to be selected by Republicans. An offer to confirm any one of these four nominees is an explicit concession that each is qualified for the court and that they are being held hostage as pawns in a convoluted chess game which has spiraled out of control. If the Democrats believe that each is unqualified, a deal for confirmation of any one of them is repugnant to the basic democratic principle of individual, fair, and equitable treatment. And more importantly, it violates Senators' oaths on the constitutional confirmation process. If these nominees, any one of them or two of them, are unqualified, what is the justification for Senators to confirm them under a deal? Such dealmaking confirms public cynicism about what goes on behind Washington's closed doors.

Instead, my suggestion is that the Senate consider each of the four without the constraints of voting. Let the leaders release their caucuses from the straitjacket of voting and even encourage Members to vote their consciences on issues of great national importance. It should not be a matter of heresy for someone in this Chamber to suggest that Senators exercise their own individual judgment and follow their consciences as opposed to voting. But the regrettable fact of life is the dominant force and the dominant power in this Chamber is voting. When you come to a matter of a change of the Senate rules materially affecting the rights of the minority, there should be no question that the party line ought not to be the determinant.

In a press conference on March 10, 2005, Senator REID referred to the nuclear option and said:

> If it does come to a vote, I ask Senator Frist to allow his Republican colleagues to follow their conscience. Senator Specter recently said that senators should be bound by Senate loyalty rather than party loyalty on a question of this magnitude.

Senator REID concluded that he agreed. Well, that is some progress. But Senator REID did not make any reference to my urging him to have the Democrats reject the party-line straitjacket voting on filibustering.

The fact is that the harm to the Republic by confirming all of the pending circuit court nominees is, at worst, infinitesimal compared to the harm to the Senate that would occur whichever way the vote would turn out on the constitutional or nuclear option. None of these circuit judges could make new law, because all are bound, and each one has agreed on the record, to follow U.S. Supreme Court decisions.

While it is frequently argued that circuit court opinions are in many cases final because the Supreme Court grants certiorari in so few cases, circuit courts, as we all know, sit in panels of three. Since at least one other circuit judge on the panel must concur, no one of the nominees can unilaterally render an egregious decision. If a situation does arise where a panel of three circuit judges makes an egregious decision, it is subject to correction by the court en banc of the circuit. And then there is also the opportunity for review by the Supreme Court if it is really outlandish or egregious.

What is the overhang of this Chamber is the imminence of a Supreme Court nominee. I have heard one of the distinguished senior Senators from the other side of the aisle say: Confirm them all. Eliminate the filibuster on all of them, because the real issue is what is going to happen with the confirmation of a Supreme Court nominee. And if the filibuster were to continue on a Supreme Court nominee, given the many 5–4 Court decisions, we know we would then have 4–4 decisions so that the circuit opinion would stand; there would be no determination on very many tremendously important questions; and the Supreme Court of the United States would be rendered dysfunctional.

As we are debating this issue, there has been a move among a number of Senators to find six Democrats who would forsake the filibuster, except in what has been categorized as ''extraordinary circumstances,'' if six Republicans would vow to vote against the constitutional or nuclear option.

I have attended some of those meetings. The attendance has shifted with many Senators, more than 12, participating. I do not know how many. It is not exactly the old style floating crap game, but it is a moving dialog. There are moving discussions. There are moving targets, and there are moving Senators.

On Tuesday afternoon, when a group of us met downstairs in the first floor off the Senate Chamber, one of the Democrats said: Suppose we take the floor and add Judge Saad of Michigan, and suppose you take two and give us three, or suppose we take three and give you two. It seemed to me that the latter suggestion of taking three to confirm, rejecting two, would be a sound proposition. I cannot subscribe to the idea that a group of 12, however they may ultimately be constituted, ought to make the decision on who is to be confirmed and who ought not to be confirmed. It is my view that ultimately that is a decision for this body.

To achieve that end in a principled way, I have urged the majority leader, Senator FRIST, to do a whip count among Republicans. If anybody is watching on C–SPAN 2, by way of brief explanation, a whip count is when there is a tabulation by talking to each of the Republican Senators, and the same process may occur on the Democratic side to discern how those Senators are going to vote.

It is a common practice. If the whip count were to be conducted, we might know in advance what the result would be, and if the result would be that two or more of the filibustered judges would be rejected, then the Democrats would have won their point.

So much of what we are engaged in today is a matter of saving face. This whole controversy has been escalated so far that neither side is prepared to back down. Neither side is willing to back down. In the wings, we have all of these press conferences on the Senate steps. We have various groups meeting. We have the commercials on the air—perhaps started with Gregory Peck in 1987 on the Judge Bork nomination, continuing until the past weekend, and continuing to this day. It is hard to turn on the television set without finding a commercial. Last week, my State of Pennsylvania was inundated with commercials demanding that Senator ARLEN SPECTER vote to ''save the Republic.'' Nobody is quite sure what it means to ''save the Republic,'' the way the debate is going on.

These commercials are, in my opinion, counterproductive, certainly not effective, and realistically viewed, insulting. If we take the play from the groups, the play from the press conferences, the play from all of the opinion makers out there—the newspaper writers and editorialists, and the so-called groups—one group is shouting to the Democrats: Filibuster forever, filibuster forever. The other side is shouting to the Republicans: Pull the trigger, pull the trigger. So what if it is a nuclear detonation, as long as our side wins.

What I think needs to be done is the issue ought to be returned to the Senate. It ought to be returned to the 100 Members of this body. And if the leaders do not liberate their Members to pass their individual consciences on these issues in the context of a whip check to get an idea of what will happen, then a small group of Senators will take control of the Senate; a small group of Senators will have struck a deal; a small group of Senators will pledge, with sufficient numbers, not to carry on the filibuster; and a sufficient group of Senators on the other side will have a sufficient number of votes not to implement the constitutional or nuclear option.

What we need to do is return this decision-making power to this body. One idea I advanced many years ago with S. Res. 146, joined by Senator BYRD, was a resolution to establish an advisory role for the Senate in the selection of Supreme Court justices. The thrust of this resolution was that it would be useful to create a pool of recognized candidates of superior quality for consideration by the President. The pool would be considered by consulting with the chief judges of the various State supreme courts, bar associations, professors, circuit courts of appeal, and chief judges from across the country. This sort of body would be available to the President.

It is my judgment not to reintroduce that Senate resolution at this time because, in the current context—the current incendiary context—of the prospect of the nomination or nominations which may be upon us any day now, it is my conclusion that this would not be an appropriate time to promote the idea, but that it ought to wait until the time when heads are cooler and the country is not so badly divided on this issue, and when the Senate is not so badly divided on this issue.

It is my personal view that the option of a filibuster for extraordinary, egregious circumstances ought to be retained, but not in the context of the way it has been used in the immediate past, as a pattern of delay that is directed at getting even or getting back.

When it comes to this issue of extraordinary circumstances, it seems to me each Senator individually would have to make a determination as to what he or she thought constitutes extraordinary circumstances. I have engaged in legal research on the subject. There is no way, in my opinion, to delineate it, to write it down so there will not be some area of disagreement. But just as Senators must make an individual determination of what constitutes extraordinary circumstances to resort to the filibuster—hopefully, in very rare cases—so must those who make a pledge not to invoke the constitutional or nuclear option have the understanding that an individual's determination as to whether the extraordinary circumstance exception applies is being exercised in good faith.

Good faith is something we ought to talk about a little more in this Chamber. It is the brother to following our individual consciences. If we do that, we have the sensibility and the background and the intelligence and the experience to make the appropriate decisions. I have spoken twice before on this subject, as the CONGRESSIONAL RECORD shows—once on April 21, and again on May 9—in a real effort to try to promote some ideas that will lead to a resolution and a compromise. As we approach—it is 4 days away—a Tuesday cloture vote on Priscilla Owen, the countdown is narrow. The Presiding Officer sits in the Vice President's chair by designation, and the clock above him ticks. It has the feel of a Hollywood stage. We are set for a countdown, where second by second, the hours and minutes go by as we come to the critical votes, the first of which will be the cloture vote on Texas Supreme Court Justice Priscilla Owen. And what may follow, when the count reaches zero, when the roll is called—if it is to be called—is a vote on the constitutional or nuclear option. It is still my hope we will avoid that vote.

Either way the vote comes out, it will be harmful to the Senate. If the option is rejected, it will embolden the Democrats, as well as whichever may be the minority party at any time in the future. It will embolden the minority party to recklessly use the filibuster, as I think it has been used in the 108th Congress. It may embolden the minority party further to filibuster nominees like John Bolton, whose nomination for U.N. ambassador is very much in doubt. If the option is passed, it will embolden the appointers into having greater latitude on the nominees who may be submitted.

When you deal with the doctrine of separation of powers, there is a well-established principle that to have a little play in the joints is a good thing, where it is uncertain as to how a vote will turn out. And I think at this reading, it remains uncertain how a vote on the constitutional or nuclear option will turn out. There is a greater chance for compromise.

In an earlier floor statement, I analogized our controversy here to the controversy between the United States and the Union of Soviet Socialist Republics in the Cold War. I have seen some of my colleagues pick up on that analogy. If there is any certainty in our troubled world—if the United States and the Soviet Union could avoid a nuclear confrontation on mutually assured destruction—so should the Senate.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, I would like to take a few minutes today to caution the majority from pursuing what is referred to as the ''nuclear option'' in an effort to change Senate rules and forbid unlimited debate on judicial nominations.

Some of my colleagues say they are seeking this change because they want judicial nominees to get a vote. This view is a shift for those who denied more than 60 of President Clinton's judicial nominees a vote either in committee or in the full Senate.

Unlike those nominees, President Bush's nominees have received votes by the full Senate. Those votes determined that these nominations should not move forward.

Some in the majority did not like the outcome of those votes, and that is why we are here today in what has been described as ''a historic moment'' in Senate history. But I fear that we are making history for all the wrong reasons.

I do not find it the least bit alarming that we are challenging a handful of judicial nominees while at the same time we have approved more than 200 of the President's choices.

These judges will be appointed for life, and it is our job—no, our responsibility—to ensure that these judges are worthy of the role. Despite what some would have the public believe, the system is working just as it is supposed to work.

Perhaps if this administration had consulted the Senate on these nominees, rather than show such determination to test our will, we would not be in the unfortunate position we are in.

But instead of heeding the warning signs, this administration plowed recklessly ahead.

A success rate of over 95 percent apparently wasn't good enough, so the administration resubmitted the names of its most controversial picks.

I believe that a 95 percent success rate is a record this Senate should be proud of. Unfortunately, some in the majority don't share my view.

The right in the Senate to unlimited debate is an important part of our system of checks and balances. It ensures that a bipartisan consensus is reached by more than a bare minimum majority of Senators when we are faced with critical issues.

There are those in the majority who believe, contrary to the U.S. Constitution, Senate rules, and Senate precedent, that all judicial nominees must have an up-or-down vote on the floor of the Senate.

Nothing in the Constitution, nothing in the Senate rules, and nothing in the way the Senate has functioned in the past supports that belief.

In fact, my colleagues in the majority have themselves required 60 votes in order to pass judicial nominees.

Back in 2000, during consideration of the nominations of Richard Paez and Marsha Berzon to the Ninth Circuit Court of Appeals, 60 votes were required in order to reach a final vote on these two Clinton nominees.

During the debate on these nominations, then-Senator Bob Smith of New Hampshire made a very important point concerning the need for unlimited debate on judicial nominations.

He said:

> I think it is fair that judges who are appointed forever, who will be making decisions long after we are out of here, probably when our children are coming into voting age, or our grandchildren, whatever the case may be . . . we have a responsibility to look very carefully at them.

As I prepare to become a grandfather for the first time any day now, I am struck by these remarks.

Some of the judicial nominees we approve today may be interpreting laws and deciding constitutional questions when my grandson graduates from high school, when he votes for the first time, and perhaps even when he starts his own family.

It seems logical, given this scenario, that we require some lifetime appointments to receive more than the support of a bare majority of Senators.

I am also concerned that if the nuclear option is invoked and unlimited debate on judicial nominations is forbidden, this precedent will eventually be extended to other nominations and legislation.

I fear the ultimate goal of some of those pursuing this nuclear option will be to extend the filibuster prohibition beyond judicial nominees. We will then have two bodies that are purely run by a majority and not protective of the rights of the minority.

It is nice to hear the majority leader say that he has no intention of extending this precedent.

However, it rings a little hollow to me when we all know that come January 2007, there will be a new majority leader in the Senate. This individual, Republican or Democrat, will not be bound by the promises made by the current majority leader.

This week, the editorial pages of a local Vermont newspaper noted the irony of the timing of this debate. That editorial, printed in the Times Argus of Barre, VT, said:

> The majority in the United States Senate wants to remove one of the important and traditional political tools—the filibuster—that protects the rights of the minority party, even as Secretary of State Condoleezza Rice goes to Baghdad to urge the majority there to put aside its long-standing grudges and guarantee minority rights.

So why is it that we are urging the fledging democracy in Iraq and in other nations around the world to respect minority rights, while some in the Senate want to trample those same rights and threaten the balance of power that we hold so dear right here in our own democracy?

I am afraid I do not have the answer, but it concerns me beyond words.

In my more than 30 years in Washington, I have always tried to decide each issue on its merits, rather than to provide a rubberstamp to comply with the wishes of leadership.

I fear that we are here today because some in the majority would prefer that the Senate just act as a rubber stamp for the President's desires.

I refuse to spend the last 19 months of my term in the Senate being a rubberstamp.

I will oppose changing the Senate rules for this purpose, and I hope my colleagues will join me in protecting the rights of the minority by protecting the right of unlimited debate in the Senate.

In concluding, I suggest that my colleagues listen to the words of Charles Mathias, a former Republican Senator from Maryland, who recently wrote:

> Make no mistake about it: If the Senate ever creates the precedent that, at any time, its rules are what 51 senators say they are—without debate—then the value of a senator's voice, vote and views, and the clout of his state, will be diminished.

I do not know of a single Senator who would desire this outcome, but I fear it could happen if this body agrees to change the Senate rules that have served this chamber so well for so long.

This is truly a historic moment in Senate history.

I hope my colleagues will join me to maintain our system of checks and balances, keep the Senate the Senate, and protect each individual Senator's right to unlimited debate.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I commend the distinguished Senator from Vermont whose independence and wisdom has been demonstrated in this body in the time I have been here. Some of what I am about to say will echo what he more eloquently said.

I spoke earlier this week about why the elimination of the filibuster on judicial nominations would be ill advised as a matter of policy and why violating the existing Senate rule which governs how we can properly change the Senate's rules of procedures should be unthinkable and would be unconscionable. It would set a terribly damaging precedent for this great institution, damage that would be permanent and irreparable, a precedent that the existing rules and procedures of the Senate can at any time and for any reason or for no reason be disregarded or changed or a new rule added by a majority vote of the Senators present at that time. Just make a motion to the Presiding Officer, who could ignore the advice of the Senate's professional Parliamentarian, make his or her own ruling, and a majority vote would either uphold or overturn that decision.

That essentially means the majority of this body at any time can do whatever they want to do, however they want to do it, as long as they ratify it by their own majority vote. None of the rules of procedure would have any permanent standing or reliability, no matter how long they have been in existence.

If the majority of Senators decides it does not like those rules of procedure, or if they cannot get the results they want by following them and they can just disregard them or change them any time and then vote themselves right by doing so, we have lost the integrity of this institution. What kind of society would we have if that precedent, reestablished here, became standard operating procedure by our fellow citizens all over this land?

Another point I would like to raise, after listening for the last couple days

to the stated reasons by the proponents of this so-called nuclear option, is that many of them say the U.S. Constitution's advice and consent clause requires an up-or-down vote by the full Senate. I raise this point respectfully and seriously because each of us, the day we take office as a Senator, takes a sworn oath right here in the Senate Chamber, right in front of our family, our friends, and the American people, administered by the Vice President of the United States, with our hand on the Bible. And that oath says in part:

I will support and defend the Constitution of the United States. . . .

It goes on to say:

. . . I will bear true faith and allegiance to the same.

And it ends with our saying:

. . . so help me God.

I know for myself that was the most serious and important oath I have ever taken, and I believe that every other Member of this Senate is as fully committed to upholding that oath as I am and is acting now and wants to continue to act in all good faith to uphold it at all times.

We sometimes have honest differences in our views of what particular words in the Constitution mean and what they instruct us to do. Those honest differences have arisen since this body commenced its work on March 4, 1789, sometimes between Members of the two parties, sometimes between Members of the same party, sometimes between Members of different parts of the country, or those representing large States and small States, and for many other legitimate reasons.

In most of our actions and decisions in the Senate, our interpretations of the words of the Constitution and our application of those words individually and as a collective body will be reviewed and can be tempered or even rejected by other public officials and institutions.

All the legislation we pass must be agreed to by the House, must be agreed to by the President or vetoed by him, and overridden with a two-thirds vote here and in the House. Then, if properly challenged by someone with legal standing, it can be further reviewed as to constitutionality by Federal courts and, as the ultimate arbiter of constitutionality, the U.S. Supreme Court.

So with all the legislation we act upon and most other matters that come before us, our constitutional understandings, interpretations, and applications are subjected to a rigorous process of checks and balances.

Those checks and balances, however, do not exist for Senate approval or disapproval of Presidential nominees because the Constitution clearly and explicitly authorizes the Senate and the House, each of those bodies, to determine the rules of their proceedings. Previous Federal courts have ruled those words mean exactly what they clearly say.

The Constitution then defines this proceeding we are engaged in now as ''the advice and consent of the Senate.'' That wording, its meaning, and its intent are unfortunately much less clear. The section of the Constitution says in its entirety the President ''shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.''

That means almost everyone in the Federal Government is subject to the advice and consent of the Senate unless Congress, by law, chooses to waive that requirement for specified ''inferior''—that is the Constitution's word, not mine—officers. That is why as members of the Armed Services Committee we regularly report to the full Senate rosters of ''appointments,'' most of which are promotions, of 2,000, 3,000, over 4,000 officers in the U.S. Armed Forces. They must then be approved, and they usually are approved en bloc by the full Senate.

Proponents of the nuclear option are saying this clause of the Constitution, particularly the words ''advice and consent,'' requires that every Presidential judicial nominee gets an up-or-down vote by the full Senate. If that is the view of the majority of the Senate, how can it not also apply equally to every other nomination described in that section of the Constitution?

The Constitution, the section I just read, makes no distinction in defining our role and responsibility to advice and consent between Presidential nominees for executive branch or judicial offices. It makes no distinction between term limited or lifetime appointments, and it gives us no authority to make those distinctions either, except that by law we cannot require the Senate to approve certain lower level positions.

As I understand the majority leader's intention for next week, just from published reports I have read, he will ask the Presiding Officer of the Senate to rule that the Constitution's words ''advice and consent'' require an up-or-down vote by the full Senate—on all Presidential nominations covered by those words in the Constitution? No, I think that is not the case. Only for judicial nominations. Would that ruling, that constitutional requirement of an up-or-down vote by the full Senate, apply then to all judicial nominations that come to the Senate? No, not as I understand it; not to those that are blocked by the Judiciary Committee, not to those that are blocked by the custom—it is not even a written rule or procedure in the Senate—that two Senators, sometimes only one Senator, in the majority, can prevent any vote by anyone, a committee or the full Senate, on a Presidential nominee.

Where, I ask my colleagues in favor of the nuclear option, who contend the Constitution requires this up-or-down vote by the full Senate, where does the Constitution permit the Senate leadership or a Senate committee or one Senator to make those distinctions between one judicial nominee or another or between judicial nominees and other Presidential nominees in that same section of the Constitution?

I believe the ambiguity in the meaning of the term ''advice and consent'' certainly provides us with reasonable latitude in defining what that term requires the Senate to do. It does not, however, permit us to apply one definition to one group of nominees and apply a different definition, and therefore different Senate rules and procedures, to the other nominees to which those same words equally apply.

Every Senator here is entitled to his or her own views about filibusters. Whether they are good or bad instruments of public policy, they are properly debatable. They are entitled to their own views. We are each entitled, within far greater constraints, to our own best conscientious interpretation of the Constitution, especially words or clauses where well-informed and well-intentioned people can reasonably differ. We are not entitled, however—in fact we are forbidden—to rewrite, reinterpret, selectively apply, or ignore those words just because we do not like them or agree with them. We have sworn an oath to uphold, to support, and defend them, every one of them. If we disagree with them, if we believe they are not right for our constituents and our country, we have the right to change them. But, according to the rules and the procedures in the Constitution, we do not have the right to change them otherwise; just as we have the right to change Senate rules and procedures, but only by following the rules in the Senate to do so.

Following the rules, obeying the laws, upholding the Constitution—those are the foundation of our country. At a time when we are demonstrating to other parts of the world, other countries and citizens, how to set up democracies and make them successful and make them survive and thrive, we will make a tragic, terrible error if we violate those founding, fundamental principles ourselves. The country and the world will be watching next week to see what we do.

I yield the floor.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Arkansas.

Mrs. LINCOLN. Mr. President, I do not come to the floor often to speak, but today I do come out of a sense of duty and a real spirit of purpose, to express my strong opposition to changing the rules of debate here in the Senate. As a pragmatic Democrat who has raised more than a few eyebrows in my own party over the years for putting

progress on critical issues ahead of loyalty to any political party or ideology, I am alarmed frankly that we have reached a point in the Senate when confrontation is the choice over consensus, considering the history of the debate on this issue, and the consequences of what is being contemplated.

To understand the consequences of the debate in which we find ourselves engaged today, I think it is so helpful to briefly review the basic facts regarding the confirmation of judicial nominees in the Senate in recent years. Since President Bush took office in January of 2001, the Senate has confirmed 208 of the lifetime judicial nominees he has appointed, and the Senate has withheld consent from 10 of those nominees. In other words, the Senate has confirmed more than 95 percent of the judicial nominees put forward by President Bush since he took office more than 4 years ago. As a result, there are only 45 judicial vacancies today, which represents the lowest judicial vacancy rate since President Reagan was in office.

When you compare that to more than 60 judicial nominees who were blocked in the Judiciary Committee under the Republican control during President Clinton's term in office, I quite frankly think it is a pretty good record of which the President should be proud and with which the Republican leadership should be pleased.

Put another way, when my 8-year-old twin boys come home from school with a 95 percent on their report card or on their test, I don't stomp my feet and send them to their room. I do not get angry with them and tell them to go back to school tomorrow and break those rules next time so you can get 100 percent on that test.

No, that is not what we do. That is not the example we set. That is not what we ask of a body or individuals who are guided by rules. That would be outrageous.

I would say to my children: Good job, keep up the good work. Work a little bit harder.

Am I suggesting Democrats of the Senate deserve a medal for fulfilling their constitutional role in considering and confirming judicial nominees through advice and consent? Of course I am not. But I also do not think the record before us even comes close to justifying an attempt to undermine one of the fundamental principles of this institution—freedom of speech and of debate; making sure everyone's opinion does count—which protects the rights of every citizen in my State and in this entire Nation.

In my view, the proposal put forward by the Senate majority leader to limit the ability of Senators to debate judicial nominees represents what will become a first step, if successful, in weakening the role of the Senate and the role the Senate plays in our system of Government in providing the kind of checks and balances against an overreach by the executive branch or the political parties or any other branch of Government which happens to be in the majority at any given time. And it can be either one of us.

I believe the protections and safeguards that are part of the fabric of our system of Government have served our Nation well and they are critical, regardless of which political party controls the White House and the Congress.

Most importantly, I sincerely believe what is being proposed by the majority could seriously threaten my ability as a Senator from the great State of Arkansas to effectively represent the needs of my constituents. As I have listened to many of my colleagues debate this issue over the past several weeks, I have reflected on the role of the Senate as an institution and how and why it came into being. Coming from a small State such as Arkansas, which has only 6 voting delegates in Congress out of the entire 535, I do not take lightly the fact that the compromise which gave birth to the Senate was based on the principle that all States, regardless of their size, and all Senators privileged to serve in this body, are on equal footing. The Senate was deliberately designed to protect the interests of small States such as mine and to provide a restraint on the ability of a temporary majority on any issue before this body to prevail unchecked.

Recently, in order to get the attention of this administration, I had to use tools. I had to use some of those tools I have as a Senator, to simply get an answer, a letter answered on international child abduction, on the way Southern producers in agriculture were being treated in this budget. It was not an issue of me getting all of what I wanted. It was simply an issue of me getting an answer—me, a small State, someone representing a small State, being able to get an answer on principle and on idea and purpose, from the administration. That is what we are talking about, everyone being represented.

The debate we are having and the issues at stake are much more important to me than my political party. With all due respect, they are also more important than any individual nominee or judgeship. If we start down this road, I fear where it will lead us. This week we are debating the role of the Senate as an institution in the consideration and confirmation of judicial nominees. Next week or next year, will we be debating a change of the rule or the Senate precedent during a consideration of the President's plan to privatize Social Security or his proposal to shortchange Southern farmers in a farm bill? Where will we have that ability to speak out and make sure we are clearly heard?

I hope not, which is why I am standing up here today to defend the powers vested in me as a Senator from Arkansas, to represent my constituency.

But if getting 100 percent—if that is why we are here, if that is what this debate is about and that is what the majority leader is looking for—if getting 100 percent of what you want all the time is the purpose here, when will we ever be content? When will the majority ever be content? And how can we say these things will not happen?

The majority leader stated that he believes filibusters against any judicial nominee are unwise and unreasonable. While I disagree with him, I still respect his opinion and his right to debate that issue in the Senate, or anywhere else, for that matter, at great length. What troubles me, though, is his willingness to discard an institutional power regarding consideration of judicial nominees, even when, according to reports, the Senate Parliamentarian believes the so-called nuclear option does not conform to the rules of the Senate. Let us all take time and think about what nuclear fallout is like. Look at the photographs of nuclear fallout. Look at what happens when nuclear reaction occurs. There is great devastation.

What happens if the rules of debate in the Senate in the future will be viewed by the majority party that happens to be in charge at any given time as unwise or outdated and dispensable? I do not want to find out. This body is too precious. It does too much. It is too important to the balance that makes this Nation great.

It is my sincere hope and prayer that the Senate as an institution can survive the current impasse intact, and I think we can. I am aware Members on both sides of the aisle are considering a short-term compromise which would, in a limited fashion, preserve the current rules of debate regarding judicial nominees for the remainder of this Congress.

I am hopeful a constructive solution which preserves the integrity of our system of checks and balances can be achieved. But I regret that the current political environment has put the Senate in this position and has left us with so few options that we come today in sadness that we have even come this far.

After having served now in the Senate for over 6 years and prior to that in the House of Representatives for 4, I have enormous respect for the role each Chamber plays in our system of Government. Based on that experience, I am convinced that for the sake of the Senate as an institution and the vital role it plays now and will play into the future, long after everyone in this body is gone, I believe the way out of this standoff is for Members of both parties to work together to defend the Senate, to defend our rules, to defend this great deliberative body as an institution while also working to prevent showdowns with the White House over judicial nominees from occurring in the first place.

I met with Miss Owen. She is a nice woman. This is not to say that she is

not a nice person. We are here to say, when the opportunity comes, we need a clear and substantial amount of this body to say this is the person for this job. Her peers from her own party have labeled her a judicial activist. We are not here to say she is not a nice lady. We are here to say she is not the right person for the job. That should be the opportunity we have in the Senate.

To come to those conclusions will require communicating and cooperating in good faith. It will also require trust, and most of all respect—respect across the aisle and across Pennsylvania Avenue.

I am not probably one of the most typical of politicians or Members. I don't come from a big legal background or even a big political background. I am a farmer's daughter from east Arkansas. Right now, one of my biggest responsibilities along with serving in this great Senate is to be a good parent and to show my children what it means to be truthful and respectful.

Last night, I was fortunate enough to sit on the sidelines and watch a Little League game, a precious Little League game of players, who were not the best but weren't the worst, playing their heart out. But they still lost. And to see a coach who has made so much difference in their life and in their performance, to sit them down as he always does after the game, making sure he points out all the positive things that each one of them has done, points out some of the things they could do better, but at the end he says to them: Let me tell you, in this game we respect the rules, we respect the umpire, and we respect the other team. And because we do, we are all the better for it.

Those of us in this body need to dig down deep in each of our souls and look for the respect, the respect for the other team, the respect for the rules, for the game, the institution, and for the umpire.

We have an opportunity now to set an example for our children. There is a saying on my wall in the kitchen at my home. It says: When I'm dead and gone it's not going to matter what kind of car I drove. It's not going to matter how big my house was. All of those things are probably not going to matter, but the fact that I may have in some way made an impact on the life of a child, my life will have mattered.

This body, this institution has an opportunity to set an example, not just to each of us together as Senators to show one another the trust and the respect this body engages us to do, but also the opportunity to show this Nation and the world, and more importantly our children, that rules do matter and that you cannot just change the rules in the middle of the game because it does not suit you, and if you don't get 100 percent of what you want, that rules and the decision of the umpire matters. Most importantly, respecting the other side and the other team in this game is ultimately what makes it worth playing.

I call on my colleagues today to step back and reflect on how the balance of power in our government will change and how the Senate will be weakened, perhaps for all time, if the proposal of the majority leader is adopted. I do think it is the wrong path and something Members in both parties will come to regret in the years to come. Again, my hope and my prayer is that we do not forget all of those that are watching, that we do not forget the rules of the game and how important they are, and most importantly I hope we do not forget what a critical role respect plays in all of the games of life that we play.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, the issue before us is pretty simple. It is this, shall we continue the two-century tradition of voting up or down each President's judicial nominations? That is it. That is all we are talking about.

Making your way through all the histrionics—and there have been a lot of them on both sides—that is absolutely all we are talking about. Shall we continue the two-century tradition of voting up or down, eventually, on this President's or any President's judicial nominees?

The Democrats have decided they will use the Senate rules to prevent an up-and-down vote on some of President Bush's judicial nominees by using this as a consistent tactic for the last 2 years to block a vote on nominees a majority of us want to confirm. They are using the Senate rules in a way they have never before been used. They know that. Everyone knows that. There is no disputing that. They had a meeting. They decided to do it. And they are doing it.

Now, they may have past grievances such as the practice used by both parties to allow a single Senator to block a nominee in a committee. I know all about that grievance. In 1991, the first President Bush nominated me to be the U.S. Education Secretary. I was enthusiastic about it. I had been the Governor of my State. I was President of the University of Tennessee. I came up and sold my house, moved my family up, put my kids into school, and then one Senator from Ohio put a hold on my nomination. So I sat there in the committee for about 3 months, not even knowing who it was, or knowing what the problem was.

After a while, that Senator, who happened to be a Democrat—they were in the majority then—said in a public hearing with me: Governor Alexander, we have heard some disturbing things about you, but I don't want to bring them up now, here, with the lights all around, and all the people and your family here.

I said: Please, Senator, bring them all up. I would rather have them out here.

That went on for 3 months. I didn't know what to do, so I went to see Senator Warren Rudman who most people would say is one of the most respected Members of this body over the last 30 years. I said: Senator Rudman, what can I do? A Democrat Senator has, by himself, blocked my possibility to be the Education Secretary. I moved my family up here, I sold my house, my kids are in school, what do I do? He said: Keep your mouth shut.

I said: What do you mean, keep my mouth shut? This is unjust.

He said: Let me tell you a story. In 1976, President Ford nominated me to be on the Federal Communications Commission, and the Democrat Senator from New Hampshire put a hold on my nomination.

I said: What happened?

He said: Well, I just swung there. Nobody knew what was going on. Pretty soon back in New Hampshire they were saying: What is wrong with Warren? Has he done something wrong? Did he beat his wife? Did he steal something? Why won't the Senate consider him and confirm him? After 4 or 5 months I was so embarrassed I just asked the President to withdraw my nomination.

I said: Is that the end of it?

He said: No, then I ran against the so and so who put a block on me, and I was elected to the Senate in his place.

So that is how Warren Rudman got over being blocked.

JEFF SESSIONS, our distinguished colleague from Alabama, ran into a nearly similar situation. He was rejected by the committee. He was the U.S. attorney from Mobile, Alabama and the committee would not send his nomination to the floor. They held him up in the committee.

Senator SESSIONS got over that. He even got himself elected to the Senate. So Senator Rudman got over it, I got over it, Senator SESSIONS got over it. I didn't like it, and I still don't like it. But I got over it.

There are various ways to get over whatever grievous injustices were done to the Democrats before the distinguished Senator from Texas, who is presiding, and I were elected to the Senate in 2002.

Senator FRIST, the majority leader, has repeatedly offered to fix the problem I just described. He has said let all the nominees from a Democrat President or Republican President, let them eventually all come out of committee. He has said if there is not enough debate—and I respect the idea of extended debate in the Senate—let there be 100 hours of debate on every single nominee. Then Senator FRIST has said, let there eventually be a vote, an up-or-down vote, as there has always been.

Now, it is not believable for my friends on the other side to suggest, as they are, that they are doing nothing new. They know they are. I will give one example.

Everyone remembers the Senate debate about Clarence Thomas. Among other things, it made Dave Barry's career when he wrote columns about the

Senate hearings. Everyone remembers those hearings. Everyone remembers how passionate they were and how much information came out. There was a new saga every day. No television drama approached it. There was never more passion in recent times in a Supreme Court nomination than when the first President Bush nominated Justice Clarence Thomas.

He was nominated in July of 1991 by President Bush. This Senate completed those hearings that were on television, that we all remember, and there was a vote in October of 1991, up or down. In that case, it was up, he was confirmed 52 to 48.

I have yet to find one single person who even remembers anyone suggesting 14 years ago that the Senate should not vote on Clarence Thomas. Everyone knew that after all the histrionics, all the debates, that the greatest deliberative body in the world would eventually vote.

So we are standing on the Senate floor conjuring up our own versions of history, inventing nuclear analogies, shouting at each other while gas prices go up and illegal immigrants run across our border. The Democrats are using the rules to block the President's nomination in a way they have never used before in 200 years. So we Republicans are now threatening to change the rules to prevent the Democrats from manipulating the rules in a way that has never occurred before.

That is what this is all about.

I have a simple solution for the unnecessary pickle in which we find ourselves in this body. I offered it 2 years ago. I have offered it several times this year. This is it. I have pledged and I still pledge to give up my right to filibuster any President's nominee for the appellate courts, including the Supreme Court of the United States. If five more Republicans and six Democrats did that, there could be no filibuster and there would be no need for a rules change.

For the past 2 weeks, perhaps two dozen different Senators have flirted with variations of this formula. But they have not been successful because they have insisted on including exceptions. I hope these Senators who are still having this discussion succeed. I expect 80 percent of the Senate hopes they succeed. This oncoming train wreck is bad for the Senate, it is bad for the country, it is bad for the Democrats, and it is bad for the Republicans.

We look pretty silly lecturing Iraq on how to set up a government when we cannot agree on having an up-or-down vote on President Bush's judicial nominees. My suggestion is forget the exceptions. Twelve of us should just give up our right to filibuster, period. Let's do it. Let's get on with it. That ends the train wreck.

We have a war in Iraq. We have natural gas prices at $7—these are record levels. We have highways to build. We have deficits to get under control. We have a health care system that needs transformation. We have judicial vacancies to fill.

I have said I will never filibuster a President's judicial nominees. I said it 2 years ago when JOHN KERRY might have been President. For me, that meant then—and it means today, and tomorrow—that if a President Kerry or a President Clinton nominates some liberal I do not like, I may talk for a long time about it, I may vote against the person, but I will insist that we eventually vote up or down, as the Senate has for two centuries.

If 11 colleagues would join me in this simple solution, then we could get down to business, then we might look once again like the world's greatest deliberative body.

I say to the Presiding Officer, when you and I came to the Senate a little over 2 years ago, we talked about what our maiden addresses would be. We still call our first major speech our ''maiden address.'' I say to the Presiding Officer, remember, we were sitting next to each other in the front row, anxiously looking forward to hearing ourselves give our maiden addresses. I wanted to make mine about putting the teaching of American history and civics back in its rightful place in our schools so our children could grow up knowing what it means to be an American.

But as I sat here listening to the debate on Miguel Estrada, I was so surprised and so disappointed in what I heard that I found myself getting up one night and making a speech on Miguel Estrada, which I had no intention of doing.

During the debate, I was listening to this story of the American dream: This young man from Honduras coming here, speaking no English, going to Columbia, Harvard Law School, being in the Solicitor General's Office. He is the kind of person who when the Presiding Officer and I were in law school, and we would hear about people like that, we would say there are just a handful of people that talented, that able. We were envious, at least I was. He is exactly the kind of person who should have been nominated. Yet we could not even get a vote.

I thought about my time as Governor, for 8 years, of Tennessee. I appointed about 50 judges, and I remember what I looked for when I made those appointments. I looked for good character. I looked for good intelligence. I looked for good temperament. I looked for a good understanding of the law and for the duties of judges. And I especially looked to see if this nominee had an aspect of courtesy toward those who might come before him or her on the bench. I appointed some Democrats. I appointed the first women appeals judges and the first African-American judges in Tennessee. I thought it was unethical and unnecessary for me to ask questions of those judges about how they might decide cases that might come before them.

I still feel the same way about the Federal judges we nominate. I am distressed that we have turned this process into an election instead of a confirmation. It has become an election about the political issues instead of a confirmation about the character and intelligence and temperament of fair-minded men and women who might be placed on the bench.

I remember when I came to this body for the first time, not as a Senator, but as a staff member to Howard Baker, later the majority leader. It was 1967. The ones worrying about protecting the minority's rights at that time were the Republicans. There were only 36 Republicans. I came back in 1977 to help Senator Baker set up his office when he was elected Republican leader, and there were only 38 Republicans. So most of us in this body understand that we may be in the minority one day. But that does not mean there should be an abuse of minority rights.

The best way I can think of to stay in the minority for any party, whether the Democratic Party or Republican Party, is to say what the Senator from New York said in December, in the Washington Post. He said that if the Republicans decide to change the rules to make sure the Senate continues the 200-year tradition of voting on the nominees the President sends to us, that it ''would make the Senate look like a banana republic . . . and cause us to shut it down in every way.''

Mr. President, shut down the Senate in every way? During a war? During illegal immigration? During a time of deficit spending, with a highway bill pending, with gas prices at record levels, with natural gas at $7? Shut the Senate down in every way?

I can promise you I know what the American people would think of that. Any group they can fix the responsibility on for shutting this body down and not doing its business will be in the minority or stay in the minority. Even now, they are beginning to shut us down. We are not allowed to hold hearings in the afternoon because of objections by the other side. The American people need to know that. It is the wrong thing to do.

I had the privilege of hearing, yesterday, when I was presiding, a very helpful speech by our leading historian in the Senate, Senator BYRD. He talked about how extended debate has always been a part of the Senate's tradition. I know that is true. I value that. I respect that. And I do not want the Senate to become like the House. I know that George Washington said, or is alleged to have said, that the Senate serves like the saucer for a cup of tea or a cup of coffee. The House heats it up, and you pour it in a saucer to cool it in the Senate. But I do not ever remember George Washington saying it ought to stay in the saucer long enough to evaporate. I think he said just to cool it.

The Constitution and our Founding Fathers have made it very clear that they always intended for Presidents' judicial nominees to be given an up-or-

down vote. I have studied very carefully, and I will submit, in my full remarks to the RECORD, my understanding of those founding documents. The language of article II, section 2, in the clause immediately before the nominations clause, for example, specifically calls for two-thirds of the Senate to concur, but in the nominations clause there is no such provision. I do not believe that is an inadvertent omission.

During the drafting of the Constitution, Roger Sherman of Connecticut argued at great length for the insertion of a comma instead of a semicolon at one point to make a section on congressional powers crystal clear.

Shortly after the Constitutional Convention, Justice Joseph Story, appointed to the Supreme Court by President James Madison, wrote his Commentaries on the Constitution, and he stated explicitly:

> The president is to nominate, and thereby has the sole power to select for office; but his nomination cannot confer office, unless approved by a majority of the Senate.

This was Justice Joseph Story.

In some ways, what Members of the other side are doing would gradually erode the President's power to, in the words of our Founders, send to us ''the object of his preference'' for us then to consider. I trust the President, elected by a vote of the entire nation, to find the right men and women to send up here to be considered for judge or justice and sent back to him then to be appointed. Our advice and consent is in the middle of that process.

I suppose the Founders could have allowed the Congress to appoint the justices or the judges, but they did not. Gradually, however, the Senate has inserted itself more and more prominently in that process. I am not sure that the instances I know about suggest that if we were doing it all over again, we would trust the Senate to do a better job than our Presidents, Democratic or Republican, in picking the men and women to serve on our courts.

Here is an example from my own experience. Back in the 1960s, I was a law clerk to the Honorable John Minor Wisdom of the Fifth Circuit Court of Appeals in New Orleans. Actually, I wasn't a law clerk; I was a messenger. He had already hired a Harvard law clerk, and he told me he could only pay me as a messenger, but if I would come, he would treat me as a law clerk. So I did. The reason I did it was because even at that time, 1965, Judge Wisdom was considered by my law professors at New York University Law School to be the leading civil rights judge in America and one of the finest appellate judges in America.

This is what I found when I got there. We were in the midst of school desegregation across the South. It was a time of great turmoil. Judge Wisdom, for example, ordered Mississippi to admit James Meredith to the University of Mississippi. And what was going on during that time was that the district judges across the South were basically upholding segregation and the Fifth Circuit appellate judges were overruling them and desegregating the South.

At that time, the Senate was not as intrusive in the appointment of judges as it is today because the President, President Eisenhower, only had to confer by custom with Senators of his own party in the appointment of circuit judges. Well, he didn't have any Republicans to confer with in the 1960s. All of the Senators were Democrats. They approved district judges who, in case after case after case, upheld segregation. But President Eisenhower nominated for the appellate bench Republican judges, John Minor Wisdom, Elbert Tuttle for whom Senator BOND of Missouri was law clerk, and John R. Brown of Texas. Those three judges, who would have been blocked, if the present policies of the Senate were in place, by Senators from their home States, were able to preside over the peaceful desegregation of the South.

I have seen no evidence in history that the Senate's increased involvement in the coappointment of appellate judges or justices improves the selection of those judges.

These are qualified men and women the President has sent here who deserve an up-or-down vote. I have mentioned Miguel Estrada. I have spoken about Charles Pickering, former judge, now retired, a graceful man who hasn't had a word of recrimination to say about what was done to him. He was battered for his record on civil rights when, in fact, he should have been given a medal for his record on civil rights: For testifying against the founder of the White Knights of the Ku Klux Klan, who had been called America's most violent living racist in the middle of the 1960s; for putting his children in public schools at a time when many families in Mississippi were putting their children in segregated schools. He was a leader in civil rights, as well as a good judge.

And Bill Pryor's credentials on civil rights have been questioned. He was a law clerk, not a messenger, a law clerk to Judge John Minor Wisdom, who had enormous pride in Bill Pryor, who was elected attorney general of the State of Alabama and repeatedly has shown that he separated his conservative personal views from interpreting the law. He was going right down the line in following the Supreme Court in school prayer cases, abortion cases, and reapportionment cases.

And Priscilla Owen, about whom we have been talking, graduated cum laude from Baylor Law School, justice of the Supreme Court of Texas, reelected to the Texas Supreme Court with 84 percent of the vote, has bipartisan support from other Texas Supreme Court justices. And Janice Rogers Brown, 9 years on the California Supreme Court, appointed in 1996, the first African-American woman to sit on the court, approved by 76 percent of the voters.

Let me end my remarks where I began. Make your way through all the discussion, all of the analogies to nuclear war, and the issue before us is pretty simple—shall we continue the two-century tradition of voting up or down on the President's judicial nominees? I believe we should. I have suggested a way we can remove ourselves from this pickle in which we find ourselves.

I have said, as I did 2 years ago, regardless of who is President, I will never vote to filibuster that President's judicial nominees. If five other Republicans and six other Democrats would say the same thing, we could then get on about our business of confirming or rejecting the President's nominees, of tackling the big deficits, passing the highway bill, trying to lower gas prices, spreading freedom around the world, supporting our troops in Iraq and Afghanistan and around the world, and in reestablishing ourselves, in the eyes of America and the rest of the world, as truly the world's greatest deliberative body.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, are we now switching to this side of the aisle for an hour?

The PRESIDING OFFICER. There are still 4 minutes remaining on the majority side.

Mr. LEAHY. I would not take that from my friend from Tennessee. He has that available to him.

Mr. ALEXANDER. Mr. President, I am glad to yield that 4 minutes to my friend from Vermont.

Mr. LEAHY. Mr. President, so we will be back to the hour to hour—why don't we go back into the hour-to-hour system.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, today, we are continuing to debate the Republican leader's bid for what I believe is one-party rule through his insistence to trigger the nuclear option. It is kind of a ''king of the hill'' situation. While playing king of the hill, you say ''might makes right,'' but it doesn't; it makes wrong in this case. Through the misguided efforts to undercut the checks and balances that the Senate provides in our system of government, it is the need to protect the rights of the American people, the independence and fairness of the Federal courts and, of course, minority rights in the Senate.

Our time would be much better used if we were doing something about the dramatic rise in the price of gasoline over the past 5 years, or the enormous and unprecedented increase in the national debt during the past 5 years; or what has happened when we have seen the huge budget surplus that former President Clinton left his successor, which has now turned into the largest

budget deficit in the lifetime of anybody in this Chamber. These are things that could help the American people.

Yesterday I urged that we get on with the business of the American people. I spoke about a number of specific items of legislation, including the bipartisan NOPEC bill, S. 555, that sit idle. That bill would provide the Justice Department with clearer tools to challenge the cartel price-setting activity of OPEC and help to lower gas prices for working Americans. I mentioned defense and law enforcement measures, as well. The Democratic leader, Senator CORZINE and others made similar points about important legislative priorities. Senator CARPER and I talked about the effect this extended debate is having on the bipartisan asbestos compensation bill. On Wednesday the Chairman cancelled a markup of the bill and on Thursday our markup was limited to two hours and many Senators were unavailable due to this floor debate.

But instead of bringing us together to make progress, our friends on the other side of the aisle insisted the Senate debate at length a nomination that has been debated over the last 3 years, after being voted down by the Judiciary Committee 3 years ago. In fact, a couple of years ago, the Republican majority staged a 40-hour talk-a-thon on judicial nominees. It was at the conclusion of that political exercise, that 40-hour talk-a-thon, that we discovered the Republican staff had been stealing files from the Judiciary computer service for at least 3 years.

That extended debate, staged by the majority, amounted to significant lost opportunities for progress on matters at that time including, ironically, asbestos reform, which is something before us today. At that time, we had approved a lot of judges. Through Senate Democratic cooperation we had approved 168 and turned down 4. In fact, during the 17 months when I chaired the Judiciary Committee, we approved 100 of President Bush's nominees. That is actually a speed record. By the end of last year, at the end of President Bush's first term, we had already confirmed 204 judges. We reduced judicial vacancies to the lowest level since President Reagan. We are now at 208 confirmations. So we have confirmed 208 and, depending upon whose count you go by, we have blocked 5 to 10. We have confirmed well over 95 percent, as a practical matter.

I thank the Senators who joined in the debate yesterday for their contributions: Senator BYRD, Senator KENNEDY, Senator KERRY, Senator BAUCUS, Senator BINGAMAN, Senator LAUTENBERG, Senator MIKULSKI, Senator HARKIN, Senator CARPER, and Senator NELSON of Florida. They know, and everybody in this place knows that if you had a secret ballot on the nuclear option, it would fail miserably. The press knows it and Senators know it. We have all talked with Members on the Republican side who say: I don't want to vote for this thing. I know it is wrong. I started asking, What if there was a secret ballot? Well, of course, that would go down. That is because Senators know it is wrong—wrong in terms of protecting the rights of the American people, wrong in terms of undercutting our Federal system of checks and balances, and it is wrong in protecting the minority rights in the Senate, saying we will have a one-party rule system.

Well, one-party rule may work in some countries. It has never, ever worked in the United States of America. We can be thankful for that. We are the strongest democracy in the world because we have never let this country come to one-party rule. Democratic Senators will not be able to rescue the Senate and our system of checks and balances from the breaking of the Senate rules that the Republican leader is planning to demand. Democratic Senators cannot protect the rights by ourselves; we cannot protect the checks and balances by ourselves. If the rights of the minority have to be preserved, if the checks and balances are to be preserved, if the Senate's unique role in our system of Government is to be preserved, it is going to take at least six republicans standing up for fairness and for checks and balances.

I know a number of Republican Senators realize this nuclear option is the wrong way to go. I have to believe enough Republican Senators will put the Senate first, put the Constitution first and, most importantly, put the American people first and withstand momentary political pressures when they cast their votes.

I have spoken to Senator ISAKSON about his comment earlier this year about the effort to bring democracy to Iraq. I know he spoke about it yesterday. The Senator observed that a Kurdish leader in the middle of Iraq said he had a ''secret weapon'' to instill democracy. When they asked what the ''secret weapon'' was, he said it was one word—filibuster.

The Senator went on to observe:

> If there were ever a reason for optimism about what this supplemental provides the people of Iraq and their stability and security, it is one of their minority leaders proudly stating one of the pillars and principles of our Government as the way they would ensure that the majority never overran the minority.

He was right. We have that same pillar here. We have had a lot of discussion on the floor of the Senate. A couple weeks ago, we voted for billions of dollars to improve law enforcement in Iraq; at the same time, we voted for a budget to cut law enforcement in the United States. We voted billions of dollars to improve infrastructure in Iraq; we voted for a budget that cuts it in America. We voted for item after item for Iraq, at the same time voting to cut similar items in America.

This is not a debate on the Iraq war, but if we are going to praise the Iraqis—and I hope and pray that they will have a democracy someday in that country—and say the reason they can have democracy is that they will have the filibuster and they can protect minority rights, maybe it is time we say let's do as much for the United States as we do for Iraq.

The Iraqi National Assembly was elected in January. In April, it acted, pursuant to its governing law, to select a presidency council by the required two-thirds vote in the assembly, a supermajority.

More recently, Cabinet members for a number of political parties, and religious and ethnic groups were announced, many in the minority parties. Use of the nuclear option in the Senate is akin to Iraqis in the majority political party in the assembly saying they have decided to disregard the governing laws and pick only members of their own party for the government and do so by a simple majority. They might feel justified in acting contrary to law because the Kurds and Sunnis were driving a hard bargain.

One thing we have learned through history is that if you govern through consensus, it is not as easy as ruling unilaterally. That is why dictators can rule unilaterally. But we have never been a dictatorship, thank God, in this country, and I believe we never will be. That is why our system of government is the world's example because we have always protected the views of all Americans, majority and minority, and we have done it in a way through a check and balance so both sides can be heard. That way it requires consensus. More difficult, yes, but then the democracy lasts, and that is the reward.

If Iraqi Shiite, Sunni, and Kurds can cooperate in their new government to make democratic decisions, why can't Republicans and Democrats in the Senate? After all, there are only 100 of us, and we are not shooting at each other—not literally, anyway. If the Iraqi law and assembly can protect minority rights and participation, so can our rules and the Senate. That has been the defining characteristic of the Senate and one of the principal ways in which it was designed from the beginning of this country to be distinct from the other body.

Recently, the Senate passed, as I said, an emergency supplemental appropriations bill to fund the war efforts in Iraq and Afghanistan. The justification for spending billions of dollars of American taxpayers' money in Iraq is we are trying to establish democracies. How ironic that at the same time we are undertaking these efforts—not just of money but of the lives of our wonderful men and women, a great cost to so many American families—the Republican majority in the Senate is seeking to undermine the protection of minority rights and checks and balances. Our men and women are dying, and while our Treasury is spending the money to bring checks and balances in Iraq, we are getting rid of it here.

Let me mention some of the recent statements of the President as he discussed democracy in other countries. When he came back, I praised him. Earlier this month, he met with President Putin of Russia. At his press conference from Latvia, President Bush noted:

> The promise of democracy is fulfilled by minority rights, and equal justice under the rule of law, and an inclusive society in which every person belongs.

President Bush was right when he said the promise of democracy requires the protection of minority rights. It requires that in Latvia; all the more important, it requires it in the world's oldest existing democracy.

On that same recent, foreign trip the President correctly observed: ''A true democracy is one that says minorities are important and that the will of the majority can't trample the minority.'' That which is necessary to constitute a true democracy in Eastern Europe is needed, as well, here in the cradle of democracy.

Again, earlier this year in another press conference with his good friend, President Putin, the President correctly observed—and I praised him for this:

> Democracies always reflect a country's customs and culture, and I know that. But democracies have certain things in common: They have a rule of law and protection of minorities, a free press and a viable political opposition.

The President was right when he spoke in Eastern Europe, but that which is necessary to constitute a true democracy in Eastern Europe is needed as well here in the cradle of democracy.

I agree with all of these observations. I commend the President, as I have already. I hope all Senators will read them and agree we have to uphold the rule of law and the rules of the Senate that are designed to protect the minorities as a viable political opposition. This country is never under one-party rule. This country always has checks and balances of both parties.

Others besides the President have spoken. Let me tell you what Secretary Rice said recently while overseas. She said this in Georgia:

> It is not easy to build a democracy . . . It means having a strong legislative branch. It means having a strong independent judiciary . . . along with freedom of speech, freedom of worship and protection of minority rights, that's how you build a democracy.

I told Secretary Rice that I agree with her, those are the components of a democracy. But we have the same components in the United States. We need to maintain the Senate as a strong legislative branch to serve as a check on the Executive, no matter what party, Democratic or Republican, controls the Executive. We need a strong independent judiciary—not a Republican judiciary, not a Democratic judiciary, an independent judiciary—to serve as a check on the political branches. We need to protect free speech and freedom of religion, and to maintain our democracy in the United States, we have to protect minority rights.

On her way to Moscow recently, the Secretary of State stated:

> [T]he centralization of State power in the presidency at the expense of countervailing institutions like the Duma or an independent judiciary is clearly very wrong.

She was speaking about how developments undercut democracy in Russia. But so, too, here in our great and wonderful country of America, democracy is undercut by the concentration of power in the Executive, removing checks and balances and undermining the independence of our judiciary. It is ironic that President Bush and Secretary of State Rice speak so eloquently—and I agree with what they have said—about the fundamental requirements of a democratic society when they meet with world leaders outside the United States, but, unfortunately, the Bush administration and the Senate Republicans are intent on employing this nuclear option to consolidate power in this Presidency in this country.

Senators ought to have enough faith in their own ability, Senators ought to have enough understanding of their independence—and the fact that each one of the 100 of us is elected independently—to be willing to stand up. We do not work for the President. We do not work for the Vice President. We represent our country and our States, and we should be independent.

They know, as all Americans know, democracy relies in the sharing of power, on checks and balances, and on an independent court system, one that protects minority rights, and on safeguarding human rights and human dignity. This nuclear option is in direct contradiction to maintain those values, those components of our democracy.

Just as Abu Ghraib and other abuses make it more difficult for our country to condemn torture and abuse when we speak to the rest of the world, this nuclear option uses a partisan effort to consolidate power in a single political power and institution and will make all the lectures we give to leaders of other countries ring hollow.

I remember when the Soviet Union broke up and it became a democratic country. A group of Russian parliamentarians came to the United States and visited the House of Representatives and the Senate. Several came to see me, and they wanted to talk about our independent judiciary. Finally one of them said: I have this question. It has really been bothering me. I have heard that in the United States people sometimes go into Federal court and sue the Government.

I said, Yes, it happens all the time.

He said, But we have also heard that sometimes the Government loses.

I said, That is right.

They said, Well, don't you fire the judge if he lets the Government lose?

I said, No, it is an independent Federal judiciary. They are independent of the executive branch. They are independent of the Senate. They are independent of the House of Representatives. They make those decisions.

This was such an eye opener to them. The rest of that afternoon, that is what we talked about.

They said, It really works, then?

I said, Yes, and if you have it work that way in Russia, you will be a much safer country.

They still haven't gotten that far. Let's hope someday they do.

Chief Justice Rehnquist is right to refer to our independent judiciary as the crown jewel of our democracy. It is a dazzling, brilliant, shining crown jewel. Judicial fairness and independence are also essential if we want to maintain our freedom. We have to stop the dangerous and irresponsible rhetoric slamming the Federal judiciary. We do not have to agree with every one of their opinions. I cannot believe that any one of 100 Senators who has followed every single Federal opinion would agree with every single one of them. I might agree with one, the distinguished Presiding Officer may disagree with the same one, or vice versa. We do not have to agree with every opinion. But let us respect their independence. Let no one say things that might bring about further threats against our judges as they endeavor to do their jobs serving justice. Let us not stand up on the floor of our Congress and speak of impeaching judges if we disagree with them. Justice Sandra Day O'Connor was right to condemn such virulent talk.

Judge Joan Lefkow of Illinois testified before the Senate Judiciary committee this week. This is a woman whose husband and mother were murdered by somebody who disagreed with her decisions. She sacrificed too much for us not to heed her words when she asked us to lower the rhetoric, lower the attacks on Federal judges. We 100, and the 435 in the other body, of all people ought to know better. We ought to be protecting them physically and institutionally. We should not take the easy rhetorical potshots that put judges in real danger when they attack the very independence of our Federal judiciary.

When the U.S. Supreme Court decided the Federal election in 2000, as a lawyer, as a Senator, I thought the 5-to-4 majority engaged in an incredibly overreaching act of judicial activism to effectively decide a Presidential election. But I went on the floor of the Senate and I went before the press and I called for Americans to respect the opinion of the Court because it was the final word. I thought the word was wrong, but I believed as Americans we must respect it.

I attended the argument, during the arguments of Bush v. Gore, with my Republican counterpart in the Senate Judiciary Committee in order to show the country that we had to get along and work together. You didn't hear

Democrats saying let's impeach Justice Scalia when we wholeheartedly disagreed with his action.

Part of upholding the Constitution is upholding the independence of the third branch of Government. One political party or the other is going to control the Presidency. One party or the other will control the House of Representatives. One party or the other will control the Senate. But no political party—neither Democratic nor Republican—should control the judiciary. It has to be independent of all political parties. That was the genius of the Founders of this country. It is the genius that has protected our liberties and our rights for well over 200 years. It is the genius of this country that will continue to protect us unless we allow something to destroy it just for short-term political gain.

It would be a terrible diminution of our rights to remove the independence of the Federal judiciary. It is a diminution of our rights no matter what party we belong to, no matter what part of the country we are from. It would be a diminution of our rights that none of the armies that have marched against our country has ever been able to do. If you take away the independence of our Federal judiciary, then our whole constitutional fabric unravels.

That is what we Democrats are trying to protect. That is what we are defending. The nuclear option is a threat to the protection of the minority, the independence of our judiciary, the protection of Americans rights and our democracy. It removes checks and balances.

How can the most powerful Nation, the wealthiest Nation history has ever known, be able to maintain itself without the protection of checks and balances? How can we? And how can we represent to the rest of the world we are the example they should follow? How can we tell other countries, as they become democratic, this is what they should follow?

I know I will be speaking further. I see the distinguished Senator from North Dakota. I know he is seeking to speak. I will yield the floor.

Mr. DORGAN. Mr. President, I think we are waiting for Senator LIEBERMAN who is to appear on the floor momentarily. I was going to seek to say a few words following Senator LIEBERMAN, but I understand he is on his way to the floor right now and I would prefer not to proceed without him, so I think we will put ourselves in a quorum for a moment.

I make a point of order a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LIEBERMAN. Mr. President, I rise to speak on the so-called nuclear option which cloud hangs over the head of this Senate on this Friday afternoon.

The media, and sometimes Senators, speak of this debate, this possibility that the 60-vote majority requirement for confirmation of judicial nominations will be scrapped, as an internal struggle within the Senate. It is that, of course. But it is not only that. In my opinion, certainly when one judges its effect, it is not primarily that. This is about the judiciary, the judicial branch of our Government.

If you go back to the beginning of our Government, every student who takes a civics course knows there are three branches of the Government: executive, legislative, and judicial. The judicial branch, as I was taught—I presume people are still taught it this way—is the most independent because it is protected at the Federal level from politics, from the passions of the moment. It is there to arbitrate disputes, to uphold our most fundamental liberties, to take the principles in the Constitution in the laws we adopt and relate them to the lives of the American people in every generation.

It is, I want to repeat, charged with a significant responsibility and that is to be the one of the three branches of Government that is above political passions, that is there to protect—I would call them the eternal principles on which the Declaration, the Constitution, the Bill of Rights were fashioned. That is what is on the line. It is a direct question. It is a simple question, but it challenges a lot of our values.

The question really is, Will we require nominees to lifetime appointments on the Federal bench, the district court, circuit courts and, of course, the Supreme Court, will we require nominees for lifetime appointments to the Federal bench to receive the votes of at least 60 Members of the Senate? Will we require judges who will have a lot to say about the nature of law, values, freedom, and rights in our country—not just for the term of this President but for as long as they live—to receive the votes of at least 60 Members of the Senate?

In a time in the history of the Senate which is, unfortunately, increasingly partisan and polarized and too often unproductive, I speak really about the partisanship and polarization. Will we require, in having that standard of 60 votes thereby, that any nominee to the lifetime appointment to the Federal bench receive the support of the Members of more than one of our political parties?

Remember, I talked about the judiciary having that unique role in our constitutional system and our governmental system to be independent of political passions and polling and what is popular at the moment, to protect our freedom to arbitrate disputes, to uphold our best values. Don't we want to require that 60 votes be obtained for this lifetime appointment, which in the current practical, real political context—with 55 Members of one party, 45 in the other, it could soon switch. Some hope sooner than others hope, but it could switch. Do we want just those 55 Members of one political party today, and it could be another political party tomorrow, to determine confirmation of appointees for lifetime service on the Federal bench?

We are in much better shape as a country if we can look forward with much more of a sense of confidence and with a sense of pride that we have fulfilled the values and the purpose that the Founders of this country put in the judiciary if we require 60 votes. That is what is on the line. The nuclear option would blow that up and say it would require 51.

Others have spoken and can speak about the impact this might have on our working relationships in the Senate, on our ability to deal with other problems. But for me, the fundamental question is, Will we continue to require those 60 votes.

I speak for myself, but I believe I speak for most other Members of the Senate, it is never the first choice to filibuster anything. Not for me. And certainly not on a judicial nomination. I have voted in my 16½ years—I have not counted them up—I assume, on hundreds of judicial nominations. As we know from the most famous chart in America today, the President has had confirmed 208 of 218 of his nominees. I have been here since the first President Bush was in office, so I have voted on several hundred judicial nominees, and I believe I have filibustered maybe 10.

I, as one Senator, want to preserve my right if I believe this President or the next President nominates someone I just do not believe by their record, by their experience, by their testimony before hearings, is qualified or fit to serve on the Federal bench for the rest of their lifetime. I want the right to demand that nominee prove that he or she can obtain the support of at least 60 Senators.

That is what is on the line. It is on the line for the judiciary, but it suggests what is on the line for the Senate overall. Over the years, and I must say my attitude has changed on this as I have watched the Senate become more partisan and polarized, it seems to me, and now I am speaking more broadly than the judicial nominations which will be the focus of the nuclear option if the button is pushed, that in a Senate that is increasingly partisan and polarized—and therefore, unproductive—that the institutional requirement for 60 votes is one of the last best hopes of bipartisanship in moderation because to not only confirm a judicial nominee but to pass legislation, if you have the right to demand 60 votes, and the President proposes legislation, individual Members of the Senate do so, you have to go beyond the Members of your own party. I suppose if one party gets 60 votes, that argument is all over but not totally because even within

that 60 they may have to work to get it.

In the current context, that is what we are talking about. It could flip again to another party, my party being in the majority. It requires on every measure that to pass something you have to get more than the Members of your own party. You have to get more than people of one philosophical or ideological point of view. You have to get to 60. It is often not very hard to do that. That is why I say, the 60-vote supermajority requirement is today, in a partisan Senate, one of the last best hopes, pressures, for bipartisanship in the most literal sense. You cannot get to 60 votes with Members of one party, and for moderation, which is where America has always done best, and where I am convinced the majority of the American people still rest.

There were polls that came out this week. The polls are snapshots, and we should never be governed by them, but the one from the Wall Street Journal and NBC should be taken as a warning. People talk about the popularity of the President, up or down, whether people support a Social Security program or don't. But the polling data on Congress, in terms of the popularity of Congress, with trust or whatever the word was, is at an all-time low since this particular poll began to be taken in 1994. I think the public is fed up with the partisanship. I think they want us to get something done.

The tragedy of it is that all 100 of us ran for the Senate, not to come and have fights with one another, sound and fury that produce nothing. We came here to get something done. But we are in this cycle where the campaigns never seem to stop.

The Presiding Officer knows from the founding of our country, thank God, there was very spirited politics and campaigns. In some of the early campaigns, centuries before television, people said pretty tough stuff about one another, but I think through most of our history, when the campaigns ended, those elected focused on governance, on leading the country, on doing something for the people who sent us.

It seems to me too often that the campaigns never stop. As a result, we do not get as much accomplished as we should get accomplished, and the needs remain great to keep our country safe, improve the quality of our education, health care, to protect the environment, to continue to work together with business to stimulate the economy.

These are the consequences of the perpetual campaigning and increased partisanship. It is not the place to talk of the causes of it, but I want to describe it as I have experienced it and to say that if we end the 60-vote requirement, I fear it will get worse, that it will get more partisan, less productive, and we will do less for the people's business.

This is why I have been participating over the last week, and a little bit more in the extraordinary, in some sense unprecedented, discussions, negotiations between a group of Senators of both political parties who share many of the views that I have just expressed and want to avoid the nuclear option and to bring us back from the precipice.

I hope these negotiations end successfully. It would not only be in the Senate's interest, it would not only be in the interest of our independent judiciary, it would be in the interest of the American people who want us to get some things done to improve their lives and make them safer.

If those negotiations do not conclude successfully, I hope Members of the Senate individually will, in good conscience, reach a judgment that pushing the button on the nuclear option is a response, in its way, to a passion of the moment, a concern that filibusters have been used against judicial nominees.

Colleagues of mine on this side have said, over and over again, made the point—it is, in my opinion, the fact—208 out of 218 of President Bush's nominees have been confirmed, a much higher percentage than President Clinton had. But there are people, obviously, in this Chamber angry about the small number who have not been approved. It is a anger of the moment.

I appeal to all my colleagues not to yield to the anger of the moment and do serious damage not just to this institution but to the values upon which our Constitution and our country rest. That is what is on the line. It is a big moment for the Senate. I hope and pray and, ultimately, believe we will rise to the challenge and do what is right.

I thank the Chair and yield the floor.

The PRESIDENT pro tempore. The Senator from North Dakota.

Mr. DORGAN. Mr. President, my understanding is that I believe, by previous order, there are 5 minutes remaining on this side.

The PRESIDENT pro tempore. There is 3½ minutes remaining.

Mr. DORGAN. I spoke to the previous Presiding Officer and indicated I had wished to speak for 15 minutes. I ask unanimous consent to do that, provided that the other side has equal opportunity to extend their time as well.

The PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered. The time is extended.

Mr. DORGAN. Mr. President, I have said on a previous occasion how proud I am to be here in the Senate. For these years I have served, it has been an enormous privilege. I come from a small town in ranching country and wheat country in southwestern North Dakota. I never thought I would meet a Senator or a President, but yet, because of the great quilt-work of this democracy, I have been elected to the Senate now on three occasions and am enormously proud to serve.

I do not come here to be a partisan. I am proud of my political party, however. I think we have two grand political parties in this country. Both, from time to time, have made great accomplishments and have made great mistakes. I fear we are on the precipice of one of those great mistakes. That is why I came to speak again on this subject.

There is plenty of blame, I suppose, to go around to both parties on a range of issues. I think sometimes about the poem written by Ogden Nash, about a man who drinks too much and a woman who scolds him about it. Ogden Nash wrote this:

He drinks because she scolds, he thinks;
She thinks she scolds because he drinks;
And neither will admit what's true,
That he's a drunk and she's a shrew.

So Ogden Nash described circumstances of blame, circumstances of how two different people see the same situation differently.

We come now to a big decision on the floor of the Senate. David Broder, who I think is one of the excellent writers here in Washington, DC, with the Washington Post, has written a piece about what we are doing. He says:

> But dwarfing all these individual dramas [in the debate] is the question of what the vote means [the nuclear option vote means] for the Senate as an institution. Two of the main props of the Senate's identity are at stake. The tradition of unlimited debate, going back to the Senate's earliest years. . . . [and] the continuity of the Senate rules. . . .

What does this mean about ''unlimited debate'' and ''the continuity of the Senate rules''? I have the rule book for the Senate. These are the Senate rules. The Senate rules provide that to change the rules of the Senate requires 67 Senators, 67 votes.

The majority now wishes to change the rules, but they do not have 67 votes. They are displeased about that. So they want to ignore the Parliamentarian—that would be their strategy—ignore the Parliamentarian, who would rule that what they are attempting to do is not within the rules, and then they would change the rules with 51 votes.

They call this the nuclear option, self-described as a nuclear option by a member of their caucus. I suppose they use that term because they know that for a majority party to violate the rules in order to change the rules would have an enormously destructive impact on this body.

Some years ago, I went to the 200th birthday of the writing of the Constitution. It was held in the assembly room of Constitution Hall in Philadelphia. Again, I have told my colleagues in the Senate, I graduated from a small high school class of nine students. I found myself 1 of 55 people designated to go into that room where, 200 years earlier, 55 people had written the Constitution, this little book that, on page 17, says, ''We the People of the United States.'' They wrote that 229 years ago.

On its 200th birthday, 55 of us went into that room. The chair where George Washington sat as he presided

is still there. Ben Franklin sat over here, Mason over there, Madison over here. They wrote: ''We the People,'' and they described a system of self-government that represents the power of one. All of the power in this country is vested in the power of one person casting one vote at a time on a prescribed date in this country—every even-numbered year. The late Claude Pepper used to call it the ''miracle of democracy.'' Where every even-numbered year, the American people get to grab the steering wheel and decide which way to nudge this great country of ours, which direction it wants this country to move.

This Constitution set up something very important because they understood that for self-government to work, there needed to be checks and balances. They had a belly-full of King George. They just had a belly-full. They did not want that kind of oppressive government. They wanted self-government with checks and balances. So they established a government with separation of powers, a government in which the concentration of power would be prohibited by a series of checks and balances.

It has not been a perfect government, but it is the best I know of on the face of this small planet Earth. That separation of powers and those checks and balances are essential, they are critical, to the working of our Government.

Now, the question of how judges are appointed, was part of the debate of the Constitution. In fact, some wanted the Congress to appoint judges. But the compromise was that we would have a two-part process. The President would propose, or nominate, people for a lifetime appointment on the Federal bench. Incidentally, these are the only people who are given lifetime appointments, the judges who sit on the Federal bench, so that they would be impervious to the passions of the moment, impervious to changes in passions, and have fealty toward this document, the Constitution.

So they decided the President shall nominate and the Congress shall advise and consent. The President can say: Here is who I want. The Congress can say: Yes or no.

We have had a lot of problems with judicial nominations over the years. In the 1990s, I recall at least 60 names were sent up here, and they did not get a vote. Many on the other side now stand up on the floor of the Senate and say: We want the right to vote. Let's vote on all these nominees; forgetting that 60 of them—60 of them sent here by President Clinton—did not get a vote. In fact, many of them did not have the courtesy of one day of hearing. But 60 of them did not get a vote. I did not hear one person stand up on the other side and say: We demand to bring these to a vote. No. They were busy blocking—blocking—those judges.

Now, there is a kind of a born-again quality about this issue, and they say: We want everyone to have a vote. Well, they have all had a vote. It is just that 10 of them only got a cloture vote and did not get the 60 votes required. And because they did not get 60 votes, out of 218 judicial nominees, 208 were approved and 10 were not. So we have people around here whose nose is completely bent out of shape because 10 out of 218 did not get approved. And, incidentally, the 208 out of the 218 who have been approved for this President represents a much higher percentage than the previous President or the President before that. And, we also have the lowest vacancy rate on the Federal bench since many years ago.

But having said all that, we now have a proposal by the majority party to exercise the so-called nuclear option.

Why do we have that proposal? I guess they have decided they are going to do it because they can. They can decide to ignore, as David Broder, the dean of the Washington press corps describes, the two main props of Senate identity—unlimited debate and the continuity of the Senate rules.

There are reasons to have, perhaps, some sort of a self-described nuclear approach on the Senate floor. Perhaps we should have a nuclear approach to deal with the loss of jobs. Maybe that would be helpful. Maybe we ought to have this energy, this passion, this demand to explode something here to be in support of American jobs, to stop the hemorrhaging of jobs overseas. Read the paper this morning. Two more companies shut their plants, fired their workers. They are going to Mexico. It happens every single day. Mexico, China, Indonesia, Sri Lanka, you name it; we don't have the energy on the floor to deal with that. The majority party only wants to talk about the few judges that were not approved by the Senate. Why? Because I believe they have forgotten about the important elements of this Constitution dealing with checks and balances, and the separation of power.

As I said, there are many things we ought to be discussing on the floor of the Senate with great passion. How about health care? The cost of health care, the cost of prescription drugs, the dramatic increase in these costs that are devastating families, devastating to businesses, and devastating to the Federal budget. Anything going on, on the floor of the Senate about that? Not at all.

We have two things happening here. One, Air Force One is traveling around the country because they say there is a crisis in Social Security. There is not. Social Security will remain fully solvent until George W. Bush is 106 years old. That is hardly a crisis. No. 2, we have on the floor of the Senate this extreme tension because the majority party has decided it wants to violate the rules of the Senate to change the rules. Why? Because it can.

There are so many other things we ought to be working on, so many other things we ought to be doing to put this country back on track, such as dealing with the trade deficit, and the hemorrhaging of American jobs. I mentioned General Electric announced a plant closing; 470 people are going to lose their jobs. That was yesterday in the newspapers. They made refrigerators. They were proud to do it. Those refrigerators will now be made in Mexico, and those 470 people will be out of work. I would love to come to the floor to talk about that. I have offered amendments. I can't get to first base. That is not part of what happens around here.

The majority party is upset because they didn't get every judge, so they want to do what is called a nuclear option. As I said, I am enormously proud to serve here. Most of the things that we face should require us to work together. We all have the same ends. We want the best for the United States of America. We want our country to do well, to expand, to provide opportunity. We want to help with the things that families talk about at night when they sit around the supper table: Do I have a good job; does my job pay well; do I have job security; are we sending our kids to schools we are proud of; do our grandparents have access to decent health care; do we live in a safe neighborhood? All of these issues are central to what all of us ought to be thinking about and working on as hard as we can.

It is not about a Republican answer or a Democratic answer. It is about our responsibility, as 100 Senators, men and women of good will, with presumably the skills to get here and the need to come together to work on these issues.

This nuclear option is so destructive. It was said once that preceding every great mistake, there is a split second when those who are about to make that mistake have the opportunity to turn back and find a more productive course. We are at that split second. This will, indeed, be a great mistake if those who attempt this do not turn back. Abraham Lincoln once said: Die when I may, let it be said of me by those who know me best that I always plucked a thistle where I thought a flower would grow and planted a flower.

The party of Abraham Lincoln is, at this point, not planting flowers, rather, they are plucking thistles and planting thistles in the middle of this Chamber. I hope those who think this is a clever move, those who think this is a new strategy that they can win, will understand they ultimately will lose by failing to respect the traditions of the Senate, the rules of the Senate, and the concept of unlimited debate that makes this institution different than any other in the country.

We all come from different corners of America, different size cities, different backgrounds, different education. But I believe we are all people of good will. We all came here with the same hope in our heart, hope for a better America.

My hope would be that in the coming 2 or 3 or 4 days, those who have led us to this moment and this position preceding a great mistake, will rethink that position and see if we can't get back to the main agenda facing this country and its citizens.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Texas is recognized for 15 minutes.

Mr. CORNYN. Mr. President, I appreciate the eloquent comments of our colleague from North Dakota. I, too, wish we could get on with the Nation's business dealing with the high price of gasoline, which is hurting our economy and hurting consumers and people who need to commute to and from work to do their job.

I wish we could get on addressing the issues of the uninsured and lack of access to good quality health care by too many Americans. I wish we could talk about securing our borders and how we deal with our inability to control our borders and the threat that that presents to our national security. If we could simply get the up-or-down vote that was recognized as the Senate tradition for 214 years before the last Congress, we would be addressing those other issues.

But here we are, having debated for 19 days on the floor of the Senate about this nominee, Justice Priscilla Owen. Interestingly, that is 2 more days than the nominations of all nine sitting members of the U.S. Supreme Court took.

So while our colleagues on the other side of the aisle talk about preservation of the tradition of unlimited debate, this is not about debate. We have heard the distinguished Democratic leader say there is not enough time in the universe to debate these nominees. It is not about debate. Some have complained that on this side we are impeding the free speech rights of Senators.

Anybody who has been listening to the debate knows that there has been no impeding of free speech on the floor of the Senate. Some have said this is about minority rights. This is not about minority rights. We respect minority rights in the Senate. We always have, and we always will. But the fact is the American people sent a majority to the Senate that stands ready to confirm these nominees. It is not just people on our side of the aisle. If we were permitted to cast a vote, a bipartisan majority would confirm these nominees today. This amounts to a veto, in effect. A partisan minority has attempted to cast a veto of bipartisan majority rights.

I heard the distinguished Senator from Connecticut, whom I respect enormously, but I disagree with his comments today that somehow he now understands the wisdom of requiring 60 votes before we can confirm a nominee to a Federal court, when the fact is, from time immemorial, since the beginning of this institution, only 51 votes were required to confirm a nominee. And now all of a sudden, President Bush is elected and reelected, and we are going to raise the level to 60 votes. That is changing the rules in the middle of the game. That is not fair. What we need is a resolution of this issue based on principle.

That principle has to be one of fundamental fairness. That is, the same rules apply whether it is a Republican President or a Democratic President, whether there is a Republican majority or a Democratic majority. That, to me, is the principle on which this matter can be resolved—not based on some bogus suggestion or some deal cut by a handful of Senators that would throw some nominees overboard, confirm others, and not leave the issue of a potential U.S. Supreme Court vacancy resolved.

We need this matter resolved after 4 years. After 4 years, patience ceases to be a virtue. We need to get on to the issues the Senator from North Dakota and others talked about. And we will. But now is the time to resolve this issue once and for all.

I point out the speciousness of this 60-vote requirement and how it does represent a departure from past practice. We can see going back to 1979, through 2000, where judges nominated by President Carter, judges nominated by President Reagan, judges nominated by the first President Bush, and judges nominated by President Clinton were confirmed and are sitting on the Federal bench today with less than 60 votes. So any suggestion that we on this side are somehow trying to change the rules just does not withstand scrutiny. It is not true. All we are asking for is a restoration of that majority tradition.

Let me say that for the last 3 days—actually, for the last 4 years—we have debated three key questions on the floor of the Senate. Really, I do think it boils down to these three key issues:

First of all, do nominees such as Priscilla Owen, whose picture is to my right—somebody who I know personally and worked with for 3 years on the Texas Supreme Court, who I know to be a fine, decent human being and outstanding judge—deserve confirmation to the Federal bench or, at a minimum, do they deserve an up-or-down vote? No one is suggesting that any Senator violate their conscience. Indeed, if any Senator believes they cannot in good conscience vote for this or any other nominee, of course, we would expect them to cast a ''no'' vote on the confirmation. But we would expect at least for them to allow there to be a vote.

The second question is: Is this new idea of a supermajority requirement for the confirmation of judges both unprecedented and wrong?

Third, is the use of the Byrd option—the constitutional point of order we have heard much discussed, which has been exercised in the past—appropriate in order to restore Senate tradition to the confirmation of judges and to ensure that the rules remain the same, regardless of which party controls the White House and which party has a majority in the Senate?

I firmly believe the case has been made, and that the answer to each of these questions is ''yes.''

Let me reiterate. First, do nominees such as Justice Priscilla Owen deserve confirmation to the Federal bench or, at minimum, an up-or-down vote?

Of course, they do. This is a distinguished jurist and public servant, who enjoys bipartisan support in the State of Texas of statewide elected officials who are Democrats, 15 members of the State bar association, the premier association for the legal community in our State, which supports this judge because she is a good judge. There are those who oppose Justice Owen's nomination and, of course, that is their right. Some Senators have even criticized her rulings. Others, including myself, have defended those rulings. The debate has been extensive and Justice Owen's record, I believe, has prevailed.

Indeed, I submit it is precisely because Justice Owen's record is so strong that a partisan minority of Senators now insist that she may not be confirmed without the support of at least 60 Senators, a demand that is, by their own admission—at least at one time—unprecedented in Senate history. Why? Because the case for opposing her is so weak that the only way it can be defeated is by changing the rules to defeat her nomination. They know it. Before her nomination became caught up in the partisan special interest politics that seem to dominate the opposition to her nomination, the top Democrat on the Judiciary Committee predicted Owen would be swiftly confirmed.

On the day of the announcement of the first group of nominees—that is, by my recollection, on May 9, 2001—more than 4 years ago, the ranking member of the Judiciary Committee said he was encouraged and that I know them well enough that I would assume they will all go right through.

Just a few short weeks ago, the minority leader announced that Senate Democrats would give Justice Owen an up-or-down vote, albeit only if Republicans agreed to deny the same courtesy to other nominees. Now, that, as much as anything—and the distinguished senior Senator from Pennsylvania made this point—really, by the sort of bargain that has been offered, the political deal that has been offered to allow an up-or-down vote on some nominees and throw others overboard, it is clear their complaint is not with Justice Owen. If, in fact, the minority leader announced he would give her an up-or-down vote if we simply toss some of the others overboard, to me that demonstrates the lack of merit of their complaints and accusations when it comes to this judge and her record.

In the end, these concessions are understandable because the case against Justice Owen is simply not convincing. The American people know a controversial ruling from the bench when

they see one, whether it is the radical redefinition of our society's most basic institution, marriage, or the expulsion of the Pledge of Allegiance and other expressions of faith from our public square, or the elimination of the ''three strikes and you're out'' law and other penalties against multiple-time convicted criminals, or the forced removal of military recruiters from college campuses. Justice Owen's decisions as a judge fall nowhere near this class or category of cases. There is a world of difference between struggling—as any good judge will do—to try to determine what legislative intent is by parsing the words of a statute, trying to figure out what did the legislature mean—there is a huge difference between that and refusing to obey a legislature's directives altogether and substituting one's own views for that of the elected representatives of the people.

The second question to reiterate is: Is this new idea of a supermajority requirement for confirmation of judges unprecedented and wrong? The answer is yes and yes. Indeed, our colleagues across the aisle have said so in the past time and time again. Unprecedented? Well, of course, it is. President after President after President have gotten their judicial nominees confirmed by a majority vote, as we just showed a moment ago, not by a supermajority vote of 60.

Indeed, by their own admission, Justice Owen's opponents in this body are using unprecedented tactics to block her nomination. A leading Democratic Senator has boosted of their unprecedented tactics in his fundraising e-mail to Democratic donors.

Is it wrong? Well, of course it is. Senators on both sides of the aisle have firmly stated in the past that judicial nominees should never be defeated by a filibuster, and legal scholars across the political spectrum have long concluded what we in this body know instinctively: that to change the rules of confirmation, as a partisan minority has done, badly politicizes the judiciary and hands over control of this confirmation process to a handful of special interest groups.

Finally, the third and last question: Is the use of the Byrd option appropriate in order to restore Senate tradition to the confirmation of judges to ensure the rules remain the same regardless of which party controls the White House or which party controls a majority in the Senate?

Again, of course it is. It is, as we have demonstrated in the past, perhaps most appropriately called the Byrd option. Others have called it the constitutional option, or merely just a point of order. But it is called the Byrd option precisely because the former Democratic majority leader has exercised this authority on behalf of numerous Senators on numerous occasions in our history.

It is precisely why the former majority leader boasted just 10 years ago on the floor of the Senate of how ''I have seen filibusters, I have helped to break them, and the filibuster was broken—back, neck, legs, and arms. It went away in 12 hours. So I know something about filibusters. I helped set a great many of the precedents that are on the books today.''

The senior Senator from Massachusetts and the senior Senator from New York have similarly recognized the authority of the majority of Senators to establish precedents by way of a point of order or the Byrd option or the constitutional option.

Over the last 3 days a number of Senators on both sides of the aisle have taken to the floor of this body to offer their answers to these three central questions. There have been disagreements, but I hope they have been respectful disagreements.

It has been suggested by some that we are facing a constitutional crisis. I beg to differ. America is strong. Our constitutional system works. And it is perfectly normal and traditional for Senators to debate, to disagree, and vote. Indeed, it has been on the floor of the Senate over our Nation's history that we have debated the great constitutional and public policy issues of our day, and this is one of them. But it is not a crisis.

It is perfectly normal and traditional for a majority of Senators to vote on the rules and parliamentary precedents of this body. Senators have been doing that from the beginning of this great institution. There is nothing radical about Senators debating the need to confirm well-qualified judicial nominees. There is nothing radical about a majority of Senators voting to confirm judicial nominees, and there is nothing radical about a majority of Senators voting to establish Senate precedents and rules.

In short, what we have on the floor of the Senate right now is a controversy, a disagreement, not a crisis. This controversy can be resolved, and undoubtedly will be resolved, as it has always been resolved, by an up-or-down vote of the Senate. This controversy can be resolved, as it has always been resolved, by simply determining which side of the question enjoys the support of a greater number of Senators. And once the controversy is resolved, we can and we should get back to work on the rest of the people's business.

This is a controversy, a disagreement, not a crisis. And I hope that in the coming days, we will complete our debate and resolve this controversy in a respectful way, consistent with the greatest traditions of the Senate.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CORNYN. Mr. President, we have completed our third day of consideration of the nomination of Priscilla Owen and, therefore, I ask unanimous consent that there be an additional 10 hours of debate equally divided on the nomination, and that following that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

Mr. REID. I object.

The PRESIDENT pro tempore. Objection is heard.

Mr. CORNYN. Mr. President, I ask unanimous consent that there be an additional 15 hours of debate equally divided on the nomination, and that following that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Reserving the right to object, Mr. President. The mere fact that I can object shows this is a debatable motion. I do object.

The PRESIDING OFFICER. Objection is heard.

Mr. CORNYN. Mr. President, I will refrain from making other offers of unanimous consent for additional debate time at this time.

CLOTURE MOTION

With that objection, on behalf of the majority leader, I send a cloture motion to the desk.

The PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 71, the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

Bill Frist, Arlen Specter, Trent Lott, Lamar Alexander, Jon Kyl, Jim Talent, Wayne Allard, Richard G. Lugar, John Ensign, C.S. Bond, Norm Coleman, Saxby Chambliss, James M. Inhofe, Mel Martinez, Jim DeMint, George Allen, Kay Bailey Hutchison, John Cornyn.

Mr. CORNYN. Mr. President, on behalf of the majority leader, this cloture vote will occur on Tuesday, and the leader will announce the precise timing of that vote next week.

MORNING BUSINESS

Mr. CORNYN. I now ask unanimous consent there be a period of morning business with Senators permitted to speak up to 10 minutes each.

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

NATIONAL POLICE WEEK

Mr. LEVIN. Mr. President, as we commemorate National Police Week, I would like to recognize the courageous

men and women who serve our families and communities as law enforcement officers. I would also like to honor the memory of those who gave their lives in the line of duty. These officers, and their families, have paid the ultimate sacrifice for the safety of others.

The first National Police Week was celebrated in 1962 when President John F. Kennedy signed an Executive Order designating May 15th as Peace Officers Memorial Day and the week in which that date falls as ''Police Week.'' The weeklong tribute to our Nation's local, State and Federal police officers honors those who died in the line of duty and those who continue to serve and protect us every day at great personal risk.

According to the National Law Enforcement Memorial Fund, 1,649 law enforcement officers have been killed in the line of duty in the last 10 years. In 2004 alone, 153 officers lost their lives, including 7 from Michigan. As in past years, the names of these officers have been permanently engraved on the National Law Enforcement Officers Memorial along side more than 17,000 others.

We can further honor the sacrifices of these brave men and women by passing important legislation to support our law enforcement officers. That is why I have joined Senator BIDEN as a cosponsor of his COPS Reauthorization Act. The COPS program was created in 1994 and is designed to assist State and local law enforcement agencies in hiring additional police officers to reduce crime through the use of community policing. Nationwide, the COPS program has awarded more than $11 billion in grants, resulting in the hiring of 118,000 additional police officers. Unfortunately, authorization for the COPS program was permitted to expire at the end of fiscal year 2000. Although the program has survived through continued annual appropriations, its funding has been significantly cut. The COPS Reauthorization Act would continue the COPS program for another 6 years at a funding level of $1.15 billion per year, nearly double the amount appropriated for fiscal year 2005. Among other things, this funding would allow State and local governments to hire an additional 50,000 police officers and improve their ability to analyze crime data and DNA evidence. At a time when we are asking more of our police departments than ever before, I believe we should be devoting more resources to the COPS program, not less.

Supporting our law enforcement officers also requires that we take up and pass common sense legislation to help keep them safe while they carry out their duties. Shootings have been the leading cause of death for law enforcement officers over the last ten years and more can be done to keep powerful weapons out of the hands of violent criminals. We should listen to law enforcement groups like the International Association of Chiefs of Police, the International Brotherhood of Police Officers, and the National Fraternal Order of Police which have called for reauthorization of the 1994 assault weapons ban. In addition we should be working to pass legislation to close loopholes that allow potential criminals to buy dangerous weapons like the Five-Seven armor-piercing handgun. Our law enforcement community deserves no less.

In honor of their memories, the names of law enforcement officers from Michigan who died in the line of duty during 2004 are:

Officer Matthew E. Bowens of Detroit, died February 16, 2004;

Officer Gary Cooper Davis of Bloomfield Township, died May 13, 2004;

Officer Jennifer T. Fettig of Detroit, died February 16, 2004;

Deputy Sheriff Perry Austin Fillmore of Clinton County, died March 27, 2004;

Deputy Sheriff John Kevin Gunsell of Otsego County, died September 12, 2004;

Officer Mark Anthony Sawyers of Sterling Heights, died June 5, 2004; and

Detective John Raymond Weir of Sault Ste. Marie, died November 7, 2004.

ADDITIONAL STATEMENTS

TRIBUTE TO ALABAMA'S WINNERS OF THE WE THE PEOPLE: THE CITIZEN AND THE CONSTITUTION COMPETITION

• Mr. SESSIONS. Mr. President, I would like to take this opportunity to recognize a group of students in my home State of Alabama. On April 30, 2005, students from Vestavia Hills High School in Birmingham, AL, traveled to Washington, D.C. to take part in the national finals of We the People: The Citizen and the Constitution national competition. This competition is an extensive educational program developed specifically to educate young people about the United States Constitution and Bill of Rights.

More than 1,200 students from across the country participated in a 3-day academic competition. They participated in a simulated congressional hearing in which they ''testified'' before a panel. Students got to demonstrate their knowledge and understanding of constitutional principles. Additionally, they had the opportunity to evaluate, take, and defend positions on relevant historical and present day issues.

Prior to their trip to Washington, these outstanding students from Vestavia Hills High School proved their knowledge of the United States Constitution, by winning their statewide competition, thus earning them the chance to come to our Nation's capital to compete at the national level. I am proud these students represented the State of Alabama on a national level in this year's We the People competition.

I would like to pay special tribute to the teacher of the class, Amy Maddox. The students of Vestavia Hills High School participating in the We the People: The Citizens and the Constitution competition are the following: Matthew Barley, Katie Barzler, Maria Begamaz, Michelle Blackburn, Brandon Demyan, Lorey Feagin, Anne Hackney, Ashley Holmes, Abby Jones, Staci Karpova, Thomas Lide, Kristin McDonald, Freman Meri-Glenn, Tucker Reeves, Luke Romano, Erin Snow, and Christopher Willoughby. I would like to applaud their efforts.

Mr. President, the achievements of these students are continued proof that the civic education initiative we approved in this chamber is paying dividends. We the People, which is part of the civic education initiative of the No Child Left Behind legislation, is giving students the lifelong skills they need to be effective, engaged, and informed citizens. I commend the Center for Civic Education and the National Conference of State Legislatures for their leadership in sponsoring this excellent service learning-type program. I also would like to commend Janice Cowin, the state coordinator from the Alabama Center for Law & Civic Education for her work in administering the program in my State.•

MESSAGE FROM THE HOUSE

At 2:22 p.m., a message from the House of Representatives, delivered by 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. 2361. An act making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 2361. An act making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes; to the Committee on Appropriations.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

S. 1084. A bill to eliminate child poverty, and for other purposes.

S. 1085. A bill to provide for paid sick leave to ensure that Americans can address their own health needs and the health needs of their families.

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–2291. A communication from the Under Secretary of Defense for Acquisition, Technology, and Logistics, Department of Defense , transmitting, pursuant to law, a report relative to proposed test and evaluation (T&E) budgets that are not certified by the Director of the Defense Test Resource Management Center (TRMC) to be adequate; to the Committee on Armed Services.

EC–2292. A communication from the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report on the impact of the improvements to compensation and benefits made by the National Defense Authorization Act for Fiscal Year 2000 on the recruiting and retention programs of the Armed Forces; to the Committee on Armed Services.

EC–2293. A communication from the Under Secretary of Defense for Acquisition, Technology, and Logistics, Department of Defense, transmitting, pursuant to law, a report relative to the Defense Base Closure and Realignment Act of 1990, as amended; to the Committee on Armed Services.

EC–2294. A communication from the Under Secretary of Defense, Personnel and Readiness, Department of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC–2295. A communication from the Under Secretary of Defense, Personnel and Readiness, Department of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC–2296. A communication from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Under Secretary of Defense (Acquisition, Technology and Logistics), received on May 18, 2005; to the Committee on Armed Services.

EC–2297. A communication from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Deputy Under Secretary of Defense (Logistics and Materiel Readiness), received on May 18, 2005; to the Committee on Armed Services.

EC–2298. A communication from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Under Secretary of the Army, received on May 18, 2005; to the Committee on Armed Services.

EC–2299. A communication from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Under Secretary of the Air Force, received on May 18, 2005; to the Committee on Armed Services.

EC–2300. A communication from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Deputy Secretary of Defense, received on May 18, 2005; to the Committee on Armed Services.

EC–2301. A communication from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Secretary of the Air Force (Financial Management), received on May 18, 2005; to the Committee on Armed Services.

EC–2302. A communication from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Secretary of the Air Force (Financial Management), received on May 18, 2005; to the Committee on Armed Services.

EC–2303. A communication from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Under Secretary of Defense (Acquisition, Technology and Logistics), received on May 18, 2005; to the Committee on Armed Services.

EC–2304. A communication from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Secretary of the Navy (Installations and Environment), received on May 18, 2005; to the Committee on Armed Services.

EC–2305. A communication from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Secretary of the Army (Civil Works), received on May 18, 2005; to the Committee on Armed Services.

EC–2306. A communication from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Secretary of the Air Force, received on May 18, 2005; to the Committee on Armed Services.

EC–2307. A communication from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Secretary of the Air Force, received on May 18, 2005; to the Committee on Armed Services.

EC–2308. A communication from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Secretary of the Air Force, received on May 18, 2005; to the Committee on Armed Services.

EC–2309. A communication from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $59,000,000 to Iraq; to the Committee on Foreign Relations.

EC–2310. A communication from the Chairman, Federal Mine Safety and Health Review Commission, transmitting, pursuant to law, a report relative to the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002; to the Committee on Homeland Security and Governmental Affairs.

EC–2311. A communication from the Assistant General Counsel for Regulations, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Treble Damages for Failure to Engage in Loss Mitigation'' ((RIN2501–AC66) (FR–4553–F–03)) received on May 17, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–2312. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Maintenance Plans; Michigan; Southeast Michigan Ozone Maintenance Plan Update to the State Implementation Plan'' (FRL No. 7915–8) received on May 18, 2005; to the Committee on Environment and Public Works.

EC–2313. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''XL Rulemaking Extension of Expiration Date for New York State Public Utilities; Hazardous Waste Management Systems'' (FRL No. 7916–2) received on May 18, 2005; to the Committee on Environment and Public Works.

EC–2314. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Underground Storage Tank Program: Approved State Program for Minnesota'' (FRL No. 7909–5) received on May 18, 2005; to the Committee on Environment and Public Works.

EC–2315. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Waste Management System; Testing and Monitoring Activities; Methods Innovation Rule and SW–846 Final Update IIIB'' (FRL No. 7916–1) received on May 18, 2005; to the Committee on Environment and Public Works.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. FEINSTEIN (for herself and Ms. SNOWE):

S. 1090. A bill to provide certain requirements for the siting, construction, expansion, and operation of liquefied natural gas import terminals, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SALAZAR:

S. 1091. A bill to establish a Federal incentive program as part of a national gasification strategy to stimulate commercial deployment of integrated gasification combined cycle and industrial gasification technology; to the Committee on Energy and Natural Resources.

By Mr. SALAZAR:

S. 1092. A bill to establish a program under which the Secretary of the Interior offers for lease certain land for oil shale development, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SALAZAR:

S. 1093. A bill to reauthorize and revise the Renewable Energy Production Incentive program, and for other purposes; to the Committee on Finance.

By Mr. ENZI:

S. 1094. A bill to amend the Mineral Leasing Act to establish procedures for the reinstatement of leases terminated due to unforeseeable circumstances; to the Committee on Energy and Natural Resources.

By Mr. CORNYN (for himself and Mr. LEAHY):

S. 1095. A bill to amend chapter 113 of title 18, United States Code, to clarify the prohibition on the trafficking in goods or services, and for other purposes; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 65

At the request of Mr. INHOFE, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 65, a bill to amend the age restrictions for pilots.

S. 420

At the request of Mr. KYL, the name of the Senator from Texas (Mrs.

HUTCHISON) was added as a cosponsor of S. 420, a bill to make the repeal of the estate tax permanent.

S. 875

At the request of Mr. BINGAMAN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 875, a bill to amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to increase participation in section 401(k) plans through automatic contribution trusts, and for other purposes.

S. 962

At the request of Mr. GRASSLEY, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 962, a bill to amend the Internal Revenue Code of 1986 to allow a credit to holders of qualified bonds issued to finance certain energy projects, and for other purposes.

S. 1060

At the request of Mr. COLEMAN, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 1060, a bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for the purchase of hearing aids.

S. 1075

At the request of Mr. THUNE, the names of the Senator from Connecticut (Mr. LIEBERMAN), the Senator from New Jersey (Mr. CORZINE) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 1075, a bill to postpone the 2005 round of defense base closure and realignment.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CORNYN (for himself and Mr. LEAHY):

S. 1095. A bill to amend chapter 113 of title 18, United States Code, to clarify the prohibition on the trafficking in goods or services, and for other purposes; to the Committee on the Judiciary.

Mr. CORNYN. Mr. President, today I am pleased to join Senator LEAHY to offer important legislation in our continued bipartisan effort to combat the trafficking of illegitimate goods throughout the world.

Recently, we have worked together on a matter near and dear to my heart—good government legislation related to the Freedom of Information Act, and it is indeed a pleasure to work with the Ranking Member of the Judiciary Committee again.

The rampant distribution of illegitimate goods—be it counterfeited products, illegal copies of copyrighted works or any other form of piracy—undermines property rights, threatens American jobs, decreases consumer safety and, often times, supports organized crime and terrorist activity.

Amazingly, it is estimated that between 5 percent and 7 percent worldwide trade is conducted with counterfeit goods and services. According to FBI estimates, counterfeiting costs U.S. businesses as much as $200–$250 billion annually—and that costs Americans their jobs—more than 750,000 jobs according to U.S. Customs.

In recent years, this plague on global trade has grown significantly. According to the World Customs Organization and Interpol, the global trade in illegitimate goods has increased from $5.5 billion in 1992 to more than $600 billion per year today. That is—$600 billion per year illegally extracted from the global economy.

But perhaps most troubling, the counterfeit trade threatens our safety and our security. Counterfeit goods undermine our confidence in the reliability of our goods and service. For example, the Federal Aviation Administration estimates that 2 percent the 26 million airline parts installed each year are counterfeit. And the Federal Drug Administration estimates that as much as 10 percent pharmaceuticals are counterfeit. Worse yet—evidence indicates that the counterfeit trade supports terrorist activities. Indeed, Al Qaeda training manuals recommended the sale of fake goods to raise revenue.

And the reach of counterfeiting runs deep in my own home State of Texas. Data is difficult to collect, but a 1997 piece detailing Microsoft's efforts to combat counterfeiting and piracy—while dated—pointed out that this type of activity costs Texas over 10,000 jobs and almost $1 billion. Today, we know those numbers are much higher.

We must act to stop this illegal activity.

The legislation we offer today, the Protecting American Goods and Services Act, is not complicated, it is not long—but its global impact will be significant. The legislation is designed to provide law enforcement with additional tools to curb the flow of these illegitimate goods.

First, the bill would make it specifically illegal to import or export unauthorized copies of copyrighted works or counterfeit goods. Second, it would make it illegal to possess counterfeit goods with the intention of selling them. Finally, the bill would more clearly specify that it is illegal to give away counterfeit goods in exchange for some future benefit—in effect, the ''bartering'' of counterfeit goods in such a way that avoids criminality.

Each of these items was highlighted by the Department of Justice in its October, 2004 report on its Task Force on Intellectual Property. In it, the Department describes the significant limitation law enforcement often times faces in pursuing counterfeiters and offers, among others, the principles embraced in the Protecting American Goods and Services Act, as possible solutions to these obstacles.

This legislation, and other reforms, will help turn the tide of the growing counterfeit trade. The legislation is critically important to law enforcement—but it is even more critical for businesses, large and small, throughout America—including in my home State of Texas—as well as for ensuring the safety of consumers around the globe. Those who traffic in counterfeit goods put Americans in danger, support terrorism and undermine the health of our Nation's economy. It is time to put an end to this scourge on society.

I look forward to working with my colleagues to move this legislation forward, and in so doing, protect property rights, protect consumer safety, preserve American jobs and bolster the American economy.

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. 1095

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 ''Protecting American Goods and Services Act of 2005''.

SEC. 2. PROHIBITION ON TRAFFICKING OF CERTAIN GOODS AND SERVICES.

(a) IN GENERAL.—Section 2320 of title 18, United States Code, is amended—

(1) by striking subsection (a) and inserting the following:

''(a)(1) Any person who intentionally traffics or attempts to traffic in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services—

''(A) if an individual, shall be fined not more than $2,000,000, imprisoned not more than 10 years, or both; and

''(B) if a person other than an individual, shall be fined not more than $5,000,000.

''(2) Any person who possesses goods with a counterfeit mark with an intent to traffic such goods—

''(A) if an individual, shall be fined not more that $2,000,000, or imprisoned not more than 10 years, or both; and

''(B) if a person other than an individual, shall be fined not more than $5,000,000.

''(3) In the case of an offense by a person under this section that occurs after that person is convicted of another offense under this section, the person—

''(A) if an individual, shall be fined not more than $5,000,000, imprisoned not more than 20 years, or both; and

''(B) if other than an individual, shall be fined not more than $15,000,000.''; and

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

''(2) the term 'traffic' means—

''(A) transport, transfer, or otherwise dispose of, to another as consideration for anything of value or without consideration; or

''(B) make or obtain control of with intent to so transport, transfer, or dispose of; and''.

(b) PROHIBITION OF TRANSPORT OF COUNTERFEIT GOODS OR UNAUTHORIZED COPIES AND PHONORECORDS OF COPYRIGHTED WORKS.—

(1) IN GENERAL.—Chapter 113 of title 18, United States Code, is amended by inserting after section 2320 the following:

''§ 2320A. Transport of counterfeit goods and unauthorized copyrighted works into or out of the United States

''(a) DEFINITIONS.—In this section—

''(1) the terms 'copies' and 'phonorecords' have the respective meanings given under section 101 of title 17;

''(2) the term 'counterfeit mark' has the meaning given under section 2320(e)(1); and

''(3) the term 'United States' means each of the several States of the United States, the

District of Columbia, and the territories and possessions of the United States.

''(b) OFFENSE.—Any person who intentionally transports goods bearing a counterfeit mark or copies or phonorecords of a copyrighted work not authorized by the copyright holder into or out of the United States for the purposes of commercial advantage or private financial gain shall be fined not more than $100,000, imprisoned not more than 10 years, or both.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 113 of title 18, United States Code, is amended by inserting after the item relating to section 2320 the following:

''2320A. Transport of counterfeit goods and unauthorized copyrighted works into or out of the United States.''.

Mr. LEAHY. Today, I am partnering with Senator CORNYN in another of our bipartisan efforts to improve the lives of Americans through effective and efficient government. The bill we are introducing, the ''Protecting American Goods and Services Act of 2005,'' will strengthen our ability to combat the escalating problem of counterfeiting worldwide. In order to effectively fight intellectual property theft, we need stiff penalties for counterfeiters and those who are caught with counterfeit goods with the intent to traffic their false wares. Ours is a short bill—indeed, it is only four pages long—but it will have global implications in the fight against piracy.

Counterfeiting is a growing problem that costs our economy hundreds of billions of dollars every year and has been linked to organized crime, including terrorist organizations. According to the International Anti-Counterfeiting Coalition, counterfeit parts have been discovered in helicopters sold to NATO, in jet engines, bridge joints, brake pads, and fasteners in equipment designed to prevent nuclear reactor meltdowns. The World Health Organization estimates that the market for counterfeit drugs is about $32 billion each year.

Several years ago, Senator HATCH joined me in sponsoring the ''Anti-counterfeiting Consumer Protection Act of 1996,'' which addressed counterfeiting by amending several sections of our criminal and tariff codes. That law made important changes, particularly by expanding RICO, the federal anti-racketeering law, to cover crimes involving counterfeiting and copyright and trademark infringement. Then, as now, trafficking in counterfeit goods hurts purchasers, state and federal governments, and economies at every level.

Perhaps most disturbingly, the U.S. Customs Service reports that terrorists have used transnational counterfeiting operations to fund their activities: The sale of counterfeit and pirated music, movies, software, T-shirts, clothing, and fake drugs ''accounts for much of the money the international terrorist network depends on to feed its operations.''

Last year, as in years past, I worked with Senator ALLEN on an amendment to the Foreign Operations bill that provides the State Department with vital resources to combat piracy of U.S. goods abroad. The bill we ultimately passed included $3 million for this important purpose. Yet more work both at home and abroad remains. When you consider that the economic impact of tangible piracy in counterfeit goods is estimated to be roughly $350 billion a year and to constitute between 5 percent and 7 percent of worldwide trade, a few million dollars is a worthwhile investment.

We have certainly seen how this form of theft touches the lives of hard-working Vermonters. Burton Snowboards is a small company, whose innovation has made it an industry leader in snowboarding equipment and apparel. Unfortunately, knock-off products carrying Burton's name have been found across the globe. Vanessa Price, a representative of Burton, testified about counterfeiting at the Judiciary Committee's March 23, 2004, hearing on this topic. In addition to learning about the economic costs of counterfeiting, I asked her after the hearing about the risks posed to consumers by these goods. Her answer was chilling: ''In the weeks since my Senate testimony, I discovered a shipment of counterfeit Burton boots for sale through a discount sports outfit . . . After examining the poor quality of the counterfeit boots, we determined that anyone using the boots for snowboarding risks injury due to a lack of reinforcement and support in the product's construction.''

Customers and businesses lose out to counterfeiters in other ways, too. SB Electronics in Barre, Vt. has seen its capacitors reverse engineered and its customers lost to inferior copycat models. Vermont Tubbs, a furniture manufacturer in Rutland, has seen its designs copied, produced offshore with inferior craftsmanship and materials, and then reimported, so that the company is competing against cheaper versions of its own products. And Hubbardton Forge in Castleton, Vt. has seen its beautiful and original lamps counterfeited and then sold within the United States at prices—and quality—far below their own. This is wrong. It is unfair to consumers who deserve the high quality goods they think they are paying for, and it is unfair to innovators who play by the rules and deserve to profit from their labor.

The bill that I am introducing today with Senator CORNYN will help to combat this growing scourge.

The bill will criminalize the possession of counterfeit goods with the intent to sell or traffic in those goods, and it expands the definition of ''traffic'' to include any distribution of counterfeits with the expectation of gaining something of value—criminals should not be able to skirt the law simply because they barter illegal goods and services in exchange for their illicit wares. Finally, the bill will criminalize the importation and exportation of counterfeit goods, as well as of bootleg copies of copyrighted works into and out of the United States.

By tying off these loopholes and improving U.S. laws on counterfeiting, we will be sending a powerful message to the criminals who belong in jail, and to our innovators.

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

On Tuesday, May 17, 2005, the Senate passed H.R. 3, as follows:

H.R. 3

Resolved, That the bill from the House of Representatives (H.R. 3) entitled ''An Act to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

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 2005''.

(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 2005.

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

''(J) Archaeological planning and research.

''(K) Environmental mitigation—

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

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

''(L) Establishment of transportation museums.

''(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) $6,017,113,333 for fiscal year 2005;

(B) $6,258,525,160 for fiscal year 2006;

(C) $6,276,479,750 for fiscal year 2007;

(D) $6,589,235,166 for fiscal year 2008; and

(E) $6,685,150,152 for fiscal year 2009.

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

(A) $7,316,858,660 for fiscal year 2005;

(B) $7,606,591,948 for fiscal year 2006;

(C) $7,628,384,160 for fiscal year 2007;

(D) $8,007,988,062 for fiscal year 2008; and

(E) $8,124,348,085 for fiscal year 2009.

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

(A) $5,171,723,801 for fiscal year 2005;

(B) $5,365,009,649 for fiscal year 2006;

(C) $5,349,259,875 for fiscal year 2007;

(D) $5,647,754,080 for fiscal year 2008; and

(E) $5,729,786,635 for fiscal year 2009.

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

(A) $7,588,497,988 for fiscal year 2005;

(B) $7,878,361,598 for fiscal year 2006;

(C) $7,900,976,158 for fiscal year 2007;

(D) $8,294,904,735 for fiscal year 2008; and

(E) $8,415,808,100 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) $2,051,899,502 for fiscal year 2005;

(B) $2,124,435,995 for fiscal year 2006;

(C) $2,130,535,073 for fiscal year 2007;

(D) $2,236,776,417 for fiscal year 2008; and

(E) $2,269,463,235 for fiscal year 2009.

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

(A) $1,253,007,425 for fiscal year 2005;

(C) $1,291,977,089 for fiscal year 2006;

(D) $1,305,007,731 for fiscal year 2007;

(E) $1,369,468,771 for fiscal year 2008; and

(F) $1,389,408,993 for fiscal year 2009.

(7) APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM PROGRAM.—For the Appalachian development highway system program under section 170 of that title, $552,048,803 for each of fiscal years 2005 through 2009.

(8) RECREATIONAL TRAILS PROGRAM.—For the recreational trails program under section 206 of that title, $56,140,557 for each of fiscal years 2005 through 2009.

(9) FEDERAL LANDS HIGHWAYS PROGRAM.—

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

(i) $305,054,403 for fiscal year 2005;

(ii) $328,520,126 for fiscal year 2006;

(iii) $351,985,849 for fiscal year 2007;

(iv) $375,451,572 for fiscal year 2008; and

(v) $398,917,296 for fiscal year 2009.

(B) RECREATION ROADS.—For recreation roads under section 204 of that title, $46,931,447 for each of fiscal years 2005 through 2009.

(C) PARK ROADS AND PARKWAYS.—

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

(I) $320,000,000 for fiscal year 2005; and

(II) $330,000,000 for each of fiscal years 2006 through 2009.

(ii) MINIMUM ALLOCATION TO CERTAIN STATES.—A State more than 50 percent of the acreage of which is within the National Park System shall receive not less than 3 percent of any funds appropriated under this subparagraph, to be used for park transportation projects.

(iii) MODIFICATION OF AUTHORIZATION.—Any amount authorized to be appropriated under section 2001(a)(1)(A) to carry out surface transportation research shall be reduced by—

(I) for fiscal year 2005, $29,025,031; and

(II) for each of fiscal years 2006 through 2009, $29,638,742.

(D) REFUGE ROADS.—For refuge roads under section 204 of that title, $29,158,868 for each of fiscal years 2005 through 2009.

(E) PUBLIC LANDS HIGHWAYS.—For Federal lands highways under section 204 of that title, $281,588,679 for each of fiscal years 2005 through 2009.

(F) SAFETY.—For safety under section 204 of that title, $37,545,157 for each of fiscal years 2005 through 2009.

(10) MULTISTATE CORRIDOR PROGRAM.—For the multistate corridor program under section 171 of that title—

(A) $124,987,840 for fiscal year 2005;

(B) $145,819,146 for fiscal year 2006;

(C) $166,650,453 for fiscal year 2007;

(D) $187,481,760 for fiscal year 2008; and

(E) $208,313,066 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) $124,987,840 for fiscal year 2005;

(B) $145,819,146 for fiscal year 2006;

(C) $166,650,453 for fiscal year 2007;

(D) $187,481,760 for fiscal year 2008; and

(E) $208,313,066 for fiscal year 2009.

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

(A) $32,852,013 for fiscal year 2005;

(B) $33,790,642 for fiscal year 2006;

(C) $34,729,270 for fiscal year 2007; and

(D) $36,606,528 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 $0 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, $56,916,300 for each of fiscal years 2005 through 2009.

(15) COMMONWEALTH OF PUERTO RICO HIGHWAY PROGRAM.—For the Commonwealth of Puerto Rico highway program under section 173 of that title—

(A) $136,101,195 for fiscal year 2005;

(B) $139,855,711 for fiscal year 2006;

(C) $144,548,855 for fiscal year 2007;

(D) $150,180,629 for fiscal year 2008; and

(E) $152,996,516 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, $8,386,289 for each of fiscal years 2005 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), $28,158,868 for each of fiscal years 2005 through 2009.

(18) DELTA REGION TRANSPORTATION DEVELOPMENT PROGRAM.—For planning and construction activities authorized under the Delta Regional Authority, $75,090,314 for each of fiscal years 2005 through 2009.

(19) INTERMODAL PASSENGER FACILITIES.—For intermodal passenger facilities under subchapter III of chapter 55 of title 49, United States Code, $9,386,289 for each of fiscal years 2005 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) $34,263,000,000 for fiscal year 2005;

(2) $38,924,000,000 for fiscal year 2006;

(3) $39,352,000,000 for fiscal year 2007;

(4) $41,304,000,000 for fiscal year 2008; and

(5) $42,007,000,000 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;

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

(11) section 1106 of this Act, to the extent that funds obligated in accordance with that section were not subject to a limitation on obligations at the time at which the funds were initially made available for obligation.

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

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

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

(B) programs funded from the administrative takedown authorized by section 104(a)(1) of title 23, United States Code; 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 $639,000,000, and the Appalachian development highway system program) that are apportioned by the Secretary under this Act and title 23, United States Code, in the ratio that—

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

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

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

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

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

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

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

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

(B) title 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 2005 through 2009, the Secretary shall distribute to the States any funds that—

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

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

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

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

(g) SPECIAL 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) $436,462,453 for fiscal year 2005;

(2) $450,541,887 for fiscal year 2006;

(3) $464,621,321 for fiscal year 2007;

(4) $478,700,755 for fiscal year 2008; and

(5) $492,780,189 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 ''$46,931,447''.

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) $436,462,453 for fiscal year 2005;

''(B) $450,541,887 for fiscal year 2006;

''(C) $464,621,321 for fiscal year 2007;

''(D) $478,700,755 for fiscal year 2008; and

''(E) $492,780,189 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 ''$18,800,000 for each of fiscal years 1998 through 2002'' and inserting ''$30,000,000 for each of fiscal years 2005 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 2005 through 2009, the Secretary shall allocate among the States amounts sufficient to ensure that no State receives a percentage of the total apportionments for the fiscal year for the programs specified in paragraph (2) that is less than the percentage calculated under subsection (b).

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

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

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

''(C) the 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;

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

''(N) the border planning, operations, technology, and capacity program under section 172.

''(b) STATE PERCENTAGE.—

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

''(A) 92 percent of the quotient obtained by dividing—

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

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

''(B) for a State with a total population density of less than 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, a median household income of less than $35,000, as reported in that decennial census, or a State with a fatality rate during 2002 on Interstate highways that is greater than 1 fatality for each 100,000,000 vehicle miles traveled on Interstate highways, 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 2005)—

''(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 115 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.—

''(A) IN GENERAL.—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 the percentage specified in subparagraph (B) 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.

''(B) PERCENTAGES.—The percentages referred to in subparagraph (A) are—

''(i) for fiscal year 2005, 90.5 percent;

''(ii) for each of fiscal years 2006 through 2008, 91 percent; and

''(iii) for fiscal year 2009, 92 percent.

''(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 2005, 124 percent;

''(B) for fiscal year 2006, 128 percent;

''(C) for fiscal year 2007, 131 percent;

''(D) for fiscal year 2008, 137 percent; and

''(E) 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 2005 through 2009.''.

(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 105 and inserting the following:

''105. Equity bonus program.''

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 2005; 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).

SEC. 1106. USE OF EXCESS FUNDS AND FUNDS FOR INACTIVE PROJECTS.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE FUNDS.—

(A) IN GENERAL.—The term ''eligible funds'' means excess funds or inactive funds for a specific transportation project or activity that were—

(i) allocated before fiscal year 1998; and

(ii) designated in a public law, or a report accompanying a public law, for allocation for the specific surface transportation project or activity.

(B) INCLUSION.—The term ''eligible funds'' includes funds described in subparagraph (A) that were allocated and designated for a demonstration project.

(2) EXCESS FUNDS.—The term ''excess funds'' means—

(A) funds obligated for a specific transportation project or activity that remain available for the project or activity after the project or activity has been completed or canceled; or

(B) an unobligated balance of funds allocated for a transportation project or activity that the State in which the project or activity was to be carried out certifies are no longer needed for the project or activity.

(3) INACTIVE FUNDS.—The term ''inactive funds'' means—

(A) an obligated balance of Federal funds for an eligible transportation project or activity against which no expenditures have been charged during any 1-year period beginning after the date of obligation of the funds; and

(B) funds that are available to carry out a transportation project or activity in a State, but, as certified by the State, are unlikely to be advanced for the project or activity during the 1-year period beginning on the date of certification.

(b) AVAILABILITY FOR STP PURPOSES.—Eligible funds shall be—

(1) made available in accordance with this section to the State that originally received the funds; and

(2) available for obligation for any eligible purpose under section 133 of title 23, United States Code.

(c) RETENTION FOR ORIGINAL PURPOSE.—

(1) IN GENERAL.—The Secretary may determine that eligible funds identified as inactive funds shall remain available for the purpose for which the funds were initially made available if the applicable State certifies that the funds are necessary for that initial purpose.

(2) REPORT.—A certification provided by a State under paragraph (1) shall include a report on the status of, and an estimated completion date for, the project that is the subject of the certification.

(d) AUTHORITY TO OBLIGATE.—Notwithstanding the original source or period of availability of eligible funds, the Secretary may, on the request by a State—

(1) obligate the funds for any eligible purpose under section 133 of title 23, United States Code; or

(2)(A) deobligate the funds; and

(B) reobligate the funds for any eligible purpose under that section.

(e) APPLICABILITY.—

(1) IN GENERAL.—Subject to paragraph (2), this section applies only to eligible funds.

(2) DISCRETIONARY ALLOCATIONS; SECTION 125 PROJECTS.—This section does not apply to funds that are—

(A) allocated at the discretion of the Secretary and for which the Secretary has the authority to withdraw the allocation for use on other projects; or

(B) made available to carry out projects under section 125 of title 23, United States Code.

(f) PERIOD OF AVAILABILITY; TITLE 23 REQUIREMENTS.—

(1) IN GENERAL.—Notwithstanding the original source or period of availability of eligible funds obligated, or deobligated and reobligated, under subsection (d), the eligible funds—

(A) shall remain available for obligation for a period of 3 fiscal years after the fiscal year in which this Act is enacted; and

(B) except as provided in paragraph (2), shall be subject to the requirements of title 23, United States Code, that apply to section 133 of that title, including provisions relating to cost-sharing.

(2) EXCEPTION.—With respect to eligible funds described in paragraph (1)—

(A) section 133(d) of title 23, United States Code, shall not apply; and

(B) the period of availability of the eligible funds shall be determined in accordance with this section.

(g) SENSE OF CONGRESS REGARDING USE OF ELIGIBLE FUNDS.—It is the sense of Congress that eligible funds made available under this Act or title 23, United States Code, should be available for obligation for transportation projects and activities in the same geographic region for which the eligible funds were initially made available.

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 and hurricane evacuation routes on the Federal-aid system; or

''(2) provide operational improvements (including traffic management and intelligent transportation system strategies and limited capacity enhancements) at points of recurring highway congestion or through transportation systemic changes to manage or ameliorate 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 2005; 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 POLICY STUDY COMMISSION.—

(1) ESTABLISHMENT.—There is established a commission to be known as the ''National Surface Transportation Policy Study Commission'' (referred to in this subsection as the ''Commission'').

(2) MEMBERSHIP.—

(A) COMPOSITION.—The Commission shall be composed of 12 members, of whom—

(i) 1 member shall be the Secretary, who shall serve as Chairperson;

(ii) 3 members shall be appointed by the President;

(iii) 2 members shall be appointed by the Speaker of the House of Representatives;

(iv) 2 members shall be appointed by the minority leader of the House of Representatives;

(v) 2 members shall be appointed by the majority leader of the Senate; and

(vi) 2 members shall be appointed by the minority leader of the Senate.

(B) QUALIFICATIONS.—Members appointed under paragraph (1)—

(i) shall include individuals representing State and local governments, metropolitan planning organizations, transportation-related industries, academic and technical institutions, and public interest organizations involved with scientific, regulatory, economic, and environmental transportation activities; and

(ii) shall be balanced geographically to the extent consistent with maintaining the highest level of expertise on the Commission.

(C) DATE OF APPOINTMENTS.—The appointment of a member of the Commission shall be made not later than 120 days after the date of establishment of the Commission.

(D) TERMS.—A member shall be appointed for the life of the Commission.

(E) VACANCIES.—A vacancy on the Commission—

(i) shall not affect the powers of the Commission; and

(ii) shall be filled in the same manner as the original appointment was made.

(F) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold the initial meeting of the Commission.

(G) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(H) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(I) VICE CHAIRPERSON.—The Commission shall select a Vice Chairperson from among the members of the Commission.

(3) DUTIES.—

(A) IN GENERAL.—The Commission shall—

(i) conduct a complete and comprehensive investigation and study of—

(I) the current condition and future needs of the surface transportation system; and

(II) 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) 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;

(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 sup port the Highway Trust Fund; and

(ii) the time frame for taking those actions.

(4) RELATED WORK.—To the maximum extent practicable, the study shall build on related work that has been completed by—

(A) the Secretary of Transportation;

(B) the Secretary of Energy;

(C) the Transportation Research Board, including the findings, conclusions, and recommendations of the recent study conducted by the Transportation Research Board on alternatives to the fuel tax to support highway program financing; and

(D) other entities and persons.

(5) SURFACE TRANSPORTATION NEEDS.—With respect to surface transportation needs, the investigation and study shall specifically address—

(A) the current condition and performance of the Interstate System (including the physical condition of bridges and pavements and operational characteristics and performance), relying primarily on existing data sources;

(B) the future of the Interstate System, based on a range of legislative and policy approaches for 15-, 30-, and 50-year time periods;

(C) the expected demographics and business uses that impact the surface transportation system;

(D) the expected use of the surface transportation system, including the effects of changing vehicle types, modes of transportation, fleet size and weights, and traffic volumes;

(E) desirable design policies and standards for future improvements of the surface transportation system, including additional access points;

(F) the identification of urban, rural, national, and interregional needs for the surface transportation system;

(G) the potential for expansion, upgrades, or other changes to the surface transportation system, including—

(i) deployment of advanced materials and intelligent technologies;

(ii) critical multistate, urban, and rural corridors needing capacity, safety, and operational enhancements;

(iii) improvements to intermodal linkages;

(iv) security and military deployment enhancements;

(v) strategies to enhance asset preservation; and

(vi) implementation strategies;

(H) the improvement of emergency preparedness and evacuation using the surface transportation system, including—

(i) examination of the potential use of all modes of the surface transportation system in the safe and efficient evacuation of citizens during times of emergency;

(ii) identification of the location of critical bottlenecks; and

(iii) development of strategies to improve system redundancy, especially in areas with a high potential for terrorist attacks;

(I) alternatives for addressing environmental concerns associated with the future development of the surface transportation system;

(J) the 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.

(6) FINANCING.—With respect to financing, the study shall address specifically—

(A) the advantages and disadvantages of alternative revenue sources to meet anticipated Federal surface transportation financial requirements;

(B) recommendations concerning the most promising revenue sources to support long-term Federal surface transportation financing requirements;

(C) development of a broad transition strategy to move from the current tax base to new funding mechanisms, including the time frame for various components of the transition strategy;

(D) recommendations for additional research that may be needed to implement recommended alternatives; and

(E) the extent to which revenues should reflect the relative use of the highway system.

(7) FINANCING RECOMMENDATIONS.—In developing financing 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 nontaxed 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.

(8) TECHNICAL ADVISORY COMMITTEE.—The Secretary shall establish a technical advisory committee, in a manner consistent with the Federal Advisory Committee Act (5 U.S.C. App.), to collect and evaluate technical input from—

(A) 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 to be appropriate by the Secretary to ensure a diverse range of views.
(9) 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 to be appropriate.
(10) POWERS OF THE COMMISSION.—
(A) HEARINGS.—The Commission may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this section.
(B) INFORMATION FROM FEDERAL AGENCIES.—
(i) IN GENERAL.—The Commission may secure directly from a Federal agency such information as the Commission considers necessary to carry out this section.
(ii) PROVISION OF INFORMATION.—On request of the Chairperson of the Commission, the head of a Federal agency shall provide the requested information to the Commission.
(C) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government.
(D) DONATIONS.—The Commission may accept, use, and dispose of donations of services or property.
(11) COMMISSION PERSONNEL MATTERS.—
(A) MEMBERS.—A member of the Commission shall serve without pay but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.
(B) CONTRACTORS.—The Commission may enter into contracts with an appropriate organizations, agencies, and entities to conduct the study required under this section, under the strategic guidance of the Commission.
(C) ADMINISTRATIVE SUPPORT.—On the request of the Commission, the Administrator of the Federal Highway Administration shall provide to the Commission, on a reimbursable basis, the administrative support and services necessary for the Commission to carry out the duties of the Commission under this section.
(D) DETAIL OF PERSONNEL.—
(i) IN GENERAL.—On the request of the Commission, the Secretary may detail, on a reimbursable basis, any of the personnel of the Department to the Commission to assist the Commission in carrying out the duties of the Commission under this section.
(ii) CIVIL SERVICE STATUS.—The detail of the employee shall be without interruption or loss of civil service status or privilege.
(12) COOPERATION.—The staff of the Secretary shall cooperate with the Commission in the study required under this section, including providing such nonconfidential data and information as are necessary to conduct the study.
(13) RELATIONSHIP TO OTHER LAW.—
(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), funds made available to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code.
(B) FEDERAL SHARE.—The Federal share of the cost of the study and the Commission under this section shall be 100 percent.
(C) AVAILABILITY.—Funds made available to carry out this section shall remain available until expended.
(14) DEFINITION OF SURFACE TRANSPORTATION SYSTEM.—In this subsection, the term ''surface transportation system'' includes—
(A) the National Highway System;
(B) the Interstate System;
(C) the strategic highway network;
(D) congressional high priority corridors;
(E) intermodal connectors;
(F) freight facilities;
(G) navigable waterways;
(H) mass transportation;
(I) freight and intercity passenger rail infrastructure and facilities; and
(J) surface access to airports.
(15) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $2,815,886 for fiscal year 2005.
(16) TERMINATION.—
(A) IN GENERAL.—The Commission shall terminate on the date that is 180 days after the date on which the Commission submits the report of the Commission under paragraph (10).
(B) RECORDS.—Not later than the date of termination of the Commission under subparagraph (A), all records and papers of the Commission shall be delivered to the Archivist of the United States for deposit in the National Archives.

SEC. 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) $46,931,447 for each fiscal year to carry out this section.

''(2) AVAILABILITY.—Notwithstanding section 118(a), funds made available under paragraph (1) shall not 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 INTERSTATE HIGHWAYS.

(a) DESIGNATION OF DANIEL PATRICK MOYNIHAN INTERSTATE HIGHWAY.—

(1) DESIGNATION.—Interstate Route 86 in the State of New York, extending from the Pennsylvania border near Lake Erie through Orange County, New York, shall be known and designated as the ''Daniel Patrick Moynihan Interstate Highway''.

(2) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the highway referred to in paragraph (1) shall be deemed to be a reference to the Daniel Patrick Moynihan Interstate Highway.

(b) DESIGNATION OF AMO HOUGHTON BYPASS.—

(1) DESIGNATION.—The 3-mile segment of Interstate Route 86 between the interchange of Interstate Route 86 with New York State Route 15 in the vicinity of Painted Post, New York, and the interchange of Interstate Route 86 with New York State Route 352 in the vicinity of Corning, New York, shall be known and designated as the ''Amo Houghton Bypass''.

(2) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the highway referred to in paragraph (1) shall be deemed to be a reference to the Amo Houghton Bypass.

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.

(c) INNOVATIVE AND COST-EFFECTIVE MATERIALS.—The Secretary shall encourage and provide incentives to States to make maximum use of innovative and cost-effective materials and products in highway construction.

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 a bridge project 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 $122,021,761 for each of fiscal years 2005 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 $1,877,258 for each of fiscal years 2005 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. 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. 1305. 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.''.

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 (including motorcyclist safety); 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 (including motorcyclists), bicyclists, pedestrians, and other highway users; and

''(ii) using such criteria as the State determines to be appropriate, establish the relative severity of those locations, in terms of accidents, injuries, deaths, traffic volume levels, and other relevant data;

''(C) adopt strategic and performance-based goals that—

''(i) address traffic safety, including behavioral and infrastructure problems and opportunities on all public roads;

''(ii) focus resources on areas of greatest need; and

''(iii) are coordinated with other State highway safety programs;

''(D) advance the capabilities of the State for traffic records data collection, analysis, and integration with other sources of safety data (such as road inventories) in a manner that—

''(i) complements the State highway safety program under chapter 4 and the commercial vehicle safety plan under section 31102 of title 49;

''(ii) includes all public roads;

''(iii) identifies hazardous locations, sections, and elements on public roads that constitute a danger to motorists (including motorcyclists), bicyclists, pedestrians, 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 State involving bicyclists and pedestrians.

''(i) ROADWAY SAFETY IMPROVEMENTS FOR OLDER DRIVERS AND PEDESTRIANS.—For each of fiscal years 2005 through 2009, $23,465,723 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 $187,725,786 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 certifies to 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 ''$563,177''.

SEC. 1403. INCREASED PENALTIES FOR HIGHER-RISK DRIVERS DRIVING WHILE INTOXICATED OR DRIVING UNDER THE INFLUENCE.

(a) IN GENERAL.—Section 164 of title 23, United States Code, is amended to read as follows:

''§ 164. Increased penalties for higher-risk drivers driving while intoxicated or driving under the influence

''(a) DEFINITIONS.—In this section:

''(1) BLOOD ALCOHOL CONCENTRATION.—The term 'blood alcohol concentration' means grams of alcohol per 100 milliliters of blood or the equivalent grams of alcohol per 210 liters of breath.

''(2) DRIVING WHILE INTOXICATED; DRIVING UNDER THE INFLUENCE.—The terms 'driving while intoxicated' and 'driving under the influence' mean driving or being in actual physical control of a motor vehicle while having a blood alcohol concentration above the permitted limit as established by each State.

''(3) HIGHER-RISK IMPAIRED DRIVER LAW.—

''(A) IN GENERAL.—The term 'higher-risk impaired driver law' means a State law that provides, as a minimum penalty, that—

''(i) an individual described in subparagraph (B) shall—

''(I) receive a driver's license suspension;

''(II)(aa) have the motor vehicle driven at the time of arrest impounded or immobilized for not less than 45 days; and

''(bb) for the remainder of the license suspension period, be required to install a certified alcohol ignition interlock device on the vehicle;

''(III)(aa) be subject to an assessment by a certified substance abuse official of the State that assesses the degree of abuse of alcohol by the individual; and

''(bb) be assigned to a treatment program or impaired driving education program, as determined by the assessment and paid for by the individual; and

''(IV) be imprisoned for not less than 10 days, or have an electronic monitoring device for not less than 100 days; and

''(ii) an individual who is convicted of driving while intoxicated or driving under the influence with a blood alcohol concentration level of 0.15 percent or greater shall—

''(I) receive a driver's license suspension; and

''(II)(aa) be subject to an assessment by a certified substance abuse official of the State that assesses the degree of abuse of alcohol by the individual; and

''(bb) be assigned to a treatment program or impaired driving education program, as determined by the assessment and paid for by the individual.

''(B) COVERED INDIVIDUALS.—An individual referred to in subparagraph (A)(i) is an individual who—

''(i) is convicted of a second or subsequent offense for driving while intoxicated or driving under the influence within a period of 7 consecutive years; or

''(ii) is convicted of a driving-while-suspended offense, if the suspension was the result of a conviction for driving under the influence.

''(4) LICENSE SUSPENSION.—The term 'license suspension' means, for a period of not less than 1 year—

''(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 45 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.

''(5) MOTOR VEHICLE.—

''(A) IN GENERAL.—The term 'motor vehicle' means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways.

''(B) EXCLUSIONS.—The term 'motor vehicle' does not include—

''(i) a vehicle operated solely on a rail line; or

''(ii) a commercial vehicle.

''(b) TRANSFER OF FUNDS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), on October 1, 2008, and each October 1 thereafter, if a State has not enacted or is not enforcing a higher-risk impaired driver law, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used in accordance with section 402(a)(3) only to carry out impaired driving programs.

''(2) NATIONWIDE TRAFFIC SAFETY CAMPAIGNS.—The Secretary shall—

''(A) reserve 25 percent of the funds that would otherwise be transferred to States for a fiscal year under paragraph (1); and

''(B) use the reserved funds to make law enforcement grants, in connection with nationwide traffic safety campaigns, to be used in accordance with section 402(a)(3).''.

(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 164 and inserting the following:

''164. Increased penalties for higher-risk drivers driving while intoxicated or driving under the influence.''.

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 $65,704,024 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)(A) Recommending federally-assisted projects to implement or accommodate the use of a device capable of—

''(i) automatically capturing images of, measuring the speed of, and relating to, multiple vehicles in multiple lanes simultaneously; and

''(ii) correlating measured speeds to capture images of specific identified vehicles traveling in excess of posted speed limits in road work zones and construction areas.

''(B) Recommending appropriate measures to protect public security and privacy, including—

''(i) notice to drivers of the use of the devices described in subparagraph (A); and

''(ii) with respect to the information generated by the devices described in subparagraph (A)—

''(I) limitations on the number of, and authorization process relating to, individuals that may access the information;

''(II) limitations on the use, disclosure, and retention of the information; and

''(III) any measures necessary to ensure that the information is accessed only by an individual that is authorized to access the information.

''(11) Ensuring that any recommendation made under any of paragraphs (7) through (10) provides for an exemption for applicability to a State, with respect to a project or class of projects—

''(A) to the extent that a State notifies the Secretary in writing that safety is not expected to be adversely affected by nonapplication of the recommendation to the project or class of projects; or

''(B) in any case in which the State has in effect a law that prohibits a project or class of projects (including a device or activity to be installed or carried out under such a project).''.

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. 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.''.

SEC. 1410. 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 knowingly sells a traffic signal preemption transmitter in or affecting interstate or foreign commerce to a person who is not acting on behalf of a public agency or private corporation authorized by law to provide fire protection, law enforcement, emergency medical services, transit services, maintenance, or other services for a Federal, State, or local government entity, shall, notwithstanding section 3571(b), be fined not more than $10,000, imprisoned not more than 1 year, or both.

''(2) USE.—A person who makes unauthorized use 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 mechanism that can change or alter a traffic signal's phase time or sequence.

''(2) UNAUTHORIZED USE.—

''(A) IN GENERAL.—The term 'unauthorized use' means use of a traffic signal preemption transmitter by a person who is not acting on behalf of a public agency or private corporation authorized by law to provide fire protection, law enforcement, emergency medical services, transit services, maintenance, or other services for a Federal, State, or local government entity.

''(B) EXCEPTION.—The term 'unauthorized use' does not apply to use of a traffic signal preemption transmitter for classroom or instructional purposes.''.

(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. 1411. PRESIDENTIAL COMMISSION ON ALCOHOL-IMPAIRED DRIVING.

(a) FINDINGS.—Congress finds that—

(1) there has been considerable progress over the past 25 years in reducing the number and rate of alcohol-related highway fatalities;

(2) the National Highway Traffic Safety Administration projects that fatalities in alcohol-related crashes declined in 2004 for the second year in a row;

(3) in spite of this progress, an estimated 16,654 Americans died in 2004, in alcohol-related crashes;

(4) these fatalities comprise 39 percent of the annual total of highway fatalities;

(5) about 250,000 are injured each year in alcohol-related crashes;

(6) the past 2 years of decreasing alcohol-related fatalities follows a 3-year increase;

(7) drunk driving is the Nation's most frequently committed violent crime;

(8) the annual cost of alcohol-related crashes is over $100,000,000,000, including $9,000,000,000 in costs to employers;

(9) a Presidential Commission on Drunk Driving in 1982 and 1983 helped to lead to substantial progress on this issue; and

(10) these facts point to the need to renew the national commitment to preventing these deaths and injuries.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that, in an effort to further change the culture of alcohol impaired driving on our Nation's highways, the President should consider establishing a Presidential Commission on Alcohol-Impaired Driving—

(1) comprised of—

(A) representatives of State and local governments, including state legislators;

(B) law enforcement;

(C) traffic safety experts, including researchers;

(D) victims of alcohol-related crashes;

(E) affected industries, including the alcohol, insurance, and auto industries;

(F) the business community;

(G) labor;

(H) the medical community;

(I) public health; and

(J) Members of Congress; and

(2) that not later than September 30, 2006, would—

(A) conduct a full examination of alcohol-impaired driving issues; and

(B) make recommendations for a broad range of policy and program changes that would serve

to further reduce the level of deaths and injuries caused by drunk driving.

SEC. 1412. SENSE OF THE SENATE IN SUPPORT OF INCREASED PUBLIC AWARENESS OF BLOOD ALCOHOL CONCENTRATION LEVELS AND THE DANGERS OF DRINKING AND DRIVING.

(a) FINDINGS.—The Senate finds that—

(1) in 2003—

(A) 17,013 Americans died in alcohol-related traffic crashes;

(B) 40 percent of the persons killed in traffic crashes died in alcohol-related crashes; and

(C) drivers with blood alcohol concentration levels over 0.15 were involved in 58 percent of alcohol-related traffic fatalities;

(2) research shows that 77 percent of Americans think they have received enough information about drinking and driving and the way in which alcohol affects individual blood alcohol concentration levels; and

(3) only 28 percent of the American public can correctly identify the legal limit of blood alcohol concentration of the State in which they reside.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the National Highway Traffic Safety Administration should work with State and local governments and independent organizations to increase public awareness of—

(1) State legal limits on blood alcohol concentration levels; and

(2) the dangers of drinking and driving.

SEC. 1413. GRANT PROGRAM FOR COMMERCIAL DRIVER TRAINING.

(a) ESTABLISHMENT.—The Secretary of Transportation shall establish a program for making grants to commercial driver training schools and programs for the purpose of providing financial assistance to entry level drivers of commercial vehicles (as defined in section 31301 of title 49, United States Code).

(b) FEDERAL SHARE.—The Federal share of the cost for which a grant is made under this section shall be 80 percent.

(c) FUNDING.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for the purpose of carrying out this section $5,000,000 for each of the fiscal years 2006 through 2009.

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, tribal, 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 and tribal 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)).

''(3) MITIGATION IN CLOSED BASINS.—

''(A) IN GENERAL.—A State may use amounts deposited in the State fund for projects to protect existing roadways from anticipated flooding of a closed basin lake, including—

''(i) construction—

''(I) necessary for the continuation of roadway services and the impoundment of water, as the State determines to be appropriate; or

''(II) for a grade raise to permanently restore a roadway the use of which is lost or reduced, or could be lost or reduced, as a result of an actual or predicted water level that is within 3 feet of causing inundation of the roadway in a closed lake basin;

''(ii) monitoring, studies, evaluations, design, or preliminary engineering relating to construction; and

''(iii) monitoring and evaluations relating to proposed construction.

''(B) REIMBURSEMENT.—The Secretary may permit a State that expends funds under subparagraph (A) to be reimbursed for the expenditures through the use of amounts made available under section 125(c)(1).

''(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 cooperating 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;

''(E) the Committee on Transportation and Infrastructure of the House of Representatives; and

''(F) the Council on Environmental Quality.

''(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.

(c) EXISTING ENVIRONMENTAL REVIEW PROCESS.—Nothing in this section affects any existing State environmental review process, program, agreement, or funding arrangement approved by the Secretary under section 1309 of the Transportation Equity Act for the 21st Century (112 Stat. 232; 23 U.S.C. 109 note).

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 shall—

(A) conduct a study on the implementation of this section and the amendments made by this section; and

(B) commission an independent review of the study plan and methodology, and any associated conclusions, by the Transportation Research Board of the National Academy of Sciences.

(2) COMPONENTS.—In conducting the study, the Secretary shall evaluate—

(A) the processes developed under this section and the amendments made by this section and the efficiencies that may result;

(B) the post-construction effectiveness of impact mitigation and avoidance commitments adopted as part of projects conducted under this section and the amendments made by this section; and

(C) the quantity of projects with impacts that are considered de minimis under this section and the amendments made by this section, including information on the location, size, and cost of the projects.

(3) REPORT REQUIREMENT.—The Secretary shall prepare—

(A) not earlier than the date that is 3 years after the date of enactment of this Act, a report on the results of the study conducted under this subsection; and

(B) not later than March 1, 2010, an update on the report required under subparagraph (A).

(4) REPORT RECIPIENTS.—The Secretary shall—

(A) submit the report, review of the report, and update required under paragraph (3) to—

(i) the appropriate committees of Congress;

(ii) the Secretary of the Interior; and

(iii) the Advisory Council on Historic Preservation; and

(B) make the report and update available to the public.

SEC. 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—

''(A) the Secretary determines that the property is offered for sale on the open market;

''(B) the Secretary determines that 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) the State determines that 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 $3,754,515 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.''.

SEC. 1523. 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 $9,386,289 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. 1524. 14TH AMENDMENT HIGHWAY AND 3RD INFANTRY DIVISION HIGHWAY.

Not later than December 31, 2005, any funds made available to commission studies and reports regarding construction of a route linking Augusta, Georgia, Macon, Georgia, Columbus, Georgia, Montgomery, Alabama, and Natchez, Mississippi and a route linking through Savannah, Georgia, Augusta, Georgia, and Knoxville, Tennessee, shall be provided to the Secretary to—

(1) carry out a study and submit to the appropriate committees of Congress a report that describes the steps and estimated funding necessary to construct a route for the 14th Amendment Highway, from Augusta, Georgia, to

Natchez, Mississippi (formerly designated the Fall Line Freeway in the State of Georgia); and

(2) carry out a study and submit to the appropriate committees of Congress a report that describes the steps and estimated funding necessary to designate and construct a route for the 3rd Infantry Division Highway, extending from Savannah, Georgia, to Knoxville, Tennessee (formerly the Savannah River Parkway in the State of Georgia), following a route generally defined through Sylvania, Waynesville, Augusta, Lincolnton, Elberton, Hartwell, Toccoa, and Young Harris, Georgia, and Maryville, Tennessee.

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;

if such efforts are related to transportation projects funded under this title.

''(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)—

(A) in paragraph (1), by striking ''the roads as'' and all that follows and inserting ''the roads as—

''(A) National Scenic Byways;

''(B) All-American Roads; or

''(C) America's Byways.'';

(B) in paragraph (3)—

(i) by striking ''To be considered'' and inserting the following:

''(A) IN GENERAL.—To be considered'';

(ii) in subparagraph (A) (as designated by clause (i))—

(I) by inserting '', an Indian tribe, '' after ''nominated by a State''; and

(II) by inserting '', an Indian scenic byway,'' after ''designated as a State scenic byway''; and

(iii) by adding at the end the following:

''(B) NOMINATION BY INDIAN TRIBES.—An Indian tribe may nominate a road as a National Scenic Byway under subparagraph (A) only if a Federal land management agency (other than the Bureau of Indian Affairs), a State, or a political subdivision of a State does not have—

''(i) jurisdiction over the road; or

''(ii) responsibility for managing the road.

''(C) SAFETY.—Indian tribes shall maintain the safety and quality of roads nominated by the Indian tribe under subparagraph (A).''; and

(C) by adding at the end the following:

''(4) RECIPROCAL NOTIFICATION.—States, Federal land management agencies, and Indian tribes shall notify each other regarding nominations under this subsection for roads that—

''(A) are within the jurisdictional boundary of the State, Federal land management agency, or Indian tribe; or

''(B) directly connect to roads for which the State, Federal land management agency, or Indian tribe is responsible.'';

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by inserting ''and Indian tribes'' after ''provide technical assistance to States'';

(ii) in subparagraph (A), by striking ''designated as'' and all that follows and inserting ''designated as—

''(i) National Scenic Byways;

''(ii) All-American Roads;

''(iii) America's Byways;

''(iv) State scenic byways; or

''(v) Indian scenic byways; and''; and

(iii) in subparagraph (B), by inserting ''or Indian'' after ''State'';

(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'';

(ii) in subparagraph (B)—

(I) by striking ''State-designated'' and inserting ''State or Indian''; and

(II) 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

(iii) in subparagraph (C), by inserting ''or Indian'' after ''State'';

(3) in subsection (c)—

(A) in paragraph (1), by inserting ''or Indian'' after ''State'';

(B) in paragraph (3)—

(i) by inserting ''Indian scenic byway,'' after ''improvements to a State scenic byway,''; and

(ii) by inserting ''Indian scenic byway,'' after ''designation as a State scenic byway,''; and

(C) in paragraph (4), by striking ''passing lane,''; and

(4) in subsection (e), by inserting ''or Indian tribe'' after ''State''.

(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 $1,877,258 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 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. 460l–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.

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;

''(ii) a local agency in a State that is responsible for transportation matters; and

''(iii) a public authority, or a public or private entity designated by a State, to collect a toll from motor vehicles at an eligible toll facility.

''(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—

''(I) meets Tier II emission levels 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; and

''(I)(aa) is certified by the Administrator of the Environmental Protection Agency, in consultation with the manufacturer, to have achieved not less than a 50-percent increase in city fuel economy or not less than a 25-percent increase in combined city-highway fuel economy relative to a comparable vehicle that is an internal combustion gasoline fueled vehicle (other than a vehicle that has propulsion energy from onboard hybrid sources); or

''(bb) is a dedicated alternative fueled vehicle under section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

''(ii) COMPARABLE VEHICLE DETERMINATION.—Not later than 180 days after the date of enactment of the Safe, Affordable, Flexible, and Efficient Transportation Equity Act of 2005, the Administrator of the Environmental Protection

Agency, in accordance with section 32908(b) of title 49, United States Code, shall establish guidelines and procedures for making the vehicle comparisons and performance calculations described in clause (i)(I)(aa).

''(iii) HOV LANE PERFORMANCE.—

''(I) IN GENERAL.—The responsible agency may not 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 performance of the lanes is seriously degraded.

''(II) MANAGEMENT.—In managing the use of high occupancy vehicle lanes by low emission and energy efficient vehicles that do not meet applicable occupancy requirements, the responsible agency may increase the percentages described in clause (i)(I)(aa).

''(iv) 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 2005 through 2009, the Secretary, after making the deductions authorized by subsections (a) and (f), shall set aside $469,314 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) by striking paragraph (2) and inserting the following:

''(2) LIMITATION.—The Secretary may permit the collection of tolls under this subsection on 1 facility in the State of Virginia.'';

(C) 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.''; and

(D) 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 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 $10,324,918 for each of fiscal years 2005 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 2005, 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.

(a) IN GENERAL.—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.''.

(b) CONFORMING AMENDMENT.—Section 149(c)(2) of title 23, United States Code, is amended by striking ''104(b)(2)(D)'' and inserting ''104(b)(2)(E)''.

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;

''(7) if the project or program involves the purchase of integrated, interoperable emergency communications equipment; or

''(8) if the project or program is for—

''(A) diesel retrofit technologies that are—

''(i) for motor vehicles (as defined in section 216 of the Clean Air Act (42 U.S.C. 7550)); or

''(ii) published in the list under subsection (f)(5) for non-road vehicles and non-road engines (as defined in section 216 of the Clean Air Act (42 U.S.C. 7550)) that are used in construction projects that are—

''(I) located in nonattainment or maintenance areas for ozone, PM_{10}, or $PM_{2.5}$ (as defined under the Clean Air Act (42 U.S.C. 7401 et seq.)); and

''(II) funded, in whole or in part, under this title; or

''(B) outreach activities that are designed to provide information and technical assistance to the owners and operators of diesel equipment and vehicles regarding the emission reduction strategy.''.

(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.—Section 149 of title 23, United States Code, is amended by adding at the end the following:

''(f) COST-EFFECTIVE EMISSION REDUCTION STRATEGIES.—

''(1) DEFINITIONS.—In this subsection:

''(A) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

''(B) CMAQ RESOURCES.—The term 'CMAQ resources' means resources available to a State to carry out the congestion mitigation and air quality improvement program under this section.

''(C) DIESEL RETROFIT TECHNOLOGY.—The term 'diesel retrofit technology' means a replacement, repowering, rebuilding, after treatment, or other technology, as determined by the Administrator.

''(2) EMISSION REDUCTION STRATEGIES.—Each State shall develop, implement, and periodically revise emission reduction strategies comprised of any methods determined to be appropriate by the State that are consistent with section 209 of the Clean Air Act (42 U.S.C. 7542) for engines and vehicles that are used in construction projects that are—

''(A) located in nonattainment areas for ozone, PM_{10}, or $PM_{2.5}$ (as defined under the Clean Air Act (42 U.S.C. 7401 et seq.)); and

''(B) funded, in whole or in part, under this title.

''(3) STATE CONSIDERATIONS.—In developing emission reduction strategies, each State—

''(A) may include any means to reduce emissions that are determined to be appropriate by the State; but

''(B) shall—

''(i) consider guidance issued by the Administrator under paragraph (5);

''(ii) limit technologies to those identified by the Administrator under paragraph (5);

''(iii) provide contractors with guidance and technical assistance regarding the implementation of emission reduction strategies;

''(iv) give special consideration to small businesses that participate in projects funded under this title;

''(v) place priority on the use of—

''(I) diesel retrofit technologies and activities;

''(II) cost-effective strategies;

''(III) financial incentives using CMAQ resources and State resources; and

''(IV) strategies that maximize health benefits; and

''(vi) not include any activities prohibited by paragraph (4).

''(4) STATE LIMITATIONS.—Emission reduction strategies may not—

''(A) authorize or recommend the use of bans on equipment or vehicle use during specified periods of a day;

''(B) authorize or recommend the use of contract procedures that would require retrofit activities, unless funds are made available by the State under this section or other State authority to offset the cost of those activities; or

''(C) authorize the use of contract procedures that would discriminate between bidders on the basis of a bidder's existing equipment or existing vehicle emission technology.

''(5) EMISSION REDUCTION STRATEGY GUIDANCE.—The Administrator, in consultation with the Secretary, shall publish a nonbinding list of emission reduction strategies and supporting technical information for—

''(A) diesel emission reduction technologies certified or verified by the Administrator, the California Air Resources Board, or any other entity recognized by the Administrator for the same purpose;

''(B) diesel emission reduction technologies identified by the Administrator as having an application and approvable test plan for

verification by the Administrator or the California Air Resources board that is submitted not later that 18 months of the date of enactment of this Act;

''(C) available information regarding the emission reduction effectiveness and cost effectiveness of technologies identified in this paragraph, taking into consideration health effects;

''(D) options and recommendations for the structure and content of emission reduction strategies including—

''(i) emission reduction performance criteria;

''(ii) financial incentives that use CMAQ resources and State resources;

''(iii) procedures to facilitate access by contractors to financial incentives;

''(iv) contract incentives, allowances, and procedures;

''(v) methods of voluntary emission reductions; and

''(vi) other means that may be employed to reduce emissions from construction activities; and

''(6) PRIORITY.—States and metropolitan planning organizations shall give priority in distributing funds received for congestion management and air quality projects and programs to finance of diesel retrofit and cost-effective emission reduction activities identified by States in the emission reduction strategies developed under this subsection.

''(7) NO EFFECT ON AUTHORITY OR RESTRICTIONS.—Nothing in this subsection modifies any authority or restriction established under the Clean Air Act (42 U.S.C. 7401 et seq.).''.

(d) AVAILABILITY OF FUNDS FOR THE STATE OF MAINE.—In addition to other eligible uses, the State of Maine may use funds apportioned under section 104(b)(2) to support, through September 30, 2009, the operation of passenger rail service between Boston, Massachusetts, and Portland, Maine.

(e) RESPONSIBILITY OF THE STATE OF MONTANA.—In addition to other eligible uses, the State of Montana may use funds apportioned under section 104(b)(2) for the operation of public transit activities that serve a nonattainment or maintenance area.

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 2005, 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, 2004);

''(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.''; and

(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, 2004), 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, 2004), 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, 2004).

''(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.''.

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, 2004), 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, 2004), 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 transportation project taken as a whole during the environmental review phase of transportation 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, 2006, after consultation with Federal land managers and State air pollution control agencies, the Administrator shall publish in the Federal Register proposed regulations governing the review and handling of air quality monitoring data influenced by exceptional events.

''(B) FINAL REGULATIONS.—Not later than 1 year after the date on which the Administrator publishes proposed regulations under subparagraph (A), and after providing an opportunity for interested persons to make oral presentations of views, data, and arguments regarding the proposed regulations, the Administrator shall promulgate final regulations governing the review and handling or air quality monitoring data influenced by an exceptional event that are consistent with paragraph (3).

''(3) PRINCIPLES AND REQUIREMENTS.—

''(A) PRINCIPLES.—In promulgating regulations under this section, the Administrator shall follow—

''(i) the principle that protection of public health is the highest priority;

''(ii) the principle that timely information should be provided to the public in any case in which the air quality is unhealthy;

''(iii) the principle that all ambient air quality data should be included in a timely manner, an appropriate Federal air quality database that is accessible to the public;

''(iv) the principle that each State must take necessary measures to safeguard public health regardless of the source of the air pollution; and

''(v) the principle that air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in all monitoring data and analyses.

''(B) REQUIREMENTS.—Regulations promulgated under this section shall, at a minimum, provide that—

''(i) the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies;

''(ii) a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location;

''(iii) there is a public process for determining whether an event is exceptional; and

''(iv) there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the 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 2005, 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. FEDERAL PROCUREMENT OF RECYCLED COOLANT.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the President shall conduct a review of Federal procurement policy of off-site recycled coolant.

(b) ELEMENTS.—In conducting the review under subsection (a), the President shall consider recycled coolant produced from processes that—

(1) are energy efficient;

(2) generate no hazardous waste (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903));

(3) produce no emissions of air pollutants;

(4) present lower health and safety risks to employees at a plant or facility; and

(5) recover at least 97 percent of the glycols from used antifreeze feedstock.

SEC. 1622. CLEAN SCHOOL BUS PROGRAM.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) ALTERNATIVE FUEL.—The term ''alternative fuel'' means—

(A) liquefied natural gas, compressed natural gas, liquefied petroleum gas, hydrogen, or propane;

(B) methanol or ethanol at no less than 85 percent by volume; or

(C) biodiesel conforming with standards published by the American Society for Testing and Materials as of the date of enactment of this Act.

(3) CLEAN SCHOOL BUS.—The term ''clean school bus'' means a school bus with a gross vehicle weight of greater than 14,000 pounds that—

(A) is powered by a heavy duty engine; and

(B) is operated solely on an alternative fuel or ultra-low sulfur diesel fuel.

(4) ELIGIBLE RECIPIENT.—

(A) IN GENERAL.—Subject to subparagraph (B), the term ''eligible recipient'' means—

(i) 1 or more local or State governmental entities responsible for—

(I) providing school bus service to 1 or more public school systems; or

(II) the purchase of school buses;

(ii) 1 or more contracting entities that provide school bus service to 1 or more public school systems; or

(iii) a nonprofit school transportation association.

(B) SPECIAL REQUIREMENTS.—In the case of eligible recipients identified under clauses (ii) and (iii), the Administrator shall establish timely and appropriate requirements for notice and may establish timely and appropriate requirements for approval by the public school systems that would be served by buses purchased or retrofit using grant funds made available under this section.

(5) RETROFIT TECHNOLOGY.—The term ''retrofit technology'' means a particulate filter or other emissions control equipment that is verified or certified by the Administrator or the California Air Resources Board as an effective emission reduction technology when installed on an existing school bus.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(7) ULTRA-LOW SULFUR DIESEL FUEL.—The term ''ultra-low sulfur diesel fuel'' means diesel fuel that contains sulfur at not more than 15 parts per million.

(b) PROGRAM FOR RETROFIT OR REPLACEMENT OF CERTAIN EXISTING SCHOOL BUSES WITH CLEAN SCHOOL BUSES.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Administrator, in consultation with the Secretary and other appropriate Federal departments and agencies, shall establish a program for awarding grants on a competitive basis to eligible recipients for the replacement, retrofit (including repowering, aftertreatment, and remanufactured engines) of, or purchase of alternative fuels for, certain existing school buses.

(B) BALANCING.—In awarding grants under this section, the Administrator shall, to the maximum extent practicable, achieve an appropriate balance between awarding grants—

(i) to replace school buses;

(ii) to install retrofit technologies; and

(iii) to purchase and use alternative fuel.

(2) PRIORITY OF GRANT APPLICATIONS.—

(A) REPLACEMENT.—In the case of grant applications to replace school buses, the Administrator shall give priority to applicants that propose to replace school buses manufactured before model year 1977.

(B) RETROFITTING.—In the case of grant applications to retrofit school buses, the Administrator shall give priority to applicants that propose to retrofit school buses manufactured in or after model year 1991.

(3) USE OF SCHOOL BUS FLEET.—

(A) IN GENERAL.—All school buses acquired or retrofitted with funds provided under this section shall be operated as part of the school bus fleet for which the grant was made for not less than 5 years.

(B) MAINTENANCE, OPERATION, AND FUELING.—New school buses and retrofit technology shall be maintained, operated, and fueled according to manufacturer recommendations or State requirements.

(4) RETROFIT GRANTS.—The Administrator may award grants for up to 100 percent of the retrofit technologies and installation costs.

(5) REPLACEMENT GRANTS.—

(A) ELIGIBILITY FOR 50 PERCENT GRANTS.—The Administrator may award grants for replacement of school buses in the amount of up to ½

of the acquisition costs (including fueling infrastructure) for —

(i) clean school buses with engines manufactured in model year 2005 or 2006 that emit not more than—

(I) 1.8 grams per brake horsepower-hour of non-methane hydrocarbons and oxides of nitrogen; and

(II) .01 grams per brake horsepower-hour of particulate matter; or

(ii) clean school buses with engines manufactured in model year 2007, 2008, or 2009 that satisfy regulatory requirements established by the Administrator for emissions of oxides of nitrogen and particulate matter to be applicable for school buses manufactured in model year 2010.

(B) ELIGIBILITY FOR 25 PERCENT GRANTS.—The Administrator may award grants for replacement of school buses in the amount of up to ¼ of the acquisition costs (including fueling infrastructure) for —

(i) clean school buses with engines manufactured in model year 2005 or 2006 that emit not more than—

(I) 2.5 grams per brake horsepower-hour of non-methane hydrocarbons and oxides of nitrogen; and

(II) .01 grams per brake horsepower-hour of particulate matter; or

(ii) clean school buses with engines manufactured in model year 2007 or thereafter that satisfy regulatory requirements established by the Administrator for emissions of oxides of nitrogen and particulate matter from school buses manufactured in that model year.

(6) ULTRA-LOW SULFUR DIESEL FUEL.—

(A) IN GENERAL.—In the case of a grant recipient receiving a grant for the acquisition of ultra-low sulfur diesel fuel school buses with engines manufactured in model year 2005 or 2006, the grant recipient shall provide, to the satisfaction of the Administrator—

(i) documentation that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the purposes of the grant; and

(ii) a commitment by the applicant to use that fuel in carrying out the purposes of the grant.

(7) DEPLOYMENT AND DISTRIBUTION.—The Administrator shall, to the maximum extent practicable—

(A) achieve nationwide deployment of clean school buses through the program under this section; and

(B) ensure a broad geographic distribution of grant awards, with no State receiving more than 10 percent of the grant funding made available under this section during a fiscal year.

(8) ANNUAL REPORT.—

(A) IN GENERAL.—Not later than January 31 of each year, the Administrator shall submit to Congress a report that—

(i) evaluates the implementation of this section; and

(ii) describes—

(I) the total number of grant applications received;

(II) the number and types of alternative fuel school buses, ultra-low sulfur diesel fuel school buses, and retrofitted buses requested in grant applications;

(III) grants awarded and the criteria used to select the grant recipients;

(IV) certified engine emission levels of all buses purchased or retrofitted under this section;

(V) an evaluation of the in-use emission level of buses purchased or retrofitted under this section; and

(VI) any other information the Administrator considers appropriate.

(c) EDUCATION.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall develop an education outreach program to promote and explain the grant program.

(2) COORDINATION WITH STAKEHOLDERS.—The outreach program shall be designed and conducted in conjunction with national school bus transportation associations and other stakeholders.

(3) COMPONENTS.—The outreach program shall—

(A) inform potential grant recipients on the process of applying for grants;

(B) describe the available technologies and the benefits of the technologies;

(C) explain the benefits of participating in the grant program; and

(D) include, as appropriate, information from the annual report required under subsection (b)(8).

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out this section, to remain available until expended—

(1) $55,000,000 for each of fiscal years 2006 and 2007; and

(2) such sums as are necessary for each of fiscal years 2008, 2009, and 2010.

SEC. 1623. CONSERVE BY BICYCLING PROGRAM.

(a) DEFINITIONS.—In this section:

(1) PROGRAM.—The term ''program'' means the Conserve by Bicycling Program established by subsection (b).

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

(b) ESTABLISHMENT.—There is established within the Department of Transportation a program to be known as the ''Conserve by Bicycling Program''.

(c) PROJECTS.—

(1) IN GENERAL.—In carrying out the program, the Secretary shall establish not more than 10 pilot projects that are—

(A) dispersed geographically throughout the United States; and

(B) designed to conserve energy resources by encouraging the use of bicycles in place of motor vehicles.

(2) REQUIREMENTS.—A pilot project described in paragraph (1) shall—

(A) use education and marketing to convert motor vehicle trips to bicycle trips;

(B) document project results and energy savings (in estimated units of energy conserved);

(C) facilitate partnerships among interested parties in at least 2 of the fields of—

(i) transportation;

(ii) law enforcement;

(iii) education;

(iv) public health;

(v) environment; and

(vi) energy;

(D) maximize bicycle facility investments;

(E) demonstrate methods that may be used in other regions of the United States; and

(F) facilitate the continuation of ongoing programs that are sustained by local resources.

(3) COST SHARING.—At least 20 percent of the cost of each pilot project described in paragraph (1) shall be provided from State or local sources.

(d) ENERGY AND BICYCLING RESEARCH STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall enter into a contract with the National Academy of Sciences for, and the National Academy of Sciences shall conduct and submit to Congress a report on, a study on the feasibility of converting motor vehicle trips to bicycle trips.

(2) COMPONENTS.—The study shall—

(A) document the results or progress of the pilot projects under subsection (b);

(B) determine the type and duration of motor vehicle trips that people in the United States may feasibly make by bicycle, taking into consideration factors such as—

(i) weather;

(ii) land use and traffic patterns;

(iii) the carrying capacity of bicycles; and

(iv) bicycle infrastructure;

(C) determine any energy savings that would result from the conversion of motor vehicle trips to bicycle trips;

(D) include a cost-benefit analysis of bicycle infrastructure investments; and

(E) include a description of any factors that would encourage more motor vehicle trips to be replaced with bicycle trips.

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 management and operation of transportation systems 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 transportation systems in a coordinated manner to preserve the capacity and maximize the performance of transportation 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. 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.—For the purpose of any applicable program under title 23, United States Code, the city of Norman, Oklahoma, shall be considered to be part of the Oklahoma City urbanized area.

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 ''20''; 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 20-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;

''(ii) improving the value and quality of the project; and

''(iii) reducing the time to complete the project.

''(B) INCLUSIONS.—The recommendations referred to in subparagraph (A) include, with respect to a project—

''(i) combining or eliminating otherwise inefficient use of costly parts of the original proposed design for the project; and

''(ii) completely redesigning the project using different technologies, materials, or methods so as to accomplish the original purpose of the project.

''(2) ANALYSIS.—The State shall provide a value engineering analysis or other cost-reduction analysis for—

''(A) each project on the Federal-Aid System with an estimated total cost of $25,000,000 or more;

''(B) a bridge project with an estimated total cost of $20,000,000 or more; and

''(C) any other project the Secretary determines to be appropriate.

''(3) MAJOR PROJECTS.—The Secretary may require more than 1 analysis described in paragraph (2) for a major project described in subsection (h).

''(4) REQUIREMENTS.—Analyses described in paragraph (1) for a bridge project shall—

''(A) include bridge substructure requirements based on construction material; and

''(B) be evaluated—

''(i) on engineering and economic bases, taking into consideration acceptable designs for bridges; and

''(ii) using an analysis of life-cycle costs and duration of project construction.''; and

(2) by striking subsections (g) and (h) and inserting the following:

''(g) OVERSIGHT PROGRAM.—

''(1) 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.

SEC. 1803. REVISION OF REGULATIONS.

Section 112(b)(3) of title 23, United States Code, is amended—

(1) by redesignating subparagraph (D) as subparagraph (E); and

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

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

''(D) REGULATORY PROCESS.—Not later than 90 days after the date of enactment of the Safe, Affordable, Flexible, and Efficient Transportation Equity Act of 2005, the Secretary shall promulgate revised regulations under section 1307(c) of the Transportation Equity Act for 21st Century (23 U.S.C. 112 note; 112 Stat. 230) that—

''(i) do not preclude State transportation departments or local transportation agencies from—

''(I) issuing requests for proposals;

''(II) proceeding with awards of design-build contracts; or

''(III) issuing notices to proceed with preliminary design work under design-build contracts; prior to compliance with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332);

''(ii) require that the State transportation department or local transportation agency receive concurrence from the Secretary before carrying out an activity under clause (i); and

''(iii) preclude the design-build contractor from proceeding with final design or construction of any permanent improvement prior to completion of the process under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).''.

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 ''$93,862,893 for each of fiscal years 2005 through 2009''; and

(2) by striking ''Transportation Equity Act for the 21st Century'' and inserting ''Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005''.

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 ''2005''; 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 for distribution of funds under the Indian reservation roads program.

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

(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) $14,079,433 for each of fiscal years 2005 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 after approval of applicable plans, specifications, and estimates in accordance with this title.''; 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 approve plans, specifications, and estimates and 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 2005 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 allocated for Indian reservation roads from the Highway Trust Fund, not more than 25 percent may be expended for the purpose of maintenance, excluding road sealing, and shall not be subject to any limitation. The Bureau of Indian Affairs shall continue to retain primary responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations. The Secretary shall ensure that funding made available under this subsection for maintenance of Indian reservation roads for each fiscal year is supplementary to and not in lieu of any obligation of funds by the Bureau of Indian Affairs for road maintenance programs on Indian reservations.''.

(f) 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. 460l–12 et seq.) shall not apply to funds made available to the Bureau of Reclamation under this subsection.''.

(g) 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 (f)(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. 460l–12 et seq.) shall not apply to funds made available to the Bureau of Reclamation under this subsection.''.

(h) 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 2005 through 2009, all but $140,794,340 shall be apportioned as provided in subsection (e).

''(B) AVAILABILITY.—The $140,794,340 referred to in subparagraph (A) shall be available at the discretion of the Secretary, except that not to exceed $23,465,723 of that amount shall be available only for projects for the seismic retrofit of bridges.

''(C) SET ASIDES.—For fiscal year 2005, the Secretary shall provide—

''(i) $46,931,446 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;

''(ii) $46,931,446 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; and

''(iii) not less than 40 percent of the amount made available under subparagraph (B) for the fiscal year for the seismic retrofit of bridges for multilane, suspension bridges that—

''(I) were open to traffic prior to 1940; and

''(II) are located in high-seismic zones.''.

''(2) OFF-SYSTEM BRIDGES.—

''(A) IN GENERAL.—Not less than 15 percent of the amount apportioned to each State in each of fiscal years 2005 through 2009 shall be expended for projects to replace, rehabilitate, 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.

''(C) PILOT PROGRAM.—Not less than 20 percent of the amount apportioned to the States of Colorado, _____, and _____, for each of fiscal years 2005 through 2009 shall be expended for off-system bridge pilot projects.'';

(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.—

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

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

(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 2005 for fiscal years 2005 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 2005 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;

''(2) facilitate transportation decisionmaking and coordinate project delivery involving multistate corridors; and

''(3) support the planning, development, and construction of high priority corridors identified by section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2032).

''(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—

''(1) multistate highway and multimodal planning studies and construction; and

''(2) coordinated planning, development, and construction of high priority corridors identified by section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2032).

''(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 (including improvements to emergency evacuation routes); 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 2005 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 2005 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, technology, and capacity 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 2005 for each of fiscal years 2005 through 2009 to the Commonwealth of Puerto Rico to carry out a highway program in the Commonwealth.

''(b) APPLICABILITY OF TITLE.—

''(1) IN GENERAL.—Amounts made available by section 1101(15) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 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 $13,140,805 for each of fiscal years 2005 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 $46,931,447 for each of fiscal years 2005 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 $9,386,289 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 $9,386,289 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 2005, the Secretary shall prepare and submit to Congress an annual report that identifies—

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

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

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

SEC. 1817. NATIONAL FOREST SYSTEM ROADS.

Section 205 of title 23, United States Code, is amended by adding at the end the following:

''(e) PASSAGES FOR AQUATIC SPECIES.—Of the amounts made available for National Forest System roads, $14,079,433 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 2005), 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 2005—

''(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. HIGH-SPEED MAGNETIC LEVITATION SYSTEM DEPLOYMENT PROGRAM.

(a) IN GENERAL.—Section 322 of title 23, United States Code, is amended to read as follows:

''§ 322. High-speed magnetic levitation system deployment program

''(a) DEFINITIONS.—In this section:

''(1) ELIGIBLE PROJECT COSTS.—

''(A) IN GENERAL.—The term 'eligible project costs' means the capital cost of the fixed guideway infrastructure of a MAGLEV project, including land, piers, guideways, propulsion equipment and other components attached to guideways, power distribution facilities (including substations), control and communications facilities, access roads, and storage, repair, and maintenance facilities.

''(B) INCLUSION.—The term 'eligible project costs' includes the costs of preconstruction planning activities.

''(2) FULL PROJECT COSTS.—The term 'full project costs' means the total capital costs of a MAGLEV project, including eligible project costs and the costs of stations, vehicles, and equipment.

''(3) MAGLEV.—

''(A) IN GENERAL.—The term 'MAGLEV' means transportation systems in revenue service employing magnetic levitation that would be capable of safe use by the public at a speed in excess of 240 miles per hour.

''(B) INCLUSION.—The term 'MAGLEV' includes power, control, and communication facilities required for the safe operation of the vehicles within a system described in subparagraph (A).

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

''(5) SPECIAL PURPOSE ENTITY.—The term 'special purpose entity' means a nonprofit entity that—

''(A) is not a State-designated authority; but

''(B) is eligible, as determined by the Governor of the State in which the entity is located, to participate in the program under this section.

''(6) TEA–21 CRITERIA.—The term 'TEA–21 criteria' means—

''(A) the criteria set forth in subsection (d) of this section (as in effect on the day before the date of enactment of the Safe, Affordable, Flexible, and Efficient Transportation Equity Act of 2005), including applicable regulations; and

''(B) with respect to subsection (e)(2), the criteria set forth in subsection (d)(8) of this section (as so in effect).

''(b) PHASE I—PRECONSTRUCTION PLANNING.—

''(1) IN GENERAL.—A State, State-designated authority, multistate-designated authority, or special purpose entity may apply to the Secretary for grants to conduct preconstruction planning for proposed new MAGLEV projects, or extensions to MAGLEV systems planned, studied, or deployed under this or any other program.

''(2) APPLICATIONS.—An application for a grant under this subsection shall include a description of the proposed MAGLEV project, including, at a minimum—

''(A) a description of the purpose and need for the proposed MAGLEV project;

''(B) a description of the travel market to be served;

''(C) a description of the technology selected for the MAGLEV project;

''(D) forecasts of ridership and revenues;

''(E) a description of preliminary engineering that is sufficient to provide a reasonable estimate of the capital cost of constructing, operating, and maintaining the project;

''(F) a realistic schedule for construction and equipment for the project;

''(G) an environmental assessment;

''(H) a preliminary identification of the 1 or more organizations that will construct and operate the project; and

''(I) a cost-benefit analysis and tentative financial plan for construction and operation of the project.

''(3) DEADLINE FOR APPLICATIONS.—The Secretary shall establish an annual deadline for receipt of applications under this subsection.

''(4) EVALUATION.—The Secretary shall evaluate all applications received by the annual deadline to determine whether the applications meet criteria established by the Secretary.

''(5) SELECTION.—The Secretary, except as otherwise provided in this section, shall select for Federal support for preconstruction planning any project that the Secretary determines meets the criteria.

''(c) PHASE II—ENVIRONMENTAL IMPACT STUDIES.—

''(1) IN GENERAL.—A State, State-designated authority, or multistate-designated authority that has conducted (under this section or any other provision of law) 1 or more studies that address each of the requirements of subsection (b)(2) may apply for Federal funding to assist in—

''(A) preparing an environmental impact statement or similar analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

''(B) planning for construction, operation, and maintenance of a MAGLEV project.

''(2) DEADLINE FOR APPLICATIONS.—

''(A) IN GENERAL.—The Secretary shall—

''(i) establish an annual deadline for receipt of Phase II applications; and

''(ii) evaluate all applications received by that deadline in accordance with criteria established under subparagraph (B).

''(B) CRITERIA.—The Secretary shall establish criteria to evaluate applications that include whether—

''(i) the technology selected is available for deployment at the time of the application;

''(ii) operating revenues combined with known and dedicated sources of other revenues in any year will exceed annual operation and maintenance costs;

''(iii) over the life of the MAGLEV project, total project benefits will exceed total project costs; and

''(iv) the proposed capital financing plan is realistic and does not assume Federal assistance that is greater than the maximums specified in clause (ii).

''(C) PROJECTS SELECTED.—If the Secretary determines that a MAGLEV project meets the criteria established under subparagraph (B), the Secretary shall—

''(i) select that project for Federal Phase II support; and

''(ii) publish in the Federal Register a notice of intent to prepare an environmental impact statement or similar analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(d) PHASE III—DEPLOYMENT.—The State, State-designated agency, multistate-designated agency, or special purpose entity that is part of a public-private partnership (meeting the TEA–21 criteria) sponsoring a MAGLEV project that has completed a final environmental impact statement or similar analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for both the MAGLEV project and the entire corridor of which the MAGLEV project is the initial operating segment, and has completed planning studies for the construction, operation, and maintenance of the MAGLEV project, under this or any other program, may submit an application to the Secretary for Federal funding of a portion of the capital costs of planning, financing, constructing, and equipping the preferred alternative identified in the final environmental impact statement or analysis.

''(e) FINANCIAL ASSISTANCE.—

''(1) IN GENERAL.—The Secretary shall make available financial assistance to pay the Federal share of the full project costs of projects selected under this section.

''(2) PREVAILING WAGE AND CERTAIN TEA–21 CRITERIA.—Sections 5333(a) and the TEA–21 criteria, shall apply to financial assistance made available under this section and projects funded with that assistance.

''(3) FEDERAL SHARE.—

''(A) PHASE I AND PHASE II.—For Phase I—preconstruction planning and Phase II—environmental impact studies carried out under subsections (b) and (c), respectively, the Federal share of the costs of the planning and studies shall be not more than 2/3 of the full cost of the planning and studies.

''(B) PHASE III.—For Phase III—deployment projects carried out under subsection (d), not more than 2/3 of the full capital cost of such a project shall be made available from funds appropriated for this program.

''(4) FUNDING.—

''(A) CONTRACT AUTHORITY; AUTHORIZATION OF APPROPRIATIONS.—

''(i) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund

(other than the Mass Transit Account) for fiscal years 2005 through 2009 to carry out this section—

''(I) $10,000,000 for Phase I—preconstruction planning studies;

''(II) $20,000,000 for Phase II—environmental impact studies; and

''(III) $60,000,000 for Phase III—deployment projects.

''(ii) OBLIGATION AUTHORITY.—Funds authorized by this subparagraph shall be available for obligation in the same manner as if the funds were apportioned under chapter I, except that—

''(I) the Federal share of the cost of the project shall be in accordance with paragraph (2); and

''(II) the availability of the funds shall be in accordance with subsection (f).

''(B) NONCONTRACT AUTHORITY AUTHORIZATION OF APPROPRIATIONS.—

''(i) PHASE I.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out Phase I—preconstruction planning studies under subsection (b)—

''(I) $6,000,000 for fiscal year 2005; and

''(II) $2,000,000 for each of fiscal years 2006 through 2009.

''(ii) PHASE II.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out Phase II—environmental impact studies under subsection (c)—

''(I) $25,000,000 for fiscal year 2005;

''(II) $37,000,000 for fiscal year 2006;

''(III) $21,000,000 for fiscal year 2007; and

''(IV) $9,000,000 for each of fiscal years 2008 and 2009.

''(iii) PHASE III.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out Phase III—deployment projects under subsection (d)—

''(I) $500,000,000 for fiscal year 2005;

''(II) $650,000,000 for fiscal year 2006;

''(III) $850,000,000 for fiscal year 2007;

''(IV) $850,000,000 for fiscal year 2008; and

''(V) $600,000,000 for fiscal year 2009.

''(iv) PROGRAM ADMINISTRATION.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out administration of this program—

''(I) $13,000,000 for fiscal year 2005;

''(II) $16,000,000 for fiscal year 2006;

''(III) $8,000,000 for fiscal year 2007; and

''(IV) $5,000,000 for each of fiscal years 2008 and 2009.

''(v) RESEARCH AND DEVELOPMENT.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out research and development activities to reduce MAGLEV deployment costs $4,000,000 for each of fiscal years 2005 through 2009.

''(f) AVAILABILITY OF FUNDS.—Funds made available under subsection (e) shall remain available until expended.

''(g) OTHER FEDERAL FUNDS.—Funds made available to a State to carry out the surface transportation program under section 133 and the congestion mitigation and air quality improvement programs under section 149 may be used by any State to pay a portion of the full project costs of an eligible project selected under this section, without requirement for non-Federal funds.

''(h) OTHER FEDERAL FUNDS.—A project selected for funding under this section shall be eligible for other forms of financial assistance provided by this title and title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.), including loans, loan guarantees, and lines of credit.

''(i) MANDATORY ADDITIONAL SELECTION.—

''(1) IN GENERAL.—Subject to paragraph 2, in selecting projects for preconstruction planning, deployment, and financial assistance, the Secretary may only provide funds to MAGLEV projects that meet the criteria established under subsection (b)(4).

''(2) PRIORITY FUNDING.—The Secretary shall give priority funding to a MAGLEV project that—

''(A) has already met the TEA–21 criteria and has received funding prior to the date of enactment of the Safe, Affordable, Flexible, and Efficient Transportation Equity Act of 2005 as a result of evaluation and contracting procedures for MAGLEV transportation, to the extent that the project continues to fulfill the requirements of this section;

''(B) to the maximum extent practicable, has met safety guidelines established by the Secretary to protect the health and safety of the public;

''(C) is based on designs that ensure the greatest life cycle advantages for the project;

''(D) contains domestic content of at least 70 percent; and

''(E) is designed and developed through public/private partnership entities and continues to meet the TEA–21 criteria relating to public/private partnerships.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 23, United States Code, is amended by striking the item relating to section 322 and inserting the following:

''322. High-speed magnetic levitation system deployment program.''.

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 VI 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 $18,308,420, 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. [RESERVED.]

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 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 1105(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)(5)(A) of the Transportation Equity Act for the 21st Century (23 U.S.C. 202 note; 112 Stat. 206) is amended by striking ''$1,500,000 for each of fiscal years 1998 through 2003'' and inserting ''$1,800,000 for each of fiscal years 2005 through 2009''.

SEC. 1827. VALUE PRICING PILOT PROGRAM.

Section 1012(b)(1) of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 149 note; 105 Stat. 1938) is amended in the first sentence by striking ''The Secretary'' and inserting ''For fiscal year 2005 and each fiscal year thereafter, the Secretary''.

SEC. 1828. CREDIT TO STATE OF LOUISIANA FOR STATE MATCHING FUNDS.

(a) IN GENERAL.—The Secretary may provide a credit to the State of Louisiana in an amount equal to the cost of any planning, engineering, design, or construction work carried out by the State on any project that the Secretary determines is in accordance with the project numbered 202 under section 1602 of the Transportation Equity Act for the 21st Century (Public Law 105–178; 112 Stat. 256).

(b) ELIGIBILITY OF CREDIT.—The credit shall be eligible for use for any future payment relating to the completion of a project described in subsection (a) that is required by the State under title 23, United States Code.

SEC. 1829. APPROVAL AND FUNDING FOR CERTAIN CONSTRUCTION PROJECTS.

(a) IN GENERAL.—Not later than 30 days after the date of receipt by the Secretary of a construction authorization request from the State transportation department for the State of Georgia for project number STP–189–1(15)CT 3 in Gwinnett County, Georgia, the Secretary shall—

(1) approve the project; and

(2) reserve such Federal funds available to the Secretary as are necessary to carry out the project.

(b) CONFORMITY DETERMINATION.—

(1) IN GENERAL.—Approval, funding, and implementation of the project referred to in subsection (a) shall not be subject to the requirements of part 93 of title 40, Code of Federal Regulations (or successor regulations).

(2) REGIONAL EMISSIONS.—Notwithstanding paragraph (1), all subsequent regional emission analyses required by section 93.118 or 93.119 of title 40, Code of Federal Regulations (or successor regulations), shall include the project.

SEC. 1830. NOTICE REGARDING PARTICIPATION OF SMALL BUSINESS CONCERNS.

The Secretary of Transportation shall notify each State or political subdivision of a State to which the Secretary of Transportation awards a grant or other Federal funds of the criteria for participation by a small business concern in any program or project that is funded, in whole or in part, by the Federal Government under section 155 of the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (15 U.S.C. 567g).

SEC. 1831. ALASKA WAY VIADUCT STUDY.

(a) FINDINGS.—Congress finds that—

(1) in 2001, the Alaska Way Viaduct, a critical segment of the National Highway System in Seattle, Washington, was seriously damaged by the Nisqually earthquake;

(2) an effort to address the possible repair, retrofit, or replacement of the Alaska Way Viaduct that conforms with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is underway; and

(3) as a result of the efforts referred to in paragraph (1), a locally preferred alternative for the Alaska Way Viaduct is being developed.

(b) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Federal Highway Administration.

(2) CITY.—The term ''City'' means the city of Seattle, Washington.

(3) EARTHQUAKE.—The term ''earthquake'' means the Nisqually earthquake of 2001.

(4) FUND.—The term ''Fund'' means the emergency fund authorized under section 125 of title 23, United States Code.

(5) STATE.—The term ''State'' means the Washington State Department of Transportation.

(6) VIADUCT.—The term ''Viaduct'' means the Alaska Way Viaduct.

(c) STUDY.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Administrator, in cooperation with the State and the City, shall conduct a comprehensive study to determine the specific damage to the Viaduct from the earthquake that contribute to the ongoing degradation of the Viaduct.

(2) REQUIREMENTS.—The study under paragraph (1) shall—

(A) identify any repair, retrofit, and replacement costs for the Viaduct that are eligible for additional assistance from the Fund, consistent with the emergency relief manual governing eligible expenses from the Fund; and

(B) determine the amount of assistance from the Fund for which the Viaduct is eligible.

(3) REPORT.—Not later than 180 days after the date of enactment of this Act, the Administrator shall submit to Congress a report that describes the findings of the study.

SEC. 1832. BRIDGE CONSTRUCTION, NORTH DAKOTA.

Notwithstanding any other provision of law, and regardless of the source of Federal funds, the Federal share of the eligible costs of construction of a bridge between Bismarck, North Dakota, and Mandan, North Dakota, shall be 90 percent.

SEC. 1833. COMMUNITY ENHANCEMENT STUDY.

(a) IN GENERAL.—The Secretary shall conduct a study on—

(1) the role of well-designed transportation projects in—

(A) promoting economic development;

(B) protecting public health, safety, and the environment; and

(C) enhancing the architectural design and planning of communities; and

(2) the positive economic, cultural, aesthetic, scenic, architectural, and environmental benefits of those projects for communities.

(b) CONTENTS.—The study shall address—

(1) the degree to which well-designed transportation projects—

(A) have positive economic, cultural, aesthetic, scenic, architectural, and environmental benefits for communities;

(B) protect and contribute to improvements in public health and safety; and

(C) use inclusive public participation processes to achieve quicker, more certain, and better results;

(2) the degree to which positive results are achieved by linking transportation, design, and the implementation of community visions for the future; and

(3) methods of facilitating the use of successful models or best practices in transportation investment or development to accomplish—

(A) enhancement of community identity;

(B) protection of public health and safety;

(C) provision of a variety of choices in housing, shopping, transportation, employment, and recreation;

(D) preservation and enhancement of existing infrastructure; and

(E) creation of a greater sense of community through public involvement.

(c) ADMINISTRATION.—

(1) IN GENERAL.—To carry out this section, the Secretary shall make a grant to, or enter into a cooperative agreement or contract with, a national organization with expertise in the design of a wide range of transportation and infrastructure projects, including the design of buildings, public facilities, and surrounding communities.

(2) FEDERAL SHARE.—Notwithstanding section 1221(e)(2) of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note), the Federal share of the cost of the study under this section shall be 100 percent.

(d) REPORT.—Not later than September 20, 2006, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the study under this section.

(e) AUTHORIZATION.—Of the amounts made available to carry out section 1221 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note), $1,000,000 shall be available for each of fiscal years 2005 and 2006 to carry out this section.

SEC. 1834. COMPREHENSIVE COASTAL EVACUATION PLAN.

(a) IN GENERAL.—The Secretary of Transportation and the Secretary of Homeland Security (referred to in this section as the ''Secretaries'') shall jointly develop a written comprehensive plan for evacuation of the coastal areas of the United States during any natural or man-made disaster that affects coastal populations.

(b) CONSULTATION.—In developing the comprehensive plan, the Secretaries shall consult with Federal, State, and local transportation and emergency management officials that have been involved with disaster related evacuations.

(c) CONTENTS.—The comprehensive plan shall—

(1) consider, on a region-by-region basis, the extent to which coastal areas may be affected by a disaster; and

(2) address, at a minimum—

(A) all practical modes of transportation available for evacuations;

(B) methods of communicating evacuation plans and preparing citizens in advance of evacuations;

(C) methods of coordinating communication with evacuees during plan execution;

(D) precise methods for mass evacuations caused by disasters such as hurricanes, flash flooding, and tsunamis; and

(E) recommended policies, strategies, programs, and activities that could improve disaster-related evacuations.

(d) REPORT AND UPDATES.—The Secretaries shall—

(1) not later than October 1, 2006, submit to Congress the written comprehensive plan; and

(2) periodically thereafter, but not less often than every 5 years, update, and submit to Congress any revision to, the plan.

SEC. 1835. PRIORITY PROJECTS.

Section 1602 of the Transportation Equity Act for the 21st Century (112 Stat. 306) is amended in item 1349 of the table contained in that section by inserting '', and improvements to streets and roads providing access to,'' after ''along''.

SEC. 1836. TRANSPORTATION NEEDS, GRAYLING, MICHIGAN.

Item number 820 in the table contained in section 1602 of the Transportation Equity Act for the 21st Century (112 Stat. 287) is amended by striking ''Conduct'' and all that follows through ''interchange'' and inserting ''Conduct a transportation needs study and make improvements to I–75 interchanges in the Grayling area''.

SEC. 1837. US–95 PROJECT, LAS VEGAS, NEVADA.

Unless an agreement is reached between the Federal Highway Administration, the State of Nevada, and the Sierra Club, the State of Nevada may continue to completion construction of the project entitled ''US–95 Project in Las Vegas, Nevada'', as approved by the Federal Highway Administration on November 18, 1999, and selected in the record of decision dated January 28, 2000, on June 30, 2005.

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) $198,050,704 for fiscal year 2005;

(ii) $201,805,220 for fiscal year 2006;

(iii) $204,621,107 for fiscal year 2007;

(iv) $206,498,365 for fiscal year 2008; and

(v) $209,314,252 for fiscal year 2009.

(B) SURFACE TRANSPORTATION-ENVIRONMENTAL COOPERATIVE RESEARCH PROGRAM.—For each of fiscal years 2005 through 2009, the Secretary shall set aside $18,772,579 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) $26,281,610 for fiscal year 2005;

(B) $27,220,239 for fiscal year 2006;

(C) $28,158,868 for fiscal year 2007;

(D) $29,097,497 for fiscal year 2008; and

(E) $30,036,126 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, $26,281,610 for each of fiscal years 2005 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) $115,451,358 for fiscal year 2005;

(B) $118,267,245 for fiscal year 2006;

(C) $121,083,132 for fiscal year 2007;

(D) $123,899,019 for fiscal year 2008; and

(E) $126,714,906 for fiscal year 2009.

(5) UNIVERSITY TRANSPORTATION CENTERS.—For carrying out section 510 of title 23, United States Code $42,238,302 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) $25,342,981 for each of fiscal years 2005 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) $10,000,000 for each of fiscal years 2005 through 2009 shall be available to carry out the long-term pavement performance program under section 502(e) of that title;

(C) $5,000,000 for each of fiscal years 2005 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, of which $750,000 for each fiscal year shall be used by the Secretary to carry out

demonstration projects involving the use of ultra-high-performance concrete with ductility;

(D) $5,000,000 for each of fiscal years 2005 through 2009 shall be made available to carry out the high-performing steel bridge research and technology transfer program under section 502(k) of title 23, United States Code;

(E) $5,000,000 for each of fiscal years 2005 through 2009 shall be made available to carry out research on asphalt used in highway pavements;

(F) $5,000,000 for each of fiscal years 2005 through 2009 shall be made available to carry out research on concrete pavements;

(G) $5,000,000 for each of fiscal years 2005 through 2009 shall be made available to carry out research on alternative materials;

(H) $3,000,000 for each of fiscal years 2005 through 2009 shall be made available to carry out research on aggregates used in highway pavements, including alternative materials used in highway drainage applications;

(I) $3,000,000 for each of fiscal years 2005 through 2009 shall be made available for further development and deployment of techniques to prevent and mitigate alkali silica reactivity;

(J) $1,500,000 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

(K) $2,500,000 for each of fiscal years 2005 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), $56,317,736 for each of fiscal years 2005 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) $11,732,862 for fiscal year 2005, $12,202,176 for fiscal year 2006, $12,671,491 for fiscal year 2007, $13,140,805 for fiscal year 2008, and $13,610,119 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) $14,079,434 for each of fiscal years 2005 through 2009 shall be available to carry out section 504(b) of that title (relating to local technical assistance); and

(C) $2,815,887 for each of fiscal years 2005 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), $469,314 for each of fiscal years 2005 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 2005 through 2009, to carry out section 509 of title 23, United States Code, the Secretary shall set aside—

(A) $14,079,434 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) $17,833,949 of the amounts made available for the National Highway System under section 101 of title 23, United States Code, for the fiscal year;

(C) $12,202,176 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) $18,772,579 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) $4,693,145 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) $2,815,887 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 $28,158,868 for each of fiscal years 2005 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) $408,491,420 for fiscal year 2005;
(2) $416,000,453 for fiscal year 2006;
(3) $422,570,857 for fiscal year 2007;
(4) $428,202,637 for fiscal year 2008; and
(5) $434,773,037 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, and the National Center for Earthquake Engineering Research at the University of Buffalo, carry out a seismic research program—

''(A) to study the vulnerability of the Federal-aid 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, 2005, 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 2005, 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) $12,000,000 for each of fiscal years 2005 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.

''(k) HIGH-PERFORMING STEEL 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-performing steel in the construction and rehabilitation of bridges.

''§ 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 2005, 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 2005 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 2005, 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 2005, 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 $187,726 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 2005, 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 2005, the Secretary shall provide grants to 40 nonprofit institutions of higher learning (or consortia of institutions of higher learning) to establish centers to address transportation design, management, research, development, and technology matters, especially the education and training of greater numbers of individuals to enter into the professional field of transportation.

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

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

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

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

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

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

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

''(i) [_____].
''(ii) [_____].
''(iii) [_____].
''(iv) [_____].
''(v) [_____].
''(vi) [_____].
''(vii) [_____].
''(viii) [_____].
''(ix) [_____].
''(x) [_____].
''(xi) [_____].

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

''(i) [_____].
''(ii) [_____].
''(iii) [_____].
''(iv) [_____].
''(v) [_____].
''(vi) [_____].
''(vii) [_____].
''(viii) [_____].
''(ix) [_____].
''(x) [_____].
''(xi) [_____].

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

''(i) [_____].
''(ii) [_____].
''(iii) [_____].
''(iv) [_____].
''(v) [_____].
''(vi) [_____].
''(vii) [_____].
''(viii) [_____].

''(b) REGIONAL CENTERS.—

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

''(2) SELECTION OF REGIONAL CENTERS.—

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

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

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

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

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

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

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

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

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

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

''(i) the Research and Special Programs Administration;

''(ii) the Federal Highway Administration; and

''(iii) the Federal Transit Administration.

''(c) CENTER REQUIREMENTS.—

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

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

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

''(i) civil engineering;

''(ii) transportation engineering;

''(iii) transportation systems management and operations; or

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

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

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

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

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

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

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

''(D) shall establish an advisory committee that—

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

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

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

''(2) PEER REVIEW.—

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

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

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

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

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

''(iv) the overall outcomes of the research.

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

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

''(ii) by the University Transportation Center.

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

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

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

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

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

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

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

''(A) multidisciplinary coursework; and

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

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

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

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

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

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

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

''(A) the goals of the center;

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

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

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

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

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

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

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

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

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

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

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

''(g) FUNDING.—

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

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

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

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

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

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

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

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

''(2) USE OF FUNDS—

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

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

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

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

''(B) FACILITIES AND ADMINISTRATION FEE.—Not more than 10 percent of any grant made available to a university transportation center (or any institution or consortium that establishes such a center) for a fiscal year may be used to pay to the appropriate 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 2005, the Secretary shall use to carry out this subsection—

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

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

''§ 512. Transportation analysis simulation system

''(a) CONTINUATION OF TRANSIMS DEVELOPMENT.—

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

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

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

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

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

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

''(1) to further develop TRANSIMS for additional applications, including—

''(A) congestion analyses;

''(B) major investment studies;

''(C) economic impact analyses;

''(D) alternative analyses;

''(E) freight movement studies;

''(F) emergency evacuation studies;

''(G) port studies; and

''(H) airport access studies;

''(2) provide training and technical assistance with respect to the implementation and application of TRANSIMS to States, local governments, and metropolitan planning organizations with responsibility for travel modeling;

''(3) develop methods to simulate the national transportation infrastructure as a 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 2005 for each of fiscal years 2005 through 2009, the Secretary shall use $893,082 to carry out this section.

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

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

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

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

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

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

(a) DEFINITIONS.—In this section:

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

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

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

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

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

(b) PRIORITY AREAS OF EFFORT.—

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

(2) STATISTICAL ANALYSIS EFFORT.—

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

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

(3) NATIONAL SECURITY.—The Bureau shall—

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

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

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

(c) STUDY.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall provide a grant to, or enter into a cooperative agreement or contract with, the Board for the conduct of a study of the data collection and statistical analysis efforts of the Department with respect to the modes of surface transportation for which funds are made available under this Act.

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

(3) CONTENT.—The study shall include—

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

(B) an examination and analysis of data collected by, methods of data collection of, and

analyses performed by, agencies within the Department; and

(C) recommendations relating to—

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

(I) types of data collected;

(II) methods of data collection;

(III) types of analyses performed; and

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

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

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

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

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

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

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

(A) the Board shall submit to the Secretary, the Committee on Environment and Public Works of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a final report on the results of the study; and

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

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

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

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

(7) COMPLIANCE.—

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

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

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

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

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

''(k) ANNUAL REPORT.—

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

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

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

''(2) AVAILABILITY.—The Bureau shall—

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

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

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

''(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 2005 shall be used only for the collection and statistical analysis of information relating to surface transportation systems.''; and

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

SEC. 2103. CENTERS FOR SURFACE TRANSPORTATION EXCELLENCE.

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

(1) the environment;

(2) operations;

(3) surface transportation safety;

(4) project finance; and

(5) asset management.

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

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

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

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

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

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

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

(4) a Center for Excellence in Project Finance—

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

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

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

(c) PROGRAM ADMINISTRATION.—

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

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

(3) CONTENT.—The plan shall include—

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

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

(4) COOPERATION AND COMPETITION.—

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

(i) the National Academy of Sciences;

(ii) the American Association of State Highway and Transportation Officials;

(iii) planning organizations;

(iv) a Federal laboratory;

(v) a State agency;

(vi) an authority, association, institution, or organization; or

(vii) a for-profit or nonprofit corporation.

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

(i) on a competitive basis; and

(ii) on the basis of the results of peer review of proposals submitted to the Secretary.

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

(d) ALLOCATIONS.—

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

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

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

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

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

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

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

(3) APPLICABILITY OF TITLE 23.—Funds made available under this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share shall be 100 percent.

SEC. 2104. MOTORCYCLE CRASH CAUSATION STUDY GRANTS.

(a) GRANTS.—The Secretary shall provide grants for the purpose of conducting a comprehensive, in-depth motorcycle crash causation study that employs the common international methodology for in-depth motorcycle accident investigation of the Organization for Economic Cooperation and Development.

(b) FUNDING.—Of the amounts made available under section 2001(a)(3), $1,407,943 for each of fiscal years 2005 and 2006 shall be available to carry out this section.

SEC. 2105. TRANSPORTATION TECHNOLOGY INNOVATION AND DEMONSTRATION PROGRAM.

Section 5117(b) of the Transportation Equity Act for the 21st Century (112 Stat 449; 112 Stat. 864; 115 Stat. 2330) is amended by striking paragraph (3) and inserting the following:

''(3) INTELLIGENT TRANSPORTATION INFRASTRUCTURE.—

''(A) DEFINITIONS.—In this paragraph:

''(i) CONGESTED AREA.—The term 'congested area' means a metropolitan area that experiences significant traffic congestion, as determined by the Secretary on an annual basis.

''(ii) DEPLOYMENT AREA.—The term 'deployment area' means any of the metropolitan areas of Baltimore, Birmingham, Boston, Chicago, Cleveland, Dallas/Ft. Worth, Denver, Detroit, Houston, Indianapolis, Las Vegas, Los Angeles, Miami, New York/Northern New Jersey, Northern Kentucky/Cincinnati, Oklahoma City, Orlando, Philadelphia, Phoenix, Pittsburgh, Portland, Providence, Salt Lake, San Diego, San Francisco, St. Louis, Seattle, Tampa, and Washington, District of Columbia.

''(iii) METROPOLITAN AREA.—

''(I) IN GENERAL.—The term 'metropolitan area' means any area that—

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

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

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

''(iv) ORIGINAL CONTRACT.—The term 'original contract' means the Department of Transportation contract numbered DTTS 59–99–D–00445 T020013.

''(v) PROGRAM.—The term 'program' means the 2-part intelligent transportation infrastructure program carried out under this paragraph.

''(vi) STATE TRANSPORTATION DEPARTMENT.—The term 'State transportation department' means—

''(I) a State transportation department (as defined in section 101 of title 23, United States Code); and

''(II) a designee of a State transportation department (as so defined) for the purpose of entering into contracts.

''(vii) UNCOMMITTED FUNDS—The term 'uncommitted funds' means the total amount of funds that, as of the date that is 180 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, remain uncommitted under the original contract.

''(B) INTELLIGENT TRANSPORTATION INFRASTRUCTURE PROGRAM.—

''(i) IN GENERAL.—The Secretary shall carry out a 2-part intelligent transportation infrastructure program in accordance with this paragraph to advance the deployment of an operational intelligent transportation infrastructure system, through measurement of various transportation system activities, to simultaneously—

''(I) aid in transportation planning and analysis; and

''(II) make a significant contribution to the ITS program under this title.

''(ii) OBJECTIVES.—The objectives of the program shall be—

''(I) to build or integrate an infrastructure of the measurement of various transportation system metrics to aid in planning, analysis, and maintenance of the Department of Transportation, including the buildout, maintenance, and operation of greater than 40 metropolitan area systems with a total cost of not to exceed $2,000,000 for each metropolitan area;

''(II) to provide private technology commercialization initiatives to generate revenues that will be reinvested in the intelligent transportation infrastructure system;

''(III) to aggregate data into reports for multipoint data distribution techniques; and

''(IV) with respect to part I of the program under subparagraph (C), to use an advanced information system designed and monitored by an entity with experience with the Department of Transportation in the design and monitoring of high-reliability, mission-critical voice and data systems.

''(C) PART I.—

''(i) IN GENERAL.—In carrying out part I of the program, the Secretary shall permit the entity to which the original contract was awarded to use uncommitted funds to deploy intelligent transportation infrastructure systems that have been accepted by the Secretary—

''(I) in accordance with the terms of the original contract; and

''(II) in any deployment area, with the consent of the State transportation department for the deployment area.

''(ii) APPLICABLE CONDITIONS.—The same asset ownership, maintenance, fixed price contract, and revenue sharing model, and the same competitively selected consortium leader, as were used for the deployment of intelligent transportation infrastructure systems under the original contract before the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 shall apply to each deployment carried out under clause (i).

''(iii) DEPLOYMENT IN CONGESTED AREAS.—If the entity referred to in clause (i) is unable to commit the uncommitted funds by deploying intelligent transportation infrastructure systems in deployment areas, as determined by the Secretary, the entity may deploy the systems in accordance with this paragraph in 1 or more congested areas, with the consent of the State transportation departments for the congested areas.

''(D) PART II.—

''(i) IN GENERAL.—In carrying out part II of the program, the Secretary shall award, on a competitive basis, contracts for the deployment of intelligent transportation infrastructure systems that have been accepted by the Secretary in congested areas, with the consent of the State transportation departments for the congested areas.

''(ii) REQUIREMENTS.—The Secretary shall award contracts under clause (i)—

''(I) for individual congested areas among entities that seek to deploy intelligent transportation infrastructure systems in the congested areas; and

''(II) on the condition that the terms of each contract awarded requires the entity deploying the intelligent transportation infrastructure system to ensure that the deployed system is compatible (as determined by the Secretary) with systems deployed in other congested areas under this paragraph.

''(iii) PROVISIONS IN CONTRACTS.—The Secretary shall require that each contract for the deployment of an intelligent transportation infrastructure system under this subparagraph contain such provisions relating to asset ownership, maintenance, fixed price, and revenue sharing as the Secretary considers to be appropriate.

''(E) USE OF FUNDS FOR UNDEPLOYED SYSTEMS.—

''(i) IN GENERAL.—If, under part I or part II of the program, a State transportation department for a deployment area or congested area does not consent by the later of the date that is 180 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, or another date determined jointly by the State transportation department and the deployment area or congested area, to participate in the deployment of an intelligent transportation infrastructure system in the deployment area or congested area, upon application by any other deployment area or congested area that has consented by that date to participate in the deployment of such a system, the Secretary shall supplement the funds made available for each of the deployment areas or congested areas submitting the application by using for that purpose the funds not used for deployment of the system in the nonparticipating deployment area or congested area.

''(ii) NO INCLUSION IN COST LIMITATION.—Costs paid using funds provided through a supplementation under clause (i) shall not be considered in determining the limitation on maximum cost described in subparagraph (F)(ii).

''(F) FEDERAL SHARE; LIMITS ON COSTS OF SYSTEMS FOR METROPOLITAN AREAS.—

''(i) FEDERAL SHARE.—Subject to clause (ii), the Federal share of the cost of any project or activity carried out under the program shall be 80 percent.

''(ii) LIMIT ON COSTS OF SYSTEM FOR EACH METROPOLITAN AREA.—

''(I) IN GENERAL.—Not more than $2,000,000 may be provided under this paragraph for deployment of an intelligent transportation infrastructure system for a metropolitan area.

''(II) FUNDING UNDER EACH PART.—A metropolitan area in which an intelligent transportation infrastructure system is deployed under part I or part II of the program under subparagraph (C) or (D), respectively, including through a supplementation of funds under subparagraph (E), may not receive any additional deployment under the other part of the program.

''(G) USE OF RIGHTS-OF-WAY.—

''(i) IN GENERAL.—An intelligent transportation system project described in this paragraph or paragraph (6) that involves privately-owned intelligent transportation system components and is carried out using funds made available from the Highway Trust Fund shall not be subject to any law (including a regulation) of a State or political subdivision of a State prohibiting or regulating commercial activities in the rights-of-way of a highway for which Federal-aid highway funds have been used for planning, design, construction, or maintenance for the project, if the Secretary determines that such use is in the public interest.

''(ii) EFFECT OF SUBPARAGRAPH.—Nothing in this subparagraph affects the authority of a State or political subdivision of a State—

''(I) to regulate highway safety; or

''(II) under sections 253 and 332(c)(7) of the Communications Act of 1934 (47 U.S.C. 253, 332(c)(7)).

''(H) FUNDING.—

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

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

''(iii) AVAILABILITY; NO REDUCTION OR SETASIDE.—Amounts made available by this subparagraph—

''(I) shall remain available until expended; and

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

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

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

Subtitle C—Intelligent Transportation System Research

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

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

''SUBCHAPTER II—INTELLIGENT TRANSPORTATION SYSTEM RESEARCH AND TECHNICAL ASSISTANCE PROGRAM

''§ 521. Finding

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

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

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

''§ 522. Goals and purposes

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

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

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

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

''(2) the acceleration of the use of intelligent transportation systems to assist in the achievement of national transportation safety goals, including the enhancement of safe operation of motor vehicles and 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, photonics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

''(5) NATIONAL ITS ARCHITECTURE.—The term 'national ITS architecture' means the common framework for interoperability adopted by the Secretary that defines—

''(A) the functions associated with intelligent transportation system user services;

''(B) the physical entities or subsystems within which the functions reside;

''(C) the data interfaces and information flows between physical subsystems; and

''(D) the communications requirements associated with the information flows.

''(6) STANDARD.—The term 'standard' means a document that—

''(A) contains technical specifications or other precise criteria for intelligent transportation systems that are to be used consistently as rules, guidelines, or definitions of characteristics so as to ensure that materials, products, processes, and services are fit for their purposes; and

''(B) may—

''(i) support the national ITS architecture; and

''(ii) promote—

''(I) the widespread use and adoption of intelligent transportation system technology as a component of the surface transportation systems of the United States; and

''(II) interoperability among intelligent transportation system technologies implemented throughout the States.

''§ 524. General authorities and requirements

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

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

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

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

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

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

''(2) the private sector;

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

''(4) colleges and universities, including historically black colleges and universities and other minority institutions of higher education.

''(d) CONSULTATION WITH FEDERAL OFFICIALS.—In carrying out the intelligent transportation system research program, the Secretary, as appropriate, shall consult with—

''(1) the Secretary of Commerce;

''(2) the Secretary of the Treasury;

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

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

''(5) the Secretary of Homeland Security.

''(e) TECHNICAL ASSISTANCE, TRAINING, AND INFORMATION.—The Secretary may provide technical assistance, training, and information to State and local governments seeking to implement, operate, maintain, or evaluate intelligent transportation system technologies and services.

''(f) TRANSPORTATION PLANNING.—The Secretary may provide funding to support adequate consideration of transportation system management and operations (including intelligent transportation systems) within metropolitan and statewide transportation planning processes.

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

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

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

''(h) ADVISORY COMMITTEES.—

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

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

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

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

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

''(i) PROCUREMENT METHODS.—The Secretary shall develop and provide appropriate technical assistance and guidance to assist State and local agencies in evaluating and selecting appropriate methods of deployment and procurement for intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including innovative and 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 2005, the Secretary, in consultation with interested stakeholders (including State transportation departments) shall develop a 5-year National ITS Program Plan.

''(2) SCOPE.—The National ITS Program Plan shall—

''(A) specify the goals, objectives, and milestones for the research and deployment of intelligent transportation systems in the contexts of—

''(i) major metropolitan areas;

''(ii) smaller metropolitan and rural areas; and

''(iii) commercial vehicle operations;

''(B) specify the manner in which specific programs and projects will achieve the goals, objectives, and milestones referred to in subparagraph (A), including consideration of a 5-year timeframe for the goals and objectives;

''(C) identify activities that provide for the dynamic development, testing, and necessary revision of standards and protocols to promote and ensure interoperability in the implementation of intelligent transportation system technologies, including actions taken to establish standards; and

''(D) establish a cooperative process with State and local governments for—

''(i) determining desired surface transportation system performance levels; and

''(ii) developing plans for accelerating the incorporation of specific intelligent transportation system capabilities into surface transportation systems.

''(b) REPORTING.—The National ITS Program Plan shall be transmitted and biennially updated as part of the surface transportation research and technology development strategic plan developed under section 508(c).

''§526. National ITS architecture and standards

''(a) IN GENERAL.—

''(1) DEVELOPMENT, IMPLEMENTATION, AND MAINTENANCE.—In accordance with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note; 110 Stat. 783), the Secretary shall develop, implement, and maintain a national ITS architecture and supporting standards and protocols to promote the widespread use and evaluation of intelligent transportation system technology as a component of the surface transportation systems of the United States.

''(2) INTEROPERABILITY AND EFFICIENCY.—To the maximum extent practicable, the national ITS architecture shall promote interoperability among, and efficiency of, intelligent transportation system technologies implemented throughout the United States.

''(3) USE OF STANDARDS DEVELOPMENT ORGANIZATIONS.—In carrying out this section, the Secretary shall use the services of such standards development organizations as the Secretary determines to be appropriate.

''(b) PROVISIONAL STANDARDS.—

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

''(A) after consultation with affected parties; and

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

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

''(A) after consultation with affected parties; and

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

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

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

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

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

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

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

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

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

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

''(3) WITHDRAWAL OF WAIVER.—

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

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

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

''(ii) the reasons for withdrawing the waiver.

''(d) CONFORMITY WITH NATIONAL ITS ARCHITECTURE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall ensure that intelligent transportation system projects carried out using funds made available from the Highway Trust Fund conform to the national ITS architecture, applicable standards or provisional standards, and protocols developed under subsection (a).

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

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

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

''(3) EXCEPTIONS.—Paragraph (1) shall not apply to funds used for operation or maintenance of an intelligent transportation system in existence on the date of enactment of this subchapter.

''§527. Commercial vehicle information systems and networks deployment

''(a) DEFINITIONS.—In this section:

''(1) COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS.—The term 'commercial vehicle information systems and networks' means the information systems and communications networks that provide the capability to—

''(A) improve the safety of commercial vehicle operations;

''(B) increase the efficiency of regulatory inspection processes to reduce 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 2005 for the core deployment of commercial vehicle information systems and networks.

''(4) USE OF FUNDS.—

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

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

''(e) EXPANDED DEPLOYMENT GRANTS.—

''(1) IN GENERAL.—For each fiscal year, from the funds remaining after the Secretary has made core deployment grants under subsection (d), the Secretary may make grants to each eligible State, on request, for the expanded deployment of commercial vehicle information systems and networks.

''(2) ELIGIBILITY.—Each State that has completed the core deployment of commercial vehicle information systems and 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—TRANSPORTATION DISCRETIONARY SPENDING GUARANTEE AND BUDGET OFFSETS

SEC. 3101. SENSE OF THE SENATE ON OVERALL FEDERAL BUDGET.

It is the sense of the Senate that—

(1) comprehensive statutory budget enforcement measures, the jurisdiction of which lies with the Senate Budget Committee and Senate Governmental Affairs Committee, should—

(A) be enacted this year; and

(B) address all areas of the Federal budget, including discretionary spending, direct spending, and revenues; and

(2) special allocations for transportation should be included in that context.

SEC. 3102. DISCRETIONARY SPENDING CATEGORIES.

(a) DEFINITIONS.—

(1) HIGHWAY CATEGORY.—Section 250(c)(4)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(4)(B)) is amended—

(A) by striking ''Transportation Equity Act for the 21st Century'' and inserting ''Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005''; and

(B) by adding at the end the following:

''(v) 69–8158–0–7–401 (Motor Carrier Safety Grants).

''(vi) 69–8159–0–7–401 (Motor Carrier Safety Operations and Programs).''.

(2) MASS TRANSIT CATEGORY.—Section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(4)) is amended by striking subparagraph (C) and inserting the following:

''(C) MASS TRANSIT CATEGORY.—The term 'mass transit category' means the following budget accounts, or portions of the accounts, that are subject to the obligation limitations on

contract authority provided in the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 or for which appropriations are provided in accordance with authorizations contained in that Act:

''(i) 69–1120–0–1–401 (Administrative Expenses).

''(ii) 69–1134–0–1–401 (Capital Investment Grants).

''(iii) 69–8191–0–7–401 (Discretionary Grants).

''(iv) 69–1129–0–1–401 (Formula Grants).

''(v) 69–8303–0–7–401 (Formula Grants and Research).

''(vi) 69–1127–0–1–401 (Interstate Transfer Grants—Transit).

''(vii) 69–1125–0–1–401 (Job Access and Reverse Commute).

''(viii) 69–1122–0–1–401 (Miscellaneous Expired Accounts).

''(ix) 69–1139–0–1–401 (Major Capital Investment Grants).

''(x) 69–1121–0–1–401 (Research, Training and Human Resources).

''(xi) 69–8350–0–7–401 (Trust Fund Share of Expenses).

''(xii) 69–1137–0–1–401 (Transit Planning and Research).

''(xiii) 69–1136–0–1–401 (University Transportation Research).

''(xiv) 69–1128–0–1–401 (Washington Metropolitan Area Transit Authority).''.

(b) HIGHWAY FUNDING REVENUE ALIGNMENT.—Section 251(b)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(1)(B)) is amended—

(1) in clause (i)—

(A) by inserting ''for each of fiscal years 2006 through 2009'' after ''submits the budget'';

(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 3103 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for the highway category for the budget year, and calculate the outlay change resulting from that change in obligations relative to that amount for the budget year and each outyear using current estimates; and

''(bb) after making the calculation under item (aa), adjust the obligation limitation set forth in section 3103 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for the budget year by adding the amount calculated under subclauses (I) and (II).'';

(2) by striking clause (ii) and inserting the following:

''(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 3103 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for the highway category for the budget year, and calculate the outlay change resulting from that change in obligations relative to that amount for the budget year and each outyear using current estimates; and

''(bb) after making the calculation under item (aa), adjust the amount of obligations set forth in section 3103 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 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 2005, $34,163,000,000;

''(II) for fiscal year 2006, $36,972,000,000;

''(III) for fiscal year 2007, $38,241,000,000;

''(IV) for fiscal year 2008, $39,432,000,000; and

''(V) for fiscal year 2009, $40,557,000,000.

''(iv) In this subparagraph, the term ''highway receipts'' means the governmental receipts and interest credited to the highway account of the Highway Trust Fund.''.

(c) CONTINUATION OF SEPARATE SPENDING CATEGORIES.—For the purpose of section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(c)), the discretionary spending limits for the highway category and the mass transit category shall be—

(1) for fiscal year 2005—

(A) $33,657,000,000 for the highway category; and

(B) $6,844,000,000 for the mass transit category;

(2) for fiscal year 2006—

(A) $37,086,000,000 for the highway category; and

(B) $5,989,000,000 for the mass transit category;

(3) for fiscal year 2007—

(A) $40,192,000,000 for the highway category; and

(B) $7,493,000,000 for the mass transit category;

(4) for fiscal year 2008—

(A) $41,831,000,000 for the highway category; and

(B) $8,479,000,000 for the mass transit category; and

(5) for fiscal year 2009—

(A) $42,883,000,000 for the highway category; and

(B) $9,131,000,000 for the mass transit category.

(d) ADDITIONAL ADJUSTMENTS.—Section 251(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(1)) is amended—

(1) in subparagraph (C)—

(A) in clause (i), by striking ''fiscal years 2000, 2001, 2002, or 2003,'' and inserting ''each of fiscal years 2006, 2007, 2008, and 2009,''; and

(B) in clause (ii), by striking ''2002 and 2003'' and inserting ''2008 and 2009''; and

(2) in subparagraph (D)—

(A) in clause (i)—

(i) by striking ''1999'' and inserting ''2005'';

(ii) by striking ''2000 through 2003'' and inserting ''2006 through 2009''; and

(iii) by striking ''section 3103 of the Transportation Equity Act for the 21st Century'' and inserting ''section 6102 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005''; and

(B) in clause (ii), by striking ''2000, 2001, 2002, or 2003'' and inserting ''2006, 2007, 2008, and 2009''.

SEC. 3103. LEVEL OF OBLIGATION LIMITATIONS.

(a) HIGHWAY CATEGORY.—For the purpose of section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)), the level of obligation limitations for the highway category is—

(1) for fiscal year 2005, $35,154,000,000;

(2) for fiscal year 2006, $40,110,000,000;

(3) for fiscal year 2007, $40,564,000,000;

(4) for fiscal year 2008, $42,544,000,000; and

(5) for fiscal year 2009, $43,281,000,000.

(b) MASS TRANSIT CATEGORY.—For the purpose of section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)), the level of obligation limitations for the mass transit category is—

(1) for fiscal year 2005, $7,646,336,000;

(2) for fiscal year 2006, $8,900,000,000;

(3) for fiscal year 2007, $9,267,464,000;

(4) for fiscal year 2008, $10,050,700,000; and

(5) for fiscal year 2009, $10,685,500,000.

TITLE IV—SOLID WASTE DISPOSAL

SEC. 4001. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

(a) IN GENERAL.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) is amended by adding at the end the following:

''SEC. 6005. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

''(a) DEFINITIONS.—In this section:

''(1) AGENCY HEAD.—The term 'agency head' means—

''(A) the Secretary of Transportation; and

''(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

''(2) CEMENT OR CONCRETE PROJECT.—The term 'cement or concrete project' means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

''(A) involves the procurement of cement or concrete; and

''(B) is carried out in whole or in part using Federal funds.

''(3) RECOVERED MINERAL COMPONENT.—The term 'recovered mineral component' means—

''(A) ground granulated blast furnace slag;

''(B) coal combustion fly ash;

''(C) blast furnace slag aggregate;

''(D) silica fume; and

''(E) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

''(b) IMPLEMENTATION OF REQUIREMENTS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

''(2) PRIORITY.—In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

''(3) CONFORMANCE.—The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

''(c) FULL IMPLEMENTATION STUDY.—

''(1) IN GENERAL.—The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered

mineral component in cement used in cement or concrete projects.

''(2) MATTERS TO BE ADDRESSED.—The study shall—

''(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

''(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

''(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

''(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

''(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

''(3) REPORT.—Not later than 30 months after the date of enactment of this section, the Administrator shall submit to Congress a report on the study.

''(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the release of the report in accordance with subsection (c)(3), take additional actions authorized under this Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

''(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

''(2) eliminate barriers identified under subsection (c).

''(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding after the item relating to section 6004 the following:

''Sec. 6005. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.''.

SEC. 4002. USE OF GRANULAR MINE TAILINGS.

(a) IN GENERAL.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) (as amended by section 4001(a)) is amended by adding at the end the following:

''SEC. 6006. USE OF GRANULAR MINE TAILINGS.

''(a) MINE TAILINGS.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Administrator, in consultation with the Secretary of Transportation and heads of other Federal agencies, shall establish criteria (including an evaluation of whether to establish a numerical standard for concentration of lead and other hazardous substances) for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as 'chat', for—

''(A) cement or concrete projects; and

''(B) transportation construction projects (including transportation construction projects involving the use of asphalt) that are carried out, in whole or in part, using Federal funds.

''(2) REQUIREMENTS.—In establishing criteria under paragraph (1), the Administrator shall consider—

''(A) the current and previous uses of granular mine tailings as an aggregate for asphalt; and

''(B) any environmental and public health risks and benefits derived from the removal, transportation, and use in transportation projects of granular mine tailings.

''(3) PUBLIC PARTICIPATION.—In establishing the criteria under paragraph (1), the Administrator shall solicit and consider comments from the public.

''(4) APPLICABILITY OF CRITERIA.—On the establishment of the criteria under paragraph (1), any use of the granular mine tailings described in paragraph (1) in a transportation project that is carried out, in whole or in part, using Federal funds, shall meet the criteria established under paragraph (1).

''(b) EFFECT OF SECTIONS.—Nothing in this section or section 6005 affects any requirement of any law (including a regulation) in effect on the date of enactment of this section.''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 4001(b)) is amended by adding after the item relating to section 6005 the following:

''Sec. 6006. Use of granular mine tailings.''.

TITLE V—HIGHWAY REAUTHORIZATION AND EXCISE TAX SIMPLIFICATION

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

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

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

Subtitle A—Trust Fund Reauthorization

SEC. 5101. EXTENSION OF HIGHWAY-RELATED TAXES AND TRUST FUNDS.

(a) EXTENSION OF TAXES.—

(1) IN GENERAL.—The following provisions are each amended by striking ''2005'' each place it appears and inserting ''2011'':

(A) Section 4041(a)(1)(C)(iii)(I) (relating to rate of tax on certain buses).

(B) Section 4041(a)(2)(B) (relating to rate of tax on special motor fuels).

(C) Section 4041(m)(1) (relating to certain alcohol fuels).

(D) Section 4051(c) (relating to termination of tax on heavy trucks and trailers).

(E) Section 4071(d) (relating to termination of tax on tires).

(F) Section 4081(d)(1) (relating to termination of tax on gasoline, diesel fuel, and kerosene).

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

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

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

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

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

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

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

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

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

(c) EXTENSION OF TRANSFERS OF CERTAIN TAXES.—

(1) IN GENERAL.—Paragraphs (1), (2), and (4)(D)((iii) of subsection (b) and subsection (c)(3) of section 9503 (relating to the Highway Trust Fund) are each amended—

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

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

(2) MOTORBOAT AND SMALL-ENGINE FUEL TAX TRANSFERS.—

(A) IN GENERAL.—Paragraphs (4)(A)(i) and (5)(A) of section 9503(c) are each amended by striking ''2005'' and inserting ''2011''.

(B) CONFORMING AMENDMENTS TO LAND AND WATER CONSERVATION FUND.—Section 201(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–11(b)) is amended—

(i) by striking ''2003'' and inserting ''2009'', and

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

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

(1) HIGHWAY TRUST FUND.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) AQUATIC RESOURCES TRUST FUND.—

(A) SPORT FISH RESTORATION ACCOUNT.—Paragraph (2) of section 9504(b) is amended by striking ''Surface Transportation Extension Act of 2004, Part V'' each place it appears and inserting ''Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005'' .

(B) EXCEPTION TO LIMITATION ON TRANSFERS.—Paragraph (2) of section 9504(d) is amended by striking ''June 1, 2005'' and inserting ''October 1, 2009''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5102. MODIFICATION OF ADJUSTMENTS OF APPORTIONMENTS.

(a) IN GENERAL.—Section 9503(d) (relating to adjustments for apportionments) is amended—

(1) by striking ''24-month'' in paragraph (1)(B) and inserting ''48-month'', and

(2) by striking ''2 YEARS' '' in the heading for paragraph (3) and inserting ''4 YEARS' ''.

(b) MEASUREMENT OF NET HIGHWAY RECEIPTS.—Section 9503(d) is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

''(6) MEASUREMENT OF NET HIGHWAY RECEIPTS.—For purposes of making any estimate under paragraph (1) of net highway receipts for periods ending after the date specified in subsection (b)(1), the Secretary shall treat—

''(A) each expiring provision of subsection (b) which is related to appropriations or transfers to the Highway Trust Fund to have been extended through the end of the 48-month period referred to in paragraph (1)(B), and

''(B) with respect to each tax imposed under the sections referred to in subsection (b)(1), the rate of such tax during the 48-month period referred to in paragraph (1)(B) to be the same as the rate of such tax as in effect on the date of such estimate.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Excise Tax Reform and Simplification

PART I—HIGHWAY EXCISE TAXES

SEC. 5201. MODIFICATION OF GAS GUZZLER TAX.

(a) UNIFORM APPLICATION OF TAX.—Subparagraph (A) of section 4064(b)(1) (defining automobile) is amended by striking the second sentence.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on October 1, 2005.

SEC. 5202. EXCLUSION FOR TRACTORS WEIGHING 19,500 POUNDS OR LESS FROM FEDERAL EXCISE TAX ON HEAVY TRUCKS AND TRAILERS.

(a) IN GENERAL.—Subsection (a) of section 4051 (relating to imposition of tax) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

''(4) EXCLUSION FOR TRACTORS WEIGHING 19,500 POUNDS OR LESS.—The tax imposed by paragraph (1) shall not apply to tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer if such tractor has a gross vehicle weight of 19,500 pounds or less (as determined under regulations prescribed by the Secretary).''.

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

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

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

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

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

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

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

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

''(1) IN GENERAL.—If—

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

''(B) within 2 years after the date of such first retail sale, such article is resold by the purchaser or such purchaser makes a substantial nonexempt use of such article,

then such sale or use of such article by such purchaser shall be treated as the first retail sale of such article for a price equal to its fair market value at the time of such sale or use.

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

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

SEC. 5204. VOLUMETRIC EXCISE TAX CREDIT FOR ALTERNATIVE FUELS.

(a) IMPOSITION OF TAX.—

(1) IN GENERAL.—Section 4081(a)(2)(A) (relating to rates of tax), as amended by section 5611 of this Act, is amended—

(A) by striking ''and'' at the end of clause (ii),

(B) by striking the period at the end of clause (iii), and

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

''(iv) in the case of P Series Fuels, 18.3 cents per gallon,

''(v) in the case of compressed natural gas and hydrogen, 18.3 cents per energy equivalent of a gallon of gasoline, and

''(vi) in the case of liquefied natural gas, any liquid fuel (other than ethanol and methanol) derived from coal (including peat), and liquid hydrocarbons derived from biomass (as defined in section 29(c)(3)), 24.3 cents per gallon.''.

(2) TREATMENT OF ALTERNATIVE FUEL AS TAXABLE FUEL.—

(A) IN GENERAL.—Section 4083(a)(1) (defining taxable fuel) is amended—

(i) by striking ''and'' at the end of subparagraph (B),

(ii) by striking the period at the end of subparagraph (C) and inserting '', and'', and

(iii) by adding at the end the following new subparagraph:

''(D) alternative fuel.''.

(B) DEFINITION.—Section 4083(a) is amended by adding at the end the following new paragraph:

''(4) ALTERNATIVE FUEL.—The term 'alternative fuel' means—

''(A) compressed or liquefied natural gas,

''(B) P Series Fuels (as defined by the Secretary of Energy under section 13211(2) of title 42, United States Code,

''(C) hydrogen,

''(D) any liquid fuel (other than ethanol and methanol) derived from coal (including peat), and

''(E) liquid hydrocarbons derived from biomass (as defined in section 29(c)(3)).''.

(3) CONFORMING AMENDMENT.—Section 4041(a), as amended by section 5101 of this Act, is amended by striking paragraphs (2) and (3) and inserting the following:

''(2) SPECIAL MOTOR FUELS.—

''(A) IN GENERAL.—There is hereby imposed a tax on any alternative fuel (other than gas oil or fuel oil) and liquefied petroleum gas—

''(i) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

''(ii) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such fuel under clause (i).

''(B) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this paragraph on the sale or use of any alternative fuel or liquefied petroleum gas if tax was imposed on such alternative fuel or liquefied petroleum gas under section 4081 and the tax thereon was not credited or refunded.

''(C) RATE OF TAX.—Except as otherwise provided, the rate of the tax imposed by this paragraph shall be the rate of tax specified in clause (iv), (v), or (vi) of section 4081(a)(2)(A) on the alternative fuel which is in effect at the time of such sale or use. In the case of liquefied petroleum gas, the rate of the tax imposed by this paragraph shall be 13.6 cents per gallon (3.2 cents per gallon in the case of any sale or use after September 30, 2011).

''(D) BUS USES.—No tax shall be imposed by this paragraph on any sale for use, or use, described in subparagraph (B) or (C) of section 6427(b)(2) (relating to school bus and intracity transportation).''.

(b) CREDIT FOR ALTERNATIVE FUEL AND ALTERNATIVE FUEL MIXTURES.—

(1) IN GENERAL.—Section 6426(a) (relating to allowance of credits) is amended by striking ''plus'' at the end of paragraph (1), by striking the period at the end of paragraph (2) and by adding at the end the following new paragraphs:

''(3) the alternative fuel credit, plus

''(4) the alternative fuel mixture credit.''.

(2) ALTERNATIVE FUEL AND ALTERNATIVE FUEL MIXTURE CREDIT.—Section 6426 (relating to credit for alcohol fuel and biodiesel mixtures) is amended by redesignating subsections (d) and (e) as subsections (f) and (g) and by inserting after subsection (c) the following new subsection:

''(d) ALTERNATIVE FUEL CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the alternative fuel credit is the product of 50 cents and the number of gallons of an alternative fuel or gasoline gallon equivalents of a nonliquid alternative fuel sold by the taxpayer for use as a motor fuel in a highway vehicle.

''(2) ALTERNATIVE FUEL.—For purposes of this section, the term 'alternative fuel'—

''(A) has the meaning given such term by subparagraphs (A), (B), (C), and (E) of section 4083(a)(4),

''(B) includes any liquid fuel derived from coal (including peat) through the Fischer-Tropsch process, and

''(C) does not include ethanol, methanol, or biodiesel.

''(3) GASOLINE GALLON EQUIVALENT.—For purposes of this subsection, the term 'gasoline gallon equivalent' means, with respect to any nonliquid alternative fuel, the amount of such fuel having a Btu content of 124,800 (higher heating value).

''(4) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after September 30, 2009.

''(e) ALTERNATIVE FUEL MIXTURE CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the alternative fuel mixture credit is the product of 50 cents and the number of gallons of alternative fuel used by the taxpayer in producing any alternative fuel mixture for sale or use in a trade or business of the taxpayer.

''(2) ALTERNATIVE FUEL MIXTURE.—For purposes of this section, the term 'alternative fuel mixture' means a mixture of alternative fuel and

taxable fuel (as defined in subparagraph (A), (B), or (C) of section 4083(a)(1)) which—

''(A) is sold by the taxpayer producing such mixture to any person for use as fuel in a highway vehicle, or

''(B) is used as a fuel in a highway vehicle by the taxpayer producing such mixture.

''(3) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after September 30, 2009.''.

(3) CONFORMING AMENDMENTS.—

*(A) The section heading for section 6426 is amended by striking ''**ALCOHOL FUEL AND BIODIESEL**'' and inserting ''**CERTAIN ALTERNATIVE FUEL**''.*

(B) The table of sections for subchapter B of chapter 65 is amended by striking ''alcohol fuel and biodiesel'' in the item relating to section 6426 and inserting ''certain alternative fuel''.

(C) Section 6427(a) is amended by striking ''paragraph (2) or (3) of section 4041(a) or section 4041(c)'' and inserting ''section 4041(a)(2) or 4041(c)''.

(D) Section 6427(e) is amended—

(i) by inserting ''or the alternative fuel mixture credit'' after ''biodiesel mixture credit'' in paragraph (1),

(ii) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:

''(2) ALTERNATIVE FUEL.—If any person produces an alternative fuel 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 alternative fuel credit with respect to such fuel.'',

(iii) by striking ''under paragraph (1) with respect to any mixture'' in paragraph (3) (as redesignated by clause (ii)) and inserting ''under paragraph (1) or (2) with respect to any mixture or alternative fuel'',

(iv) by striking ''and'' at the end of paragraph (4)(A) (as redesignated by clause (ii)),

(v) by striking the period at the end of paragraph (4)(B) (as so redesignated), and

(vi) by adding at the end of paragraph (4) (as so redesignated) the following new subparagraph:

''(C) any alternative fuel or alternative fuel mixture (as defined in section 6426 (d)(2) or (e)(3)) sold or used after September 30, 2009.'', and

(vii) by striking ''OR BIODIESEL USED TO PRODUCE ALCOHOL FUEL AND BIODIESEL MIXTURES'' in the heading and inserting '', BIODIESEL, OR ALTERNATIVE FUEL''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any sale, use, or removal for any period after September 30, 2006.

PART II—AQUATIC EXCISE TAXES

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

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

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

(A) by striking ''Fund—'' and all that follows through ''shall be transferred'' in subparagraph (B) and inserting ''Fund which is attributable to motorboat fuel taxes received on or after October 1, 2005, and before October 1, 2011, shall be transferred'',

(B) by striking subparagraph (A), and

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

(2) CONFORMING AMENDMENTS.—

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

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

(ii) by striking ''or (B)'' in clause (ii), and

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

(B) Paragraph (5) of section 9503(c) is amended by striking ''Account in the Aquatic Resources'' in subparagraph (A) and inserting ''and Boating''.

(b) MERGING OF ACCOUNTS.—

(1) IN GENERAL.—Subsection (a) of section 9504 is amended to read as follows:

''(a) CREATION OF TRUST FUND.—There is hereby established in the Treasury of the United States a trust fund to be known as the 'Sport Fish Restoration and Boating Trust Fund'. Such Trust Fund shall consist of such amounts as may be appropriated, credited, or paid to it as provided in this section, section 9503(c)(4), section 9503(c)(5), or section 9602(b).''.

(2) CONFORMING AMENDMENTS.—

(A) Subsection (b) of section 9504, as amended by section 5001 of this Act, is amended—

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

(ii) by striking ''Account'' both places it appears in paragraphs (1) and (2) and inserting ''and Boating Trust Fund'', and

(iii) by striking ''ACCOUNT'' both places it appears in the headings for paragraphs (1) and (2) and inserting ''TRUST FUND''.

(B) Subsection (d) of section 9504, as amended by section 5001 of this Act, is amended—

(i) by striking ''AQUATIC RESOURCES'' in the heading thereof,

(ii) by striking ''any Account in the Aquatic Resources'' in paragraph (1) and inserting ''the Sport Fish Restoration and Boating'', and

(iii) by striking ''any such Account'' in paragraph (1) and inserting ''such Trust Fund''.

(C) Subsection (e) of section 9504 is amended by striking ''Boat Safety Account and Sport Fish Restoration Account'' and inserting ''Sport Fish Restoration and Boating Trust Fund''.

*(D) Section 9504 is amended by striking ''**AQUATIC RESOURCES**'' in the heading thereof and inserting ''**SPORT FISH RESTORATION AND BOATING**''.*

(E) The item relating to section 9504 in the table of sections for subchapter A of chapter 98 is amended by striking ''aquatic resources'' and inserting ''sport fish restoration and boating''.

(c) PHASEOUT OF BOAT SAFETY ACCOUNT.—Subsection (c) of section 9504 is amended to read as follows:

''(c) EXPENDITURES FROM BOAT SAFETY ACCOUNT.—Amounts remaining in the Boat Safety Account on October 1, 2005, and amounts thereafter credited to the Account under section 9602(b), shall be available, without further appropriation, for making expenditures before October 1, 2010, to carry out the purposes of section 15 of the Dingell-Johnson Sport Fish Restoration Act (as in effect on the date of the enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005). For purposes of section 9602, the Boat Safety Account shall be treated as a Trust Fund established by this subchapter.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2005.

SEC. 5212. REPEAL OF HARBOR MAINTENANCE TAX ON EXPORTS.

(a) IN GENERAL.—Subsection (d) of section 4462 (relating to definitions and special rules) is amended to read as follows:

''(d) NONAPPLICABILITY OF TAX TO EXPORTS.—The tax imposed by section 4461(a) shall not apply to any port use with respect to any commercial cargo to be exported from the United States.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 4461(c)(1) is amended by adding ''or'' at the end of subparagraph (A), by striking subparagraph (B), and by redesignating subparagraph (C) as subparagraph (B).

(2) Section 4461(c)(2) is amended by striking ''imposed—'' and all that follows through ''in any other case,'' and inserting ''imposed''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect before, on, and after the date of the enactment of this Act.

SEC. 5213. CAP ON EXCISE TAX ON CERTAIN FISHING EQUIPMENT.

(a) IN GENERAL.—Paragraph (1) of section 4161(a) (relating to sport fishing equipment) is amended to read as follows:

''(1) IMPOSITION OF TAX.—

''(A) IN GENERAL.—There is hereby imposed on the sale of any article of sport fishing equipment by the manufacturer, producer, or importer a tax equal to 10 percent of the price for which so sold.

''(B) LIMITATION ON TAX IMPOSED ON FISHING RODS AND POLES.—The tax imposed by subparagraph (A) on any fishing rod or pole shall not exceed $10.''.

(b) CONFORMING AMENDMENTS.—Section 4161(a)(2) is amended by striking ''paragraph (1)'' both places it appears and inserting ''paragraph (1)(A)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2005.

PART III—AERIAL EXCISE TAXES

SEC. 5221. CLARIFICATION OF EXCISE TAX EXEMPTIONS FOR AGRICULTURAL AERIAL APPLICATORS AND EXEMPTION FOR FIXED-WING AIRCRAFT ENGAGED IN FORESTRY OPERATIONS.

(a) NO WAIVER BY FARM OWNER, TENANT, OR OPERATOR NECESSARY.—Subparagraph (B) of section 6420(c)(4) (relating to certain farming use other than by owner, etc.) is amended to read as follows:

''(B) if the person so using the gasoline is an aerial or other applicator of fertilizers or other substances and is the ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial or other applicator shall be treated as having used such gasoline on a farm for farming purposes.''.

(b) EXEMPTION INCLUDES FUEL USED BETWEEN AIRFIELD AND FARM.—Section 6420(c)(4), as amended by subsection (a), is amended by adding at the end the following new flush sentence: ''In the case of an aerial applicator, gasoline shall be treated as used on a farm for farming purposes if the gasoline is used for the direct flight between the airfield and 1 or more farms.''.

(c) EXEMPTION FROM TAX ON AIR TRANSPORTATION OF PERSONS FOR FORESTRY PURPOSES EXTENDED TO FIXED-WING AIRCRAFT.—Subsection (f) of section 4261 (relating to tax on air transportation of persons) is amended to read as follows:

''(f) EXEMPTION FOR CERTAIN USES.—No tax shall be imposed under subsection (a) or (b) on air transportation—

''(1) by helicopter for the purpose of transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

''(2) by helicopter or by fixed-wing aircraft for the purpose of the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations),

but only if the helicopter or fixed-wing aircraft does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such use. In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel use or air transportation after September 30, 2005.

SEC. 5222. MODIFICATION OF RURAL AIRPORT DEFINITION.

(a) IN GENERAL.—Section 4261(e)(1)(B) (defining rural airport) is amended—

(1) by inserting ''(in the case of any airport described in clause (ii)(III), on flight segments

of at least 100 miles)'' after ''by air'' in clause (i), and

(2) by striking ''or'' at the end of subclause (I) of clause (ii), by striking the period at the end of subclause (II) of clause (ii) and inserting '', or'', and by adding at the end of clause (ii) the following new subclause:

''(III) is not connected by paved roads to another airport.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2005.

SEC. 5223. EXEMPTION FROM TAXES ON TRANSPORTATION PROVIDED BY SEAPLANES.

(a) IN GENERAL.—Section 4261 (relating to imposition of tax) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

''(i) EXEMPTION FOR SEAPLANES.—No tax shall be imposed by this section or section 4271 on any air transportation by a seaplane with respect to any segment consisting of a takeoff from, and a landing on, water, but only if the places at which such takeoff and landing occur have not received and are not receiving financial assistance from the Airport and Airways Trust Fund.''.

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

SEC. 5224. CERTAIN SIGHTSEEING FLIGHTS EXEMPT FROM TAXES ON AIR TRANSPORTATION.

(a) IN GENERAL.—Section 4281 (relating to small aircraft on nonestablished lines) is amended by adding at the end the following new sentence: ''For purposes of this section, an aircraft shall not be considered as operated on an established line at any time during which such aircraft is being operated on a flight the sole purpose of which is sightseeing.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to transportation beginning after September 30, 2005, but shall not apply to any amount paid before such date for such transportation.

PART IV—TAXES RELATING TO ALCOHOL

SEC. 5231. REPEAL OF SPECIAL OCCUPATIONAL TAXES ON PRODUCERS AND MARKETERS OF ALCOHOLIC BEVERAGES.

(a) REPEAL OF OCCUPATIONAL TAXES.—

(1) IN GENERAL.—The following provisions of part II of subchapter A of chapter 51 (relating to occupational taxes) are hereby repealed:

(A) Subpart A (relating to proprietors of distilled spirits plants, bonded wine cellars, etc.).

(B) Subpart B (relating to brewer).

(C) Subpart D (relating to wholesale dealers) (other than sections 5114 and 5116).

(D) Subpart E (relating to retail dealers) (other than section 5124).

(E) Subpart G (relating to general provisions) (other than sections 5142, 5143, 5145, and 5146).

(2) NONBEVERAGE DOMESTIC DRAWBACK.—Section 5131 is amended by striking '', on payment of a special tax per annum,''.

(3) INDUSTRIAL USE OF DISTILLED SPIRITS.—Section 5276 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1)(A) The heading for part II of subchapter A of chapter 51 and the table of subparts for such part are amended to read as follows:

''PART II—MISCELLANEOUS PROVISIONS

''Subpart A. Manufacturers of stills.
''Subpart B. Nonbeverage domestic drawback claimants.
''Subpart C. Recordkeeping and registration by dealers.
''Subpart D. Other provisions.''.

(B) The table of parts for such subchapter A is amended by striking the item relating to part II and inserting the following new item:

''Part II. Miscellaneous provisions.''.

(2) Subpart C of part II of such subchapter (relating to manufacturers of stills) is redesignated as subpart A.

(3)(A) Subpart F of such part II (relating to nonbeverage domestic drawback claimants) is redesignated as subpart B and sections 5131 through 5134 are redesignated as sections 5111 through 5114, respectively.

(B) The table of sections for such subpart B, as so redesignated, is amended—

(i) by redesignating the items relating to sections 5131 through 5134 as relating to sections 5111 through 5114, respectively, and

(ii) by striking ''and rate of tax'' in the item relating to section 5111, as so redesignated.

(C) Section 5111, as redesignated by subparagraph (A), is amended—

(i) by striking ''**AND RATE OF TAX**'' in the section heading,

(ii) by striking the subsection heading for subsection (a), and

(iii) by striking subsection (b).

(4) Part II of subchapter A of chapter 51 is amended by adding after subpart B, as redesignated by paragraph (3), the following new subpart:

''Subpart C—Recordkeeping and Registration by Dealers

''Sec. 5121. Recordkeeping by wholesale dealers.
''Sec. 5122. Recordkeeping by retail dealers.
''Sec. 5123. Preservation and inspection of records, and entry of premises for inspection.
''Sec. 5124. Registration by dealers.''.

(5)(A) Section 5114 (relating to records) is moved to subpart C of such part II and inserted after the table of sections for such subpart.

(B) Section 5114 is amended—

(i) by striking the section heading and inserting the following new heading:

''SEC. 5121. RECORDKEEPING BY WHOLESALE DEALERS.'',

and

(ii) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) WHOLESALE DEALERS.—For purposes of this part—

''(1) WHOLESALE DEALER IN LIQUORS.—The term 'wholesale dealer in liquors' means any dealer (other than a wholesale dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to another dealer.

''(2) WHOLESALE DEALER IN BEER.—The term 'wholesale dealer in beer' means any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to another dealer.

''(3) DEALER.—The term 'dealer' means any person who sells, or offers for sale, any distilled spirits, wines, or beer.

''(4) PRESUMPTION IN CASE OF SALE OF 20 WINE GALLONS OR MORE.—The sale, or offer for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumptive evidence that the person making such sale, or offer for sale, is engaged in or carrying on the business of a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be. Such presumption may be overcome by evidence satisfactorily showing that such sale, or offer for sale, was made to a person other than a dealer.''.

(C) Paragraph (3) of section 5121(d), as so redesignated, is amended by striking ''section 5146'' and inserting ''section 5123''.

(6)(A) Section 5124 (relating to records) is moved to subpart C of part II of subchapter A of chapter 51 and inserted after section 5121.

(B) Section 5124 is amended—

(i) by striking the section heading and inserting the following new heading:

''SEC. 5122. RECORDKEEPING BY RETAIL DEALERS.'',

(ii) by striking ''section 5146'' in subsection (c) and inserting ''section 5123'', and

(iii) by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

''(c) RETAIL DEALERS.—For purposes of this section—

''(1) RETAIL DEALER IN LIQUORS.—The term 'retail dealer in liquors' means any dealer (other than a retail dealer in beer or a limited retail dealer) who sells, or offers for sale, distilled spirits, wines, or beer, to any person other than a dealer.

''(2) RETAIL DEALER IN BEER.—The term 'retail dealer in beer' means any dealer (other than a limited retail dealer) who sells, or offers for sale, beer, but not distilled spirits or wines, to any person other than a dealer.

''(3) LIMITED RETAIL DEALER.—The term 'limited retail dealer' means any fraternal, civic, church, labor, charitable, benevolent, or ex-servicemen's organization making sales of distilled spirits, wine or beer on the occasion of any kind of entertainment, dance, picnic, bazaar, or festival held by it, or any person making sales of distilled spirits, wine or beer to the members, guests, or patrons of bona fide fairs, reunions, picnics, carnivals, or other similar outings, if such organization or person is not otherwise engaged in business as a dealer.

''(4) DEALER.—The term 'dealer' has the meaning given such term by section 5121(c)(3).''.

(7) Section 5146 is moved to subpart C of part II of subchapter A of chapter 51, inserted after section 5122, and redesignated as section 5123.

(8) Subpart C of part II of subchapter A of chapter 51, as amended by paragraph (7), is amended by adding at the end the following new section:

''SEC. 5124. REGISTRATION BY DEALERS.

''Every dealer who is subject to the recordkeeping requirements under section 5121 or 5122 shall register with the Secretary such dealer's name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In case of a firm or company, the names of the several persons constituting the same, and the places of residence, shall be so registered.''.

(9) Section 7012 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) For provisions relating to registration by dealers in distilled spirits, wines, and beer, see section 5124.''.

(10) Part II of subchapter A of chapter 51 is amended by inserting after subpart C the following new subpart:

''Subpart D—Other Provisions

''Sec. 5131. Packaging distilled spirits for industrial uses.
''Sec. 5132. Prohibited purchases by dealers.''.

(11) Section 5116 is moved to subpart D of part II of subchapter A of chapter 51, inserted after the table of sections, redesignated as section 5131, and amended by inserting ''(as defined in section 5121(c))'' after ''dealer'' in subsection (a).

(12) Subpart D of part II of subchapter A of chapter 51 is amended by adding at the end the following new section:

''SEC. 5132. PROHIBITED PURCHASES BY DEALERS.

''(a) IN GENERAL.—Except as provided in regulations prescribed by the Secretary, it shall be unlawful for a dealer to purchase distilled spirits for resale from any person other than a wholesale dealer in liquors who is required to keep the records prescribed by section 5121.

''(b) LIMITED RETAIL DEALERS.—A limited retail dealer may lawfully purchase distilled spirits for resale from a retail dealer in liquors.

''(c) PENALTY AND FORFEITURE.—

''For penalty and forfeiture provisions applicable to violations of subsection (a), see sections 5687 and 7302.''.

(13) Subsection (b) of section 5002 is amended—

(A) by striking ''section 5112(a)'' and inserting ''section 5121(c)(3)'',

(B) by striking ''section 5112'' and inserting ''section 5121(c)'',

(C) by striking ''section 5122'' and inserting ''section 5122(c)''.

(14) Subparagraph (A) of section 5010(c)(2) is amended by striking ''section 5134'' and inserting ''section 5114''.

(15) Subsection (d) of section 5052 is amended to read as follows:

''(d) BREWER.—For purposes of this chapter, the term 'brewer' means any person who brews beer or produces beer for sale. Such term shall not include any person who produces only beer exempt from tax under section 5053(e).''.

(16) The text of section 5182 is amended to read as follows:

''For provisions requiring recordkeeping by wholesale liquor dealers, see section 5112, and by retail liquor dealers, see section 5122.''.

(17) Subsection (b) of section 5402 is amended by striking ''section 5092'' and inserting ''section 5052(d)''.

(18) Section 5671 is amended by striking ''or 5091''.

(19)(A) Part V of subchapter J of chapter 51 is hereby repealed.

(B) The table of parts for such subchapter J is amended by striking the item relating to part V.

(20)(A) Sections 5142, 5143, and 5145 are moved to subchapter D of chapter 52, inserted after section 5731, redesignated as sections 5732, 5733, and 5734, respectively, and amended by striking ''this part'' each place it appears and inserting ''this subchapter''.

(B) Section 5732, as redesignated by subparagraph (A), is amended by striking ''(except the tax imposed by section 5131)'' each place it appears.

(C) Paragraph (2) of section 5733(c), as redesignated by subparagraph (A), is amended by striking ''liquors'' both places it appears and inserting ''tobacco products and cigarette papers and tubes''.

(D) The table of sections for subchapter D of chapter 52 is amended by adding at the end the following:

''Sec. 5732. Payment of tax.
''Sec. 5733. Provisions relating to liability for occupational taxes.
''Sec. 5734. Application of State laws.''.

(E) Section 5731 is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(21) Subsection (c) of section 6071 is amended by striking ''section 5142'' and inserting ''section 5732''.

(22) Paragraph (1) of section 7652(g) is amended—

(A) by striking ''subpart F'' and inserting ''subpart B'', and

(B) by striking ''section 5131(a)'' and inserting ''section 5111''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2008, but shall not apply to taxes imposed for periods before such date.

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

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

(b) SPECIAL RULE.—

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

(2) CONSERVATION TRUST FUND TRANSFER.—

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

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

(C) RESULT OF NONTRANSFER.—

(i) IN GENERAL.—Upon notification by the Secretary of the Interior that a Conservation Trust Fund transfer has not been made by the Commonwealth of Puerto Rico, the Secretary of the Treasury shall, except as provided in clause (ii), deduct and withhold from the next cover overpayment to be made to the treasury of Puerto Rico under section 7652(e) of such Code an amount equal to the appropriate Conservation Trust Fund transfer and interest thereon at the underpayment rate established under section 6621 of such Code as of the due date of such transfer. The Secretary of the Treasury shall transfer such amount deducted and withheld, and the interest thereon, directly to the Puerto Rico Conservation Trust Fund.

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

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

SEC. 5233. INCOME TAX CREDIT FOR DISTILLED SPIRITS WHOLESALERS AND FOR DISTILLED SPIRITS IN CONTROL STATE BAILMENT WAREHOUSES FOR COSTS OF CARRYING FEDERAL EXCISE TAXES ON BOTTLED DISTILLED SPIRITS.

(a) IN GENERAL.—Subpart A of part I of subchapter A of chapter 51 (relating to gallonage and occupational taxes) is amended by adding at the end the following new section:

''SEC. 5011. INCOME TAX CREDIT FOR AVERAGE COST OF CARRYING EXCISE TAX.

''(a) IN GENERAL.—For purposes of section 38, the amount of the distilled spirits credit for any taxable year is the amount equal to the product of—

''(1) in the case of—

''(A) any eligible wholesaler, the number of cases of bottled distilled spirits—

''(i) which were bottled in the United States, and

''(ii) which are purchased by such wholesaler during the taxable year directly from the bottler of such spirits, or

''(B) any person which is subject to section 5005 and which is not an eligible wholesaler, the number of cases of bottled distilled spirits which are stored in a warehouse operated by, or on behalf of, a State or political subdivision thereof, or an agency of either, on which title has not passed on an unconditional sale basis, and

''(2) the average tax-financing cost per case for the most recent calendar year ending before the beginning of such taxable year.

''(b) ELIGIBLE WHOLESALER.—For purposes of this section, the term 'eligible wholesaler' means any person which holds a permit under the Federal Alcohol Administration Act as a wholesaler of distilled spirits which is not a State or political subdivision thereof, or an agency of either.

''(c) AVERAGE TAX-FINANCING COST.—

''(1) IN GENERAL.—For purposes of this section, the average tax-financing cost per case for any calendar year is the amount of interest which would accrue at the deemed financing rate during a 60-day period on an amount equal to the deemed Federal excise tax per case.

''(2) DEEMED FINANCING RATE.—For purposes of paragraph (1), the deemed financing rate for any calendar year is the average of the corporate overpayment rates under paragraph (1) of section 6621(a) (determined without regard to the last sentence of such paragraph) for calendar quarters of such year.

''(3) DEEMED FEDERAL EXCISE TAX PER CASE.—For purposes of paragraph (1), the deemed Federal excise tax per case is $25.68.

''(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) CASE.—The term 'case' means 12 80-proof 750-milliliter bottles.

''(2) NUMBER OF CASES IN LOT.—The number of cases in any lot of distilled spirits shall be determined by dividing the number of liters in such lot by 9.''.

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit) is amended by striking ''plus'' at the end of paragraph (18), by striking the period at the end of paragraph (19), and inserting '', plus'', and by adding at the end the following new paragraph:

''(20) the distilled spirits credit determined under section 5011(a).''.

(c) CONFORMING AMENDMENT.—The table of sections for subpart A of part I of subchapter A of chapter 51 is amended by adding at the end the following new item:

''Sec. 5011. Income tax credit for average cost of carrying excise tax.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after September 30, 2005.

SEC. 5234. QUARTERLY EXCISE TAX FILING FOR SMALL ALCOHOL EXCISE TAXPAYERS.

(a) IN GENERAL.—Subsection (d) of section 5061 (relating to time for collecting tax on distilled spirits, wines, and beer) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) TAXPAYERS LIABLE FOR TAXES OF NOT MORE THAN $50,000.—

''(A) IN GENERAL.—In the case of any taxpayer who reasonably expects to be liable for not more than $50,000 in taxes imposed with respect to distilled spirits, wines, and beer under subparts A, C, and D for the calendar year and who was liable for not more than $50,000 in such taxes in the preceding calendar year, the last day for the payment of tax shall be the 14th day after the last day of the calendar quarter during which the action giving rise to the imposition of such tax occurs.

''(B) NO APPLICATION AFTER LIMIT EXCEEDED.—Subparagraph (A) shall not apply to any taxpayer for any portion of the calendar year following the first date on which the aggregate amount of tax due under subparts A, C, and D from such taxpayer during such calendar year exceeds $50,000, and any tax under such subparts which has not been paid on such date shall be due on the 14th day after the last day of the semimonthly period in which such date occurs.

''(C) CALENDAR QUARTER.—For purposes of this paragraph, the term 'calendar quarter' means the three-month period ending on March 31, June 30, September 30, or December 31.''.

(b) CONFORMING AMENDMENT.—Section 5061(d)(6), as redesignated by subsection (a), is amended by striking ''paragraph (4)'' and inserting ''paragraph (5)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to quarterly periods beginning on and after January 1, 2006.

PART V—SPORT EXCISE TAXES

SEC. 5241. CUSTOM GUNSMITHS.

(a) SMALL MANUFACTURERS EXEMPT FROM FIREARMS EXCISE TAX.—Section 4182 (relating to exemptions) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) SMALL MANUFACTURERS, ETC.—

''(1) IN GENERAL.—The tax imposed by section 4181 shall not apply to any pistol, revolver, or firearm described in such section if manufactured, produced, or imported by a person who manufactures, produces, and imports less than an aggregate of 50 of such articles during the calendar year.

''(2) CONTROLLED GROUPS.—All persons treated as a single employer for purposes of subsection (a) or (b) of section 52 shall be treated as one person for purposes of paragraph (1).''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2005.

(2) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to create any inference with respect to the proper tax treatment of any sales before the effective date of such amendments.

Subtitle C—Miscellaneous Provisions

SEC. 5301. MOTOR FUEL TAX ENFORCEMENT ADVISORY COMMISSION.

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

(b) FUNCTION.—The Commission shall—

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

(2) review the progress of investigations;

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

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

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

(6) review the results of Federal interagency cooperative efforts regarding motor fuel taxes; and

(7) evaluate and make recommendations to the President and Congress regarding—

(A) the effectiveness of existing Federal enforcement programs regarding motor fuel taxes,

(B) enforcement personnel allocation, and

(C) proposals for regulatory projects, legislation, and funding.

(c) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of the following representatives appointed by the Chairmen and the Ranking Members of the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives:

(A) At least 1 representative from each of the following Federal entities: the Department of Homeland Security, the Department of Transportation—Office of Inspector General, the Federal Highway Administration, the Department of Defense, and the Department of Justice.

(B) At least 1 representative from the Federation of State Tax Administrators.

(C) At least 1 representative from any State department of transportation.

(D) 2 representatives from the highway construction industry.

(E) 6 representatives from industries relating to fuel distribution — refiners (2 representatives), distributors (1 representative), pipelines (1 representative), and terminal operators (2 representatives).

(F) 1 representative from the retail fuel industry.

(G) 2 representatives from the staff of the Committee on Finance of the Senate and 2 representatives from the staff of the Committee on Ways and Means of the House of Representatives.

(2) TERMS.—Members shall be appointed for the life of the Commission.

(3) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(4) TRAVEL EXPENSES.—Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(5) CHAIRMAN.—The Chairman of the Commission shall be elected by the members.

(d) FUNDING.—Such sums as are necessary shall be available from the Highway Trust fund for the expenses of the Commission.

(e) CONSULTATION.—Upon request of the Commission, representatives of the Department of the Treasury and the Internal Revenue Service shall be available for consultation to assist the Commission in carrying out its duties under this section.

(f) OBTAINING DATA.—The Commission may secure directly from any department or agency of the United States, information (other than information required by any law to be kept confidential by such department or agency) necessary for the Commission to carry out its duties under this section. Upon request of the Commission, the head of that department or agency shall furnish such nonconfidential information to the Commission. The Commission shall also gather evidence through such means as it may deem appropriate, including through holding hearings and soliciting comments by means of Federal Register notices.

(g) TERMINATION.—The Commission shall terminate as of the close of September 30, 2009.

SEC. 5302. NATIONAL SURFACE TRANSPORTATION INFRASTRUCTURE FINANCING COMMISSION.

(a) ESTABLISHMENT.—There is established a National Surface Transportation Infrastructure Financing Commission (in this section referred to as the ''Commission''). The Commission shall hold its first meeting within 90 days of the appointment of the eighth individual to be named to the Commission.

(b) FUNCTION.—

(1) IN GENERAL.—The Commission shall, with respect to the period beginning on the date of the enactment of this Act and ending before 2016—

(A) make a thorough investigation and study of revenues flowing into the Highway Trust Fund under current law, including the individual components of the overall flow of such revenues;

(B) consider whether the amount of such revenues is likely to increase, decline, or remain unchanged, absent changes in the law, particularly by taking into account the impact of possible changes in public vehicular choice, fuel use, or travel alternatives that could be expected to reduce or increase revenues into the Highway Trust Fund;

(C) consider alternative approaches to generating revenues for the Highway Trust Fund, and the level of revenues that such alternatives would yield;

(D) consider highway and transit needs and whether additional revenues into the Highway Trust Fund, or other Federal revenues dedicated to highway and transit infrastructure, would be required in order to meet such needs; and

(E) study such other matters closely related to the subjects described in the preceding subparagraphs as it may deem appropriate.

(2) PREPARATION OF REPORT.—Based on such investigation and study, the Commission shall develop a final report, with recommendations and the bases for those recommendations, indicating policies that should be adopted, or not adopted, to achieve various levels of annual revenue for the Highway Trust Fund and to enable the Highway Trust Fund to receive revenues sufficient to meet highway and transit needs. Such recommendations shall address, among other matters as the Commission may deem appropriate—

(A) what levels of revenue are required by the Federal Highway Trust Fund in order for it to meet needs to maintain and improve the condition and performance of the Nation's highway and transit systems;

(B) what levels of revenue are required by the Federal Highway Trust Fund in order to ensure that Federal levels of investment in highways and transit do not decline in real terms; and

(C) the extent, if any, to which the Highway Trust Fund should be augmented by other mechanisms or funds as a Federal means of financing highway and transit infrastructure investments.

(c) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of 15 members, appointed as follows:

(A) 7 members appointed by the Secretary of Transportation, in consultation with the Secretary of the Treasury.

(B) 2 members appointed by the Chairman of the Committee on Ways and Means of the House of Representatives.

(C) 2 members appointed by the Ranking Minority Member of the Committee on Ways and Means of the House of Representatives.

(D) 2 members appointed by the Chairman of the Committee on Finance of the Senate.

(E) 2 members appointed by the Ranking Minority Member of the Committee on Finance of the Senate.

(2) QUALIFICATIONS.—Members appointed pursuant to paragraph (1) shall be appointed from among individuals knowledgeable in the fields of public transportation finance or highway and transit programs, policy, and needs, and may include representatives of interested parties, such as State and local governments or other public transportation authorities or agencies, representatives of the transportation construction industry (including suppliers of technology, machinery and materials), transportation labor (including construction and providers), transportation providers, the financial community, and users of highway and transit systems.

(3) TERMS.—Members shall be appointed for the life of the Commission.

(4) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(5) TRAVEL EXPENSES.—Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(6) CHAIRMAN.—The Chairman of the Commission shall be elected by the members.

(d) STAFF.—The Commission may appoint and fix the pay of such personnel as it considers appropriate.

(e) FUNDING.—Funding for the Commission shall be provided by the Secretary of the Treasury and by the Secretary of Transportation, out of funds available to those agencies for administrative and policy functions.

(f) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any department or agency of the United States may detail any of the personnel of that department or agency to the Commission to assist in carrying out its duties under this section.

(g) OBTAINING DATA.—The Commission may secure directly from any department or agency of the United States, information (other than information required by any law to be kept confidential by such department or agency) necessary for the Commission to carry out its duties under this section. Upon request of the Commission, the head of that department or agency shall furnish such nonconfidential information to the Commission. The Commission shall also gather evidence through such means as it may deem appropriate, including through holding hearings and soliciting comments by means of Federal Register notices.

(h) REPORT.—Not later than 2 years after the date of its first meeting, the Commission shall transmit its final report, including recommendations, to the Secretary of Transportation, the Secretary of the Treasury, and the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Environment and Public Works of the Senate, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(i) TERMINATION.—The Commission shall terminate on the 180th day following the date of transmittal of the report under subsection (h). All records and papers of the Commission shall thereupon be delivered to the Administrator of General Services for deposit in the National Archives.

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

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

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

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

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

(c) STUDY ON FIELD TEST OF ONBOARD COMPUTER ASSESSMENT OF HIGHWAY USE TAXES.—Not later than December 31, 2011, the Public Policy Center of the University of Iowa shall direct, analyze, and report to the Secretary of the Treasury and the Secretary of Transportation on a long-term field test of an approach to assessing highway use taxes based upon actual mileage driven by a specific vehicle on specific types of highways by use of an onboard computer—

(1) which is linked to satellites to calculate highway mileage traversed,

(2) which computes the appropriate highway use tax for each of the Federal, State, and local governments as the vehicle makes use of the highways, and

(3) the data from which is periodically downloaded by the vehicle owner to a collection center for an assessment of highway use taxes due in each jurisdiction traversed. The components of the field test shall include 2 years for preparation, including selection of vendors and test participants, and 3-year testing period.

SEC. 5304. DELTA REGIONAL TRANSPORTATION PLAN.

(a) STUDY.—The Delta Regional Authority shall conduct a study of the transportation assets and needs in the States of Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee which comprise the Delta region.

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

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

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

SEC. 5305. BUILD AMERICA CORPORATION.

(a) ESTABLISHMENT OF BUILD AMERICA CORPORATION.—There is established a nonprofit corporation, to be known as the ''Build America Corporation''. The Build America Corporation is not an agency or establishment of the United States Government. The purpose of the Corporation is to issue Build America bonds. The Corporation shall be subject, to the extent consistent with this section, to the laws of the State of Delaware applicable to corporations not for profit.

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

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

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

(A) qualified highway project,

(B) qualified public transportation project, and

(C) congestion relief project,

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

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

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

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

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

(B) give preference to projects with national or regional significance, including any projects sponsored by a coalition of States or a combination of States and private sector entities, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system.

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

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

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

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

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

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

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

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

(1) by striking ''$100'' in subparagraph (A) and inserting ''$155 (in the case of any calendar year after 2009, the dollar amount specified in subparagraph (B) for such year)'', and

(2) by striking ''$175'' in subparagraph (B) and inserting ''$200''.

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

(1) by striking the last sentence,

(2) by striking ''1999'' and inserting ''2008'', and

(3) by striking ''1998'' and inserting ''2007''.

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

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

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

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

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

(B) the Secretary of the Treasury shall review the technical and administrative feasibility of exempting such nonpropulsive use of highway fuels for the highway motor fuels excise taxes, shall propose options for implementing exemptions for classes of vehicles whose nonpropulsive fuel use exceeds 50 percent,

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

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

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

(3) the Secretary of the Treasury shall—

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

(B) determine the cost of reducing such long-term idling through the use of plug-ins at truck

stops, auxiliary power units, or other technologies.

(b) REPORT.—Not later than January 1, 2007, the Secretary of the Treasury shall report the findings of the study required under subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, except that the Secretary shall report and take action under subsection (a)(1) not later than July 1, 2006.

SEC. 5308. TAX-EXEMPT FINANCING OF HIGHWAY PROJECTS AND RAIL-TRUCK TRANSFER FACILITIES.

(a) TREATMENT AS EXEMPT FACILITY BOND.—Subsection (a) of section 142 (relating to exempt facility bond) is amended by striking ''or'' at the end of paragraph (13), by striking the period at the end of paragraph (14), and by adding at the end the following:

''(15) qualified highway facilities, or

''(16) qualified surface freight transfer facilities.''.

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

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

''(1) QUALIFIED HIGHWAY FACILITIES.—For purposes of subsection (a)(15), the term 'qualified highway facilities' means—

''(A) any surface transportation project which receives Federal assistance under title 23, United States Code (as in effect on the date of the enactment of this subsection), or

''(B) any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and which receives Federal assistance under such title 23.

''(2) QUALIFIED SURFACE FREIGHT TRANSFER FACILITIES.—For purposes of subsection (a)(16), the term 'qualified surface freight transfer facilities' means facilities for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under either title 23 or title 49, United States Code (as in effect on the date of the enactment of this subsection).

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

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

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

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

''(4) EXPENDITURE OF PROCEEDS.—An issue shall not be treated as an issue described in subsection (a)(15) or (a)(16) unless at least 95 percent of the net proceeds of the issue is expended for projects described in paragraph (3)(C) within the 5-year period beginning on the date of issuance. If at least 95 percent of such net proceeds is not expended with such 5-year period, an issue shall be treated as continuing to meet the requirements of this paragraph if the issuer uses all unspent proceeds of the issue to redeem bonds of the issue within 90 days after the end of such 5-year period. The Secretary, at the request of the issuer, may extend such 5-year period if the issuer establishes that any failure to meet such period is due to circumstances beyond the control of the issuer.''.

(c) EXEMPTION FROM GENERAL STATE VOLUME CAPS.—Paragraph (3) of section 146(g) of the Internal Revenue Code of 1986 (relating to exception for certain bonds) is amended by striking ''or (14)'' and all that follows through the end of the paragraph and inserting ''(14), (15), or (16) of section 142(a), and''.

(d) EFFECTIVE DATE.—The amendments made by this section apply to bonds issued after the date of the enactment of this Act.

SEC. 5309. TAX TREATMENT OF STATE OWNERSHIP OF RAILROAD REAL ESTATE INVESTMENT TRUST.

(a) IN GENERAL.—If a State owns all of the outstanding stock of a corporation—

(1) which is a real estate investment trust on the date of the enactment of this Act,

(2) which is a non-operating class III railroad, and

(3) substantially all of the activities of which consist of the ownership, leasing, and operation by such corporation of facilities, equipment, and other property used by the corporation or other persons for railroad transportation and for economic development purposes for the benefit of the State and its citizens,

then, to the extent such activities are of a type which are an essential governmental function within the meaning of section 115 of the Internal Revenue Code of 1986, income derived from such activities by the corporation shall be treated as accruing to the State for purposes of section 115 of such Code.

(b) GAIN OR LOSS NOT RECOGNIZED ON CONVERSION.—Notwithstanding section 337(d) of the Internal Revenue Code of 1986—

(1) no gain or loss shall be recognized under section 336 or 337 of such Code, and

(2) no change in basis of the property of such corporation shall occur,

because of any change of status of a corporation to a tax-exempt entity by reason of the application of subsection (a).

(c) TAX-EXEMPT FINANCING.—

(1) IN GENERAL.—Any obligation issued by a corporation described in subsection (a) at least 95 percent of the net proceeds (as defined in section 150(a) of the Internal Revenue Code of 1986) of which are to be used to provide for the acquisition, construction, or improvement of railroad transportation infrastructure (including railroad terminal facilities)—

(A) shall be treated as a State or local bond (within the meaning of section 103(c) of such Code), and

(B) shall not be treated as a private activity bond (within the meaning of section 103(b)(1) of such Code) solely by reason of the ownership or use of such railroad transportation infrastructure by the corporation.

(2) NO INFERENCE.—Except as provided in paragraph (1), nothing in this subsection shall be construed to affect the treatment of the private use of proceeds or property financed with obligations issued by the corporation for purposes of section 103 of the Internal Revenue Code of 1986 and part IV of subchapter B of such Code.

(d) DEFINITIONS.—For purposes of this section:

(1) REAL ESTATE INVESTMENT TRUST.—The term ''real estate investment trust'' has the meaning given such term by section 856(a) of the Internal Revenue Code of 1986.

(2) NON-OPERATING CLASS III RAILROAD.—The term ''non-operating class III railroad'' has the meaning given such term by part A of subtitle IV of title 49, United States Code (49 U.S.C. 10101 et seq.), and the regulations thereunder.

(3) STATE.—The term ''State'' includes—

(A) the District of Columbia and any possession of the United States, and

(B) any authority, agency, or public corporation of a State.

(e) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply on and after the date on which a State becomes the owner of all of the outstanding stock of a corporation described in subsection (a) through action of such corporation's board of directors.

(2) EXCEPTION.—This section shall not apply to any State which—

(A) becomes the owner of all of the voting stock of a corporation described in subsection (a) after December 31, 2003, or

(B) becomes the owner of all of the outstanding stock of a corporation described in subsection (a) after December 31, 2006.

SEC. 5310. INCENTIVES FOR THE INSTALLATION OF ALTERNATIVE FUEL REFUELING STATIONS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end the following new section:

''SEC. 30B. ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY CREDIT.

''(a) CREDIT ALLOWED.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the cost of any qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the taxable year.

''(b) LIMITATION.—The credit allowed under subsection (a) with respect to any alternative fuel vehicle refueling property shall not exceed—

''(1) $30,000 in the case of a property of a character subject to an allowance for depreciation, and

''(2) $1,000 in any other case.

''(c) QUALIFIED ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the term 'qualified alternative fuel vehicle refueling property' has the meaning given to such term by section 179A(d), but only with respect to any fuel at least 85 percent of the volume of which consists of ethanol, natural gas, compressed natural gas, liquefied natural gas, and hydrogen.

''(2) RESIDENTIAL PROPERTY.—In the case of any property installed on property which is used as the principal residence (within the meaning of section 121) of the taxpayer, paragraph (1) of section 179A(d) shall not apply.

''(d) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, and 30, over

''(2) the tentative minimum tax for the taxable year.

''(e) CARRYFORWARD ALLOWED.—

''(1) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (d) for such taxable year, such excess shall be allowed as a credit carryforward for each of the 20 taxable years following the unused credit year.

''(2) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under paragraph (1).

''(f) SPECIAL RULES.—For purposes of this section—

''(1) BASIS REDUCTION.—The basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

''(2) NO DOUBLE BENEFIT.—No deduction shall be allowed under section 179A with respect to any property with respect to which a credit is allowed under subsection (a).

''(3) PROPERTY USED BY TAX-EXEMPT ENTITY.—In the case of any qualified alternative fuel vehicle refueling property the use of which

is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such property to the person or entity using such property shall be treated as the taxpayer that placed such property in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such property (determined without regard to subsection (d)).

''(4) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1) or with respect to the portion of the cost of any property taken into account under section 179.

''(5) ELECTION NOT TO TAKE CREDIT.—No credit shall be allowed under subsection (a) for any property if the taxpayer elects not to have this section apply to such property.

''(6) RECAPTURE RULES.—Rules similar to the rules of section 179A(e)(4) shall apply.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to carry out the provisions of this section.

''(h) TERMINATION.—This section shall not apply to any property placed in service after December 31, 2009.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) is amended by striking ''and'' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting '', and'', and by adding at the end the following new paragraph:

''(32) to the extent provided in section 30B(f)(1).''.

(2) Section 55(c)(2) is amended by inserting ''30B(d),'' after ''30(b)(3),''.

(3) Section 6501(m) is amended by inserting ''30B(f)(5),'' after ''30(d)(4),''.

(4) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 30A the following new item:

''Sec. 30B Alternative fuel vehicle refueling property credit.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 5311. MODIFICATION OF RECAPTURE RULES FOR AMORTIZABLE SECTION 197 INTANGIBLES.

(a) IN GENERAL.—Subsection (b) of section 1245 is amended by adding at the end the following new paragraph:

''(9) DISPOSITION OF AMORTIZABLE SECTION 197 INTANGIBLES.—

''(A) IN GENERAL.—If a taxpayer disposes of more than 1 amortizable section 197 intangible (as defined in section 197(c)) in a transaction or a series of related transactions, all such amortizable 197 intangibles shall be treated as 1 section 1245 property for purposes of this section.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to any amortizable section 197 intangible (as so defined) with respect to which the adjusted basis exceeds the fair market value.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dispositions of property after the date of the enactment of this Act.

SEC. 5312. DIESEL FUEL TAX EVASION REPORT.

Not later than 360 days after the date of the enactment of this Act, the Commissioner of the Internal Revenue shall report to the Committees on Finance and Environment and Public Works of the Senate and the Committees on Ways and Means and Transportation and Infrastructure of the House of Representatives on the availability of new technologies that can be employed to enhance collections of the excise tax on diesel fuel and the plans of the Internal Revenue Service to employ such technologies.

Subtitle D—Fuels-related Technical Corrections

SEC. 5401. FUELS-RELATED TECHNICAL CORRECTIONS.

(a) AMENDMENTS RELATED TO SECTION 301 OF THE AMERICAN JOBS CREATION ACT OF 2004.—Section 6427 is amended—

(1) by striking subsection (f), and

(2) by striking subsection (o) and redesignating subsection (p) as subsection (o).

(b) AMENDMENTS RELATED TO SECTION 853 OF THE AMERICAN JOBS CREATION ACT OF 2004.—

(1) Subparagraph (C) of section 4081(a)(2) is amended by striking ''for use in commercial aviation'' and inserting ''for use in commercial aviation by a person registered for such use under section 4101''.

(2) So much of paragraph (2) of section 4081(d) as precedes subparagraph (A) is amended to read as follows:

''(2) AVIATION FUELS.—The rates of tax specified in clauses (ii) and (iv) of subsection (a)(2)(A) shall be 4.3 cents per gallon—''.

(3) Section 6421(f)(2) is amended—

(A) by striking ''noncommercial aviation (as defined in section 4041(c)(2))'' in subparagraph (A) and inserting ''aviation which is not commercial aviation (as defined in section 4083(b))'', and

(B) by striking ''aviation which is not noncommercial aviation'' in subparagraph (B) and inserting ''commercial aviation''.

(c) AMENDMENT RELATED TO SECTION 9005 OF THE TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.—The last sentence of paragraph (2) of section 9504(b) is amended by striking ''subparagraph (B)'', and inserting ''subparagraph (C)''.

(d) EFFECTIVE DATES.—

(1) AMERICAN JOBS CREATION ACT OF 2004.—The amendments made by subsections (a) and (b) shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 to which they relate.

(2) TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.—The amendment made by subsection (c) shall take effect as if included in the provision of the Transportation Equity Act for the 21st Century to which it relates.

Subtitle E—Revenue Offset Provisions

PART I—GENERAL PROVISIONS

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

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

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

''(1) IN GENERAL.—The Secretary'', and

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

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

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

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

''(ii) provides for contingent payments,

any regulations which require original issue discount to be determined by reference to the comparable yield of a noncontingent fixed-rate debt instrument shall be applied as if the regulations require that such comparable yield be determined by reference to a noncontingent fixed-rate debt instrument which is convertible into stock.

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

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

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

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

SEC. 5502. FRIVOLOUS TAX SUBMISSIONS.

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

''SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

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

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

''(ii) an application under—

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

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

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

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

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

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

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

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

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for

hearing before levy) is amended by adding at the end the following new subsection:

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

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

(A) by striking ''(A)'' and inserting ''(A)(i)'';

(B) by striking ''(B)'' and inserting ''(ii)'';

(C) by striking the period at the end of the first sentence and inserting ''; or''; 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. 5503. INCREASE IN CERTAIN CRIMINAL PENALTIES.

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

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

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

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

(b) INCREASE IN PENALTIES.—

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

(A) by striking ''$100,000'' and inserting ''$500,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''5 years'' and inserting ''10 years''.

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

(A) in the first sentence—

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

''(a) IN GENERAL.—Any person'', and

(ii) by striking ''$25,000'' and inserting ''$50,000'',

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

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

''(b) AGGRAVATED FAILURE TO FILE.—

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

''(A) 'felony' for 'misdemeanor',

''(B) '$500,000 ($1,000,000' for '$25,000 ($100,000', and

''(C) '10 years' for '1 year'.

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

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

(A) by striking ''$100,000'' and inserting ''$500,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''3 years'' and inserting ''5 years''.

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

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

(a) DETERMINATION OF PENALTY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) REPORT BY SECRETARY.—The Secretary shall each year conduct a study and report to Congress on the implementation of this section during the preceding year, including statistics on the number of taxpayers affected by such implementation and the amount of interest and applicable penalties asserted, waived, and assessed during such preceding year.

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

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

(a) LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) (relating to passive foreign investment company) is amended by adding at the end the following flush sentence: ''Such term shall not include any period if the earning of subpart F income by such corporation during such period would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i).''.

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

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

(a) IN GENERAL.—The Federal annual tax return of a corporation with respect to income shall also include a declaration signed by the chief executive officer of such corporation (or

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

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

SEC. 5507. TREASURY REGULATIONS ON FOREIGN TAX CREDIT.

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

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

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 5508. WHISTLEBLOWER REFORMS.

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

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

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

(3) by striking ''(other than interest)'', and

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

''(b) AWARDS TO WHISTLEBLOWERS.—

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

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

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

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

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

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

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

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

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

''(6) ADDITIONAL RULES.—

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

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

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

''(c) WHISTLEBLOWER OFFICE.—

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

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

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

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

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

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

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

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

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

''(3) REQUEST FOR ASSISTANCE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred on or after the date of the enactment

of this Act, except that such amendment shall not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained before such date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

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

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

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

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

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

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

''(3) EXCLUSION FOR CERTAIN GAIN.—

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

''(B) COST-OF-LIVING ADJUSTMENT.—

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

''(I) such dollar amount, multiplied by

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

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

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

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

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

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

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

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

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

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

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

''(b) ELECTION TO DEFER TAX.—

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

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

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

''(4) SECURITY.—

''(A) IN GENERAL.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

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

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

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

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

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

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

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

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

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

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

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

''(A) the individual—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(1) EXPATRIATE.—The term 'expatriate' means—

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

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

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

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

''(2) EXPATRIATION DATE.—The term 'expatriation date' means—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(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:

''(49) TERMINATION OF UNITED STATES CITIZENSHIP.—

''(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(3).

''(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.''.

(d) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

''(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation).''.

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(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:

''(21) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General's delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).''.

(B) SAFEGUARDS.—Section 6103(p)(4) (relating to safeguards) is amended by striking ''or (20)'' each place it appears and inserting ''(20), or (21)''.

(3) EFFECTIVE DATES.—The amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(e) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

''(h) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after the date of the enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005.''.

(2) Section 2107 is amended by adding at the end the following new subsection:

''(f) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.''.

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

''(C) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.''.

(f) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

''Sec. 877A. Tax responsibilities of expatriation.''.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after the date of the enactment of this Act.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after the date of the enactment of this Act, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

SEC. 5513. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) DISALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(B) by striking ''If'' and inserting:

''(1) TREBLE DAMAGES.—If'', and

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

''(2) PUNITIVE DAMAGES.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).''.

(2) CONFORMING AMENDMENT.—The heading for section 162(g) is amended by inserting ''OR PUNITIVE DAMAGES'' after ''LAWS''.

(b) INCLUSION IN INCOME OF PUNITIVE DAMAGES PAID BY INSURER OR OTHERWISE.—

(1) IN GENERAL.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

''SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.

''Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages.''.

(2) REPORTING REQUIREMENTS.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

''(f) SECTION TO APPLY TO PUNITIVE DAMAGES COMPENSATION.—This section shall apply to payments by a person to or on behalf of another

person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.''.

(3) CONFORMING AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

''Sec. 91. Punitive damages compensated by insurance or otherwise.''.

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

SEC. 5514. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERS WHICH ARE C CORPORATIONS.

(a) IN GENERAL.—Section 163(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

''(8) ALLOCATIONS TO CERTAIN CORPORATE PARTNERS.—If a C corporation is a partner in a partnership—

''(A) the corporation's allocable share of indebtedness and interest income of the partnership shall be taken into account in applying this subsection to the corporation, and

''(B) if a deduction is not disallowed under this subsection with respect to any interest expense of the partnership, this subsection shall be applied separately in determining whether a deduction is allowable to the corporation with respect to the corporation's allocable share of such interest expense.''.

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

SEC. 5515. PROHIBITION ON DEFERRAL OF GAIN FROM THE EXERCISE OF STOCK OPTIONS AND RESTRICTED STOCK GAINS THROUGH DEFERRED COMPENSATION ARRANGEMENTS.

(a) IN GENERAL.—Section 83 (relating to property transferred in connection with performance of services) is amended by adding at the end the following new subsection:

''(i) PROHIBITION ON ADDITIONAL DEFERRAL THROUGH DEFERRED COMPENSATION ARRANGEMENTS.—If a taxpayer exchanges—

''(1) an option to purchase employer securities—

''(A) to which subsection (a) applies, or

''(B) which is described in subsection (e)(3), or

''(2) employer securities or any other property based on employer securities transferred to the taxpayer,

for a right to receive future payments, then, notwithstanding any other provision of this title, there shall be included in gross income for the taxable year of the exchange an amount equal to the present value of such right (or such other amount as the Secretary may by regulations specify). For purposes of this subsection, the term 'employer securities' includes any security issued by the employer.''.

(b) CONTROLLED GROUP RULES.—Section 414(t)(2) is amended by inserting ''83(i),'' after ''79,''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any exchange after the date of the enactment of this Act.

SEC. 5516. LIMITATION OF EMPLOYER DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 274(e) (relating to expenses treated as compensation) is amended to read as follows:

''(2) EXPENSES TREATED AS COMPENSATION.—Expenses for goods, services, and facilities, to the extent that the expenses do not exceed the amount of the expenses which are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).''.

(b) PERSONS NOT EMPLOYEES.—Paragraph (9) of section 274(e) is amended by striking ''to the extent that the expenses are includible in the gross income'' and inserting ''to the extent that the expenses do not exceed the amount of the expenses which are includible in the gross income''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to expenses incurred after the date of the enactment of this Act.

SEC. 5517. INCREASE IN PENALTY FOR BAD CHECKS AND MONEY ORDERS.

(a) IN GENERAL.—Section 6657 (relating to bad checks) is amended—

(1) by striking ''$750'' and inserting ''$1,250'', and

(2) by striking ''$15'' and inserting ''$25''.

(b) EFFECTIVE DATE.—The amendments made by this section apply to checks or money orders received after the date of the enactment of this Act.

SEC. 5518. ELIMINATION OF DOUBLE DEDUCTION ON MINING EXPLORATION AND DEVELOPMENT COSTS UNDER THE MINIMUM TAX.

(a) IN GENERAL.—Section 57(a)(1) (relating to depletion) is amended by striking ''for the taxable year)'' and inserting ''for the taxable year and determined without regard to so much of the basis as is attributable to mining exploration and development costs described in section 616 or 617 for which a deduction is allowable for any taxable year under this part).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment this Act.

PART II—ECONOMIC SUBSTANCE DOCTRINE

SEC. 5521. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

''(o) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

''(1) GENERAL RULES.—

''(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

''(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—A transaction has economic substance only if—

''(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer's economic position, and

''(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

''(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

''(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

''(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

''(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

''(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

''(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

''(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

''(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

''(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

''(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

''(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

''(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

''(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

''(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

''(I) depreciation,

''(II) any tax credit, or

''(III) any other deduction as provided in guidance by the Secretary, and

''(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

''(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

''(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 5522. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

"SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has 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(o)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(o)(2), or

''(B) the transaction fails to meet the requirements of any similar rule of law.

''(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

''(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(2) APPLICABLE RULES.—The rules of paragraphs (2) and (3) of section 6707A(d) shall apply for purposes of paragraph (1).

''(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

''(f) CROSS REFERENCES.—

''(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

''(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).''.

(b) COORDINATION WITH OTHER UNDERSTATEMENTS AND PENALTIES.—

(1) The second sentence of section 6662(d)(2)(A) is amended by inserting ''and without regard to items with respect to which a penalty is imposed by section 6662B'' before the period at the end.

(2) Subsection (e) of section 6662A is amended—

(A) in paragraph (1), by inserting ''and noneconomic substance transaction understatements'' after ''reportable transaction understatements'' both places it appears,

(B) in paragraph (2)(A), by inserting ''and a noneconomic substance transaction understatement'' after ''reportable transaction understatement'',

(C) in paragraph (2)(B), by inserting ''6662B or'' before ''6663'',

(D) in paragraph (2)(C)(i), by inserting ''or section 6662B'' before the period at the end,

(E) in paragraph (2)(C)(ii), by inserting ''and section 6662B'' after ''This section'',

(F) in paragraph (3), by inserting ''or noneconomic substance transaction understatement'' after ''reportable transaction understatement'', and

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

''(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).''.

(3) Subsection (e) of section 6707A is amended—

(A) by striking ''or'' at the end of subparagraph (B), and

(B) by striking subparagraph (C) and inserting the following new subparagraphs:

''(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction, or

''(D) is required to pay a penalty under section 6662(h) with respect to any transaction and would (but for section 6662A(e)(2)(C)) have been subject to penalty under section 6662A at a rate prescribed under section 6662A(c) or under section 6662B,''.

(c) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

''Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 5523. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) IN GENERAL.—Section 163(m) (relating to interest on unpaid taxes attributable to nondisclosed reportable transactions) is amended—

(1) by striking ''attributable'' and all that follows and inserting the following: ''attributable to—

''(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

''(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).'', and

(2) by inserting ''AND NONECONOMIC SUBSTANCE TRANSACTIONS'' in the heading thereof after ''TRANSACTIONS''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after the date of the enactment of this Act in taxable years ending after such date.

PART III—IMPROVEMENTS IN EFFICIENCY AND SAFEGUARDS IN INTERNAL REVENUE SERVICE COLLECTION

SEC. 5531. WAIVER OF USER FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.

(a) IN GENERAL.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

''(e) WAIVER OF USER FEES FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.—In the case of a taxpayer who enters into an installment agreement in which automated installment payments are agreed to, the Secretary shall waive the fee (if any) for entering into the installment agreement.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date which is 180 days after the date of the enactment of this Act.

SEC. 5532. TERMINATION OF INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—Section 6159(b)(4) (relating to failure to pay an installment or any other tax liability when due or to provide requested financial information) is amended by striking ''or'' at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (E), and by inserting after subparagraph (B) the following:

''(C) to make a Federal tax deposit under section 6302 at the time such deposit is required to be made,

''(D) to file a return of tax imposed under this title by its due date (including extensions), or''.

(b) CONFORMING AMENDMENT.—The heading for section 6159(b)(4) is amended by striking ''FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION'' and inserting ''FAILURE TO MAKE PAYMENTS OR DEPOSITS OR FILE RETURNS WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION''.

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

SEC. 5533. OFFICE OF CHIEF COUNSEL REVIEW OF OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—Section 7122(b) (relating to record) is amended by striking ''Whenever a compromise'' and all that follows through ''his delegate'' and inserting ''If the Secretary determines that an opinion of the General Counsel for the Department of the Treasury, or the Counsel's delegate, is required with respect to a compromise, there shall be placed on file in the office of the Secretary such opinion''.

(b) CONFORMING AMENDMENTS.—Section 7122(b) is amended by striking the second and third sentences.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers-in-compromise submitted or pending on or after the date of the enactment of this Act.

SEC. 5534. PARTIAL PAYMENTS REQUIRED WITH SUBMISSION OF OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—Section 7122 (relating to compromises), as amended by this Act, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

''(c) RULES FOR SUBMISSION OF OFFERS-IN-COMPROMISE.—

''(1) PARTIAL PAYMENT REQUIRED WITH SUBMISSION.—

''(A) LUMP-SUM OFFERS.—

''(i) IN GENERAL.—The submission of any lump-sum offer-in-compromise shall be accompanied by the payment of 20 percent of amount of such offer.

''(ii) LUMP-SUM OFFER-IN-COMPROMISE.—For purposes of this section, the term 'lump-sum offer-in-compromise' means any offer of payments made in 5 or fewer installments.

''(B) PERIODIC PAYMENT OFFERS.—The submission of any periodic payment offer-in-compromise shall be accompanied by the payment of the amount of the first proposed installment and each proposed installment due during the period such offer is being evaluated for acceptance and has not been rejected by the Secretary. Any failure to make a payment required under the preceding sentence shall be deemed a withdrawal of the offer-in-compromise.

''(2) RULES OF APPLICATION.—

''(A) USE OF PAYMENT.—The application of any payment made under this subsection to the assessed tax or other amounts imposed under this title with respect to such tax may be specified by the taxpayer.

''(B) NO USER FEE IMPOSED.—Any user fee which would otherwise be imposed under this section shall not be imposed on any offer-in-compromise accompanied by a payment required under this subsection.''.

(b) ADDITIONAL RULES RELATING TO TREATMENT OF OFFERS.—

(1) UNPROCESSABLE OFFER IF PAYMENT REQUIREMENTS ARE NOT MET.—Paragraph (3) of section 7122(d) (relating to standards for evaluation of offers), as redesignated by subsection (a), is amended by striking ''; and'' at the end of subparagraph (A) and inserting a comma, by striking the period at the end of subparagraph (B) and inserting '', and'', and by adding at the end the following new subparagraph:

''(C) any offer-in-compromise which does not meet the requirements of subsection (c) shall be returned to the taxpayer as unprocessable.''.

(2) DEEMED ACCEPTANCE OF OFFER NOT REJECTED WITHIN CERTAIN PERIOD.—Section 7122, as amended by subsection (a), is amended by adding at the end the following new subsection:

''(g) DEEMED ACCEPTANCE OF OFFER NOT REJECTED WITHIN CERTAIN PERIOD.—Any offer-in-compromise submitted under this section shall be deemed to be accepted by the Secretary if such offer is not rejected by the Secretary before the date which is 24 months after the date of the submission of such offer (12 months for offers-in-compromise submitted after the date which is 5 years after the date of the enactment of this subsection). For purposes of the preceding sentence, any period during which any tax liability which is the subject of such offer-in-compromise is in dispute in any judicial proceeding shall not be taken in to account in determining the expiration of the 24-month period (or 12-month period, if applicable).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act.

SEC. 5535. JOINT TASK FORCE ON OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—The Secretary of the Treasury shall establish a joint task force—

(1) to review the Internal Revenue Service's determinations with respect to offers-in-compromise, including offers which raise equitable, public policy, or economic hardship grounds for compromise of a tax liability under section 7122 of the Internal Revenue Code of 1986,

(2) to review the extent to which the Internal Revenue Service has used its authority to resolve longstanding cases by forgoing penalties and interest which have accumulated as a result of delay in determining the taxpayer's liability,

(3) to provide recommendations as to whether the Internal Revenue Service's evaluation of offers-in-compromise should include—

(A) the taxpayer's compliance history,

(B) errors by the Internal Revenue Service with respect to the underlying tax, and

(C) wrongful acts by a third party which gave rise to the liability, and

(4) to annually report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (beginning in 2006) regarding such review and recommendations.

(b) MEMBERS OF JOINT TASK FORCE.—The membership of the joint task force under subsection (a) shall consist of 1 representative each from the Department of the Treasury, the Internal Revenue Service Oversight Board, the Office of the Chief Counsel for the Internal Revenue Service, the Office of the Taxpayer Advocate, the Office of Appeals, and the division of the Internal Revenue Service charged with operating the offer-in-compromise program.

(c) REPORT OF NATIONAL TAXPAYER ADVOCATE.—

(1) IN GENERAL.—Clause (ii) of section 7803(c)(2)(B) (relating to annual reports) is amended by striking ''and'' at the end of subclause (X), by redesignating subclause (XI) as subclause (XII), and by inserting after subclause (X) the following new subclause:

''(XI) include a list of the factors taxpayers have raised to support their claims for offers-in-compromise relief, the number of such offers submitted, accepted, and rejected, the number of such offers appealed, the period during which review of such offers have remained pending, and the efforts the Internal Revenue Service has made to correctly identify such offers, including the training of employees in identifying and evaluating such offers.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to reports in calendar year 2006 and thereafter.

Subtitle F—Additional Revenue Provisions

PART I—GENERAL PROVISIONS

SEC. 5601. SUSPENSION OF TRANSFERS FROM HIGHWAY TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.

(a) IN GENERAL.—Section 9503(c)(2)(A) (relating to transfers from Highway Trust Fund for certain repayments and credits) is amended—

(1) by striking ''July 1, 2006'' in clause (i) and inserting ''July 1, 2012'',

(2) by striking ''October 1, 2005'' in the matter following clause (i)(III) and inserting ''April 1, 2005, or for periods ending after September 30, 2009, and before October 1, 2011'', and

(3) by striking ''October 1, 2005'' in clause (ii) and inserting ''April 1, 2005, or used after September 30, 2009, and before October 1, 2011''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid for which no transfer has been made before April 1, 2005.

SEC. 5602. TEMPORARY DEDICATION OF GAS GUZZLER TAX TO HIGHWAY TRUST FUND.

(a) IN GENERAL.—Section 9503(b)(1) (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes), as amended by this Act, is amended by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively, and by inserting after subparagraph (B) the following new subparagraph:

''(C) section 4064 (relating to gas guzzler tax),''.

(b) TEMPORARY PERIOD FOR DEDICATION.—Section 9503(b)(4) (relating to certain taxes not transferred to Highway Trust Fund) is amended by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively, and by inserting after subparagraph (A) the following new subparagraph:

''(B) section 4064 with respect to taxes imposed after September 30, 2009,''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxes imposed on and after July 1, 2005.

PART II—PROVISIONS TO COMBAT FUEL FRAUD

SEC. 5611. TREATMENT OF KEROSENE FOR USE IN AVIATION.

(a) ALL KEROSENE TAXED AT HIGHEST RATE.—

(1) IN GENERAL.—Section 4081(a)(2)(A) (relating to rates of tax) is amended by adding ''and'' at the end of clause (ii), by striking '', and'' at the end of clause (iii) and inserting a period, and by striking clause (iv).

(2) EXCEPTION FOR USE IN AVIATION.—Subparagraph (C) of section 4081(a)(2), as amended by this Act, is amended to read as follows:

''(C) TAXES IMPOSED ON FUEL USED IN AVIATION.—In the case of kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in aviation, the rate of tax under subparagraph (A)(iii) shall be—

''(i) in the case of use for commercial aviation by a person registered for such use under section 4101, 4.3 cents per gallon, and

''(ii) in the case of use for aviation not described in clause (i), 21.8 cents per gallon.''.

(3) CONFORMING AMENDMENTS.—

(A) Sections 4081(a)(3)(A) and 4082(b) are amended by striking ''aviation-grade'' each place it appears.

(B) Section 4081(a)(4) is amended by striking ''paragraph (2)(C)'' and inserting ''paragraph (2)(C)(i)''.

(C) The heading for paragraph (4) of section 4081(a) is amended by striking ''AVIATION-GRADE''.

(D) Section 4081(d)(2), as amended by this Act, is amended by striking so much as precedes subparagraph (A) and inserting the following:

''(2) AVIATION FUELS.—The rates of tax specified in subsections (a)(2)(A)(ii) and (a)(2)(C)(ii) shall be 4.3 cents per gallon—''.

(E) Subsection (e) of section 4082 is amended—

(i) by striking ''aviation-grade'',

(ii) by striking ''section 4081(a)(2)(A)(iv)'' and inserting ''section 4081(a)(2)(A)(iii)'', and

(iii) by striking ''AVIATION-GRADE KEROSENE'' in the heading thereof and inserting ''KEROSENE REMOVED INTO AN AIRCRAFT''.

(b) REDUCED RATE FOR USE OF CERTAIN LIQUIDS IN AVIATION.—

(1) IN GENERAL.—Subsection (c) of section 4041 (relating to imposition of tax) is amended—

(A) by striking ''aviation-grade kerosene'' in paragraph (1) and inserting ''any liquid for use as a fuel other than aviation gasoline'',

(B) by striking ''aviation-grade kerosene'' in paragraph (2) and inserting ''liquid for use as a fuel other than aviation gasoline'',

(C) by striking paragraph (3) and inserting the following new paragraph:

''(3) RATE OF TAX.—The rate of tax imposed by this subsection shall be 21.8 cents per gallon (4.3 cents per gallon with respect to any sale or use for commercial aviation).'', and

(D) by striking ''AVIATION-GRADE KEROSENE'' in the heading thereof and inserting ''CERTAIN LIQUIDS USED AS A FUEL IN AVIATION''.

(2) PARTIAL REFUND OF FULL RATE.—

(A) IN GENERAL.—Paragraph (2) of section 6427(l) (relating to nontaxable uses of diesel fuel, kerosene and aviation fuel) is amended to read as follows:

''(2) NONTAXABLE USE.—For purposes of this subsection, the term 'nontaxable use' means any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax.''.

(B) REFUNDS FOR NONCOMMERCIAL AVIATION.—Section 6427(l) (relating to nontaxable uses of diesel fuel, kerosene and aviation fuel) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

''(5) REFUNDS FOR KEROSENE USED IN NONCOMMERCIAL AVIATION.—

''(A) IN GENERAL.—In the case of kerosene used in aviation not described in paragraph (4)(A) (other than any use which is exempt from the tax imposed by section 4041(c) other than by reason of a prior imposition of tax), paragraph (1) shall not apply to so much of the tax imposed by section 4081 as is attributable to—

''(i) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

''(ii) so much of the rate of tax specified in section 4081(a)(2)(A)(iii) as does not exceed the rate specified in section 4081(a)(2)(C)(ii).

''(B) PAYMENT TO ULTIMATE, REGISTERED VENDOR.—The amount which would be paid under paragraph (1) with respect to any kerosene shall be paid to the ultimate vendor of such kerosene, if such vendor—

''(i) is registered under section 4101, and

''(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).''.

(3) CONFORMING AMENDMENTS.—

(A) Section 4041(a)(1)(B) is amended by striking the last sentence.

(B) The heading for subsection (l) of section 6427 is amended by striking '', KEROSENE AND AVIATION FUEL'' and inserting ''AND KEROSENE''.

(C) Section 4082(d)(2)(B) is amended by striking ''section 6427(l)(5)(B)'' and inserting ''section 6427(l)(6)(B)''.

(D) Section 6427(i)(4)(A) is amended—

(i) by striking ''paragraph (4)(B) or (5)'' both places it appears and inserting ''paragraph (4)(B), (5), or (6)'', and

(ii) by striking ''subsection (b)(4) and subsection (l)(5)'' in the last sentence and inserting ''subsections (b)(4), (l)(5), and (l)(6)''.

(E) Paragraph (4) of section 6427(l) is amended—

(i) by striking ''aviation-grade'' in subparagraph (A),

(ii) by striking ''section 4081(a)(2)(A)(iv)'' and inserting ''section 4081(a)(2)(iii)'',

(iii) by striking ''aviation-grade kerosene'' in subparagraph (B) and inserting ''kerosene used in commercial aviation as described in subparagraph (A)'', and

(iv) by striking ''AVIATION-GRADE KEROSENE'' in the heading thereof and inserting ''KEROSENE USED IN COMMERCIAL AVIATION''.

(F) Section 6427(l)(6)(B), as redesignated by paragraph (2)(B), is amended by striking ''aviation-grade kerosene'' and inserting ''kerosene used in aviation''.

(c) TRANSFERS FROM HIGHWAY TRUST FUND OF TAXES ON FUELS USED IN AVIATION TO AIRPORT AND AIRWAY TRUST FUND.—

(1) IN GENERAL.—Section 9503(c) (relating to expenditures from Highway Trust Fund), as amended by this Act, is amended by adding at the end the following new paragraph:

''(7) TRANSFERS FROM THE TRUST FUND FOR CERTAIN AVIATION FUEL TAXES.—The Secretary shall pay from time to time from the Highway Trust Fund into the Airport and Airway Trust Fund amounts (as determined by the Secretary) equivalent to the taxes received on or after October 1, 2005, and before October 1, 2011, under sections 4041 and 4081 with respect to fuels used in a nontaxable use (as described in section 6427(l)(2)(B)) to the extent such amounts exceed the amounts paid with respect to such use under paragraphs (4) and (5) of section 6427(l).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 9502(a) is amended by striking ''appropriated or credited to the Airport and Airway Trust Fund as provided in this section or section 9602(b)'' and inserting ''appropriated, credited, or paid into the Airport and Airway Trust Fund as provided in this section, section 9503(c)(7), or section 9602(b)''.

(B) Section 9502(b)(1) is amended—

(i) by striking ''subsections (c) and (e) of section 4041'' in subparagraph (A) and inserting ''section 4041(c)'', and

(ii) by striking ''and aviation-grade kerosene'' in subparagraph (C) and inserting ''and kerosene to the extent attributable to the rate specified in section 4081(a)(2)(C)''.

(C) Section 9503(b) is amended by striking paragraph (3).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuels or liquids removed, entered, or sold after September 30, 2005.

SEC. 5612. REPEAL OF ULTIMATE VENDOR REFUND CLAIMS WITH RESPECT TO FARMING.

(a) IN GENERAL.—Subparagraph (A) of section 6427(l)(6) (relating to registered vendors to administer claims for refund of diesel fuel or kerosene sold to farmers and State and local governments), as redesignated by section 5611, is amended to read as follows:

''(A) IN GENERAL.—Paragraph (1) shall not apply to diesel fuel or kerosene used by a State or local government.''.

(b) CONFORMING AMENDMENT.—The heading of paragraph (6) of section 6427(l), as so redesignated, is amended by striking ''FARMERS AND''.

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

SEC. 5613. REFUNDS OF EXCISE TAXES ON EXEMPT SALES OF FUEL BY CREDIT CARD.

(a) GASOLINE.—

(1) IN GENERAL.—Paragraph (4) of section 6416(a) (relating to condition to allowance) is amended—

(A) by inserting ''except as provided in subparagraph (B),'' after ''For purposes of this subsection,'' in subparagraph (A),

(B) by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) CREDIT CARD ISSUER.—For purposes of this subsection, if the sale of gasoline described in subparagraph (A) (determined without regard to the registration status of the ultimate vendor) is made by means of a credit card issued to the ultimate purchaser, paragraph (1) shall not apply and the person extending the credit to the ultimate purchaser shall be treated as the person (and the only person) who paid the tax, but only if such person—

''(i) is registered under section 4101, and

''(ii) has established, under regulations prescribed by the Secretary, that such person—

''(I) has not collected the amount of the tax from the person who purchased such article, or

''(II) has obtained the written consent from the ultimate purchaser to the allowance of the credit or refund, and

''(iii) has so established that such person—

''(I) has repaid or agreed to repay the amount of the tax to the ultimate vendor,

''(II) has obtained the written consent of the ultimate vendor to the allowance of the credit or refund, or

''(III) has otherwise made arrangements which directly or indirectly assure the ultimate vendor of reimbursement of such tax.'',

(C) by striking ''subparagraph (A)'' in subparagraph (C), as redesignated by paragraph (2), and inserting ''subparagraph (A) or (B)'',

(D) by inserting ''or credit card issuer'' after ''vendor'' in subparagraph (C), as so redesignated, and

(E) by inserting ''OR CREDIT CARD ISSUER'' after ''VENDOR'' in the heading thereof.

(2) CONFORMING AMENDMENT.—Section 6416(b)(2) is amended by adding at the end the following new sentence: ''Subparagraphs (C) and (D) shall not apply in the case of any tax imposed on gasoline under section 4081 if the requirements of subsection (a)(4) are not met.''

(b) DIESEL FUEL OR KEROSENE.—Paragraph (6) of section 6427(l) (relating to nontaxable uses of diesel fuel and kerosene), as redesignated by section 5611, is amended—

(1) by striking ''The amount'' in subparagraph (C) and inserting ''Except as provided in subparagraph (D), the amount'', and

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

''(D) CREDIT CARD ISSUER.—For purposes of this paragraph, if the sale of any fuel described in subparagraph (A) (determined without regard to the registration status of the ultimate vendor) is made by means of a credit card issued to the ultimate purchaser, the Secretary shall pay to the person extending the credit to the ultimate purchaser the amount which would have been paid under paragraph (1) (but for subparagraph (A) or (B)), but only if such person meets the requirements of clauses (i), (ii), and (iii) of section 6416(a)(4)(B).''.

(c) CONFORMING PENALTY AMENDMENTS.—

(1) Section 6206 (relating to special rules applicable to excessive claims under sections 6420, 6421, and 6427) is amended—

(A) by striking ''Any portion'' in the first sentence and inserting ''Any portion of a refund made under section 6416(a)(4) and any portion'',

(B) by striking ''payments under sections 6420'' in the first sentence and inserting ''refunds under section 6416(a)(4) and payments under sections 6420'',

(C) by striking ''section 6420'' in the second sentence and inserting ''section 6416(a)(4), 6420'', and

(D) by striking ''***SECTIONS 6420, 6421, and 6427***'' in the heading thereof and inserting ''***CERTAIN SECTIONS***''.

(2) Section 6675(a) is amended by inserting ''section 6416(a)(4) (relating to certain sales of gasoline),'' after ''made under''.

(3) Section 6675(b)(1) is amended by inserting ''6416(a)(4),'' after ''under section''.

(4) The item relating to section 6206 in the table of sections for subchapter A of chapter 63 is amended by striking ''sections 6420, 6421, and 6427'' and inserting ''certain sections''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 2005.

SEC. 5614. ADDITIONAL REQUIREMENT FOR EXEMPT PURCHASES.

(a) STATE AND LOCAL GOVERNMENTS.—

(1) Subparagraph (C) of section 6416(b)(2) (relating to specified uses and resales) is amended to read as follows:

''(C) sold to a State or local government for the exclusive use of a State or local government (as defined in section 4221(d)(4) and certified as such by the State) or sold to a qualified volunteer fire department (as defined in section 150(e)(2) and certified as such by the State) for its exclusive use;''.

(2) Section 4041(g)(2) (relating to other exemptions) is amended by striking ''or the District of Columbia'' and inserting ''the District of Columbia, or a qualified volunteer fire department (as defined in section 150(e)(2)) (and certified as such by the State or the District of Columbia)''.

(b) NONPROFIT EDUCATIONAL ORGANIZATIONS.—

(1) Section 6416(b)(2)(D) is amended by inserting ''(as defined in section 4221(d)(5) and certified to be in good standing by the State in which such organization is providing educational services)'' after ''organization''.

(2) Section 4041(g)(4) is amended—

(A) by inserting ''(certified to be in good standing by the State in which such organization is providing educational services)'' after ''organization'' the first place it appears, and

(B) by striking ''use by a'' and inserting ''use by such a''.

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

SEC. 5615. REREGISTRATION IN EVENT OF CHANGE IN OWNERSHIP.

(a) IN GENERAL.—Section 4101(a) (relating to registration) is amended by adding at the end the following new paragraph:

''(4) REREGISTRATION IN EVENT OF CHANGE IN OWNERSHIP.—Under regulations prescribed by the Secretary, a person (other than a corporation the stock of which is regularly traded on an established securities market) shall be required to reregister under this section if after a transaction (or series of related transactions) more than 50 percent of ownership interests in, or assets of, such person are held by persons other than persons (or persons related thereto) who held more than 50 percent of such interests or assets before the transaction (or series of related transactions).''.

(b) CONFORMING AMENDMENTS.—

(1) CIVIL PENALTY.—Section 6719 (relating to failure to register) is amended—

(A) by inserting ''or reregister'' after ''register'' each place it appears,

(B) by inserting ''OR REREGISTER'' after ''REGISTER'' in the heading for subsection (a), and

(C) by inserting ''***OR REREGISTER***'' after ''***REGISTER***'' in the heading thereof.

(2) CRIMINAL PENALTY.—Section 7232 (relating to failure to register under section 4101, false representations of registration status, etc.) is amended—

(A) by inserting ''or reregister'' after ''register'',

(B) by inserting ''or reregistration'' after ''registration'', and

(C) by inserting ''***OR REREGISTER***'' after ''***REGISTER***'' in the heading thereof.

(3) CLERICAL AMENDMENTS.—The item relating to section 6719 in the table of sections for part I of subchapter B of chapter 68 and the item relating to section 7232 in the table of sections for part II of subchapter A of chapter 75 are each amended by inserting ''or reregister'' after ''register''.

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

SEC. 5616. RECONCILIATION OF ON-LOADED CARGO TO ENTERED CARGO.

(a) IN GENERAL.—Subsection (a) of section 343 of the Trade Act of 2002 is amended by inserting at the end the following new paragraph:

''(4) TRANSMISSION OF DATA.—Pursuant to paragraph (2), not later than 1 year after the date of enactment of this paragraph, the Secretary of Homeland Security, after consultation with the Secretary of the Treasury, shall establish an electronic data interchange system through which the United States Customs and Border Protection shall transmit to the Internal Revenue Service information pertaining to cargoes of any taxable fuel (as defined in section 4083 of the Internal Revenue Code of 1986) that the United States Customs and Border Protection has obtained electronically under its regulations adopted in accordance with paragraph (1). For this purpose, not later than 1 year after the date of enactment of this paragraph, all filers of required cargo information for such taxable fuels (as so defined) must provide such information to the United States Customs and Border Protection through such electronic data interchange system.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 5617. REGISTRATION OF DEEP-DRAFT VESSELS.

In applying section 4101 of the Internal Revenue Code of 1986 on and after the date of the enactment of this Act, the Secretary of the Treasury shall require the registration under such section of every operator of a vessel described in section 4042(c)(1) of such Code.

SEC. 5618. TAXATION OF GASOLINE BLENDSTOCKS AND KEROSENE.

With respect to fuel entered or removed after September 30, 2005, the Secretary of the Treasury shall, in applying section 4083 of the Internal Revenue Code of 1986—

(1) prohibit the nonbulk entry or removal of any gasoline blend stock without the imposition of tax under section 4081 of such Code, and

(2) include mineral spirits in the definition of kerosene.

SEC. 5619. NONAPPLICATION OF EXPORT EXEMPTION TO DELIVERY OF FUEL TO MOTOR VEHICLES REMOVED FROM UNITED STATES.

(a) IN GENERAL.—Section 4221(d)(2) (defining export) is amended by adding at the end the following new sentence: ''Such term does not include the delivery of a taxable fuel (as defined in section 4083(a)(1)) into a fuel tank of a motor vehicle which is shipped or driven out of the United States.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 4041(g) (relating to other exemptions) is amended by adding at the end the following new sentence: ''Paragraph (3) shall not apply to the sale of a liquid for delivery into a fuel tank of a motor vehicle which is shipped or driven out of the United States.''.

(2) Clause (iv) of section 4081(a)(1)(A) (relating to tax on removal, entry, or sale) is amended by inserting ''or at a duty-free sales enterprise (as defined in section 555(b)(8) of the Tariff Act of 1930)'' after ''section 4101''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or deliveries made after the date of the enactment of this Act.

SEC. 5620. PENALTY WITH RESPECT TO CERTAIN ADULTERATED FUELS.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end the following new section:

''SEC. 6720A. PENALTY WITH RESPECT TO CERTAIN ADULTERATED FUELS.

''(a) IN GENERAL.—Any person who knowingly transfers for resale, sells for resale, or holds out for resale any liquid for use in a diesel-powered highway vehicle or a diesel-powered train which does not meet applicable EPA regulations (as defined in section 45H(c)(3)), shall pay a penalty of $10,000 for each such transfer, sale, or holding out for resale, in addition to the tax on such liquid (if any).

''(b) PENALTY IN THE CASE OF RETAILERS.—Any person who knowingly holds out for sale (other than for resale) any liquid described in subsection (a), shall pay a penalty of $10,000 for each such holding out for sale, in addition to the tax on such liquid (if any).''.

(b) DEDICATION OF REVENUE.—Paragraph (5) of section 9503(b) (relating to certain penalties) is amended by inserting ''6720A,'' after ''6719,''.

(c) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by adding at the end the following new item:

''Sec. 6720A. Penalty with respect to certain adulterated fuels.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any transfer, sale, or holding out for sale or resale occurring after the date of the enactment of this Act.

TITLE VI—PUBLIC TRANSPORTATION

SEC. 6001. SHORT TITLE.

This title may be cited as the ''Federal Public Transportation Act of 2005''.

SEC. 6002. AMENDMENTS TO TITLE 49, UNITED STATES CODE; UPDATED TERMINOLOGY.

(a) AMENDMENTS TO TITLE 49.—Except as otherwise specifically provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

(b) UPDATED TERMINOLOGY.—Except for sections 5301(f), 5302(a)(7), and 5315, chapter 53, including the chapter analysis, is amended by striking ''mass transportation'' each place it appears and inserting ''public transportation''.

SEC. 6003. POLICIES, FINDINGS, AND PURPOSES.

(a) DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.—Section 5301(a) is amended to read as follows:

''(a) DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.—It is in the economic interest of the United States to foster the development and revitalization of public transportation systems, which are coordinated with other modes of transportation, that maximize the efficient, secure, and safe mobility of individuals and minimize environmental impacts.''.

(b) GENERAL FINDINGS.—Section 5301(b)(1) is amended—

(1) by striking ''70 percent'' and inserting ''two-thirds''; and

(2) by striking ''urban areas'' and inserting ''urbanized areas''.

(c) PRESERVING THE ENVIRONMENT.—Section 5301(e) is amended—

(1) by striking ''an urban'' and inserting ''a''; and

(2) by striking ''under sections 5309 and 5310 of this title''.

(d) GENERAL PURPOSES.—Section 5301(f) is amended—

(1) in paragraph (1)—

(A) by striking ''improved mass'' and inserting ''improved public''; and

(B) by striking ''public and private mass transportation companies'' and inserting ''public transportation companies and private companies engaged in public transportation'';

(2) in paragraph (2)—

(A) by striking ''urban mass'' and inserting ''public''; and

(B) by striking ''public and private mass transportation companies'' and inserting ''public transportation companies and private companies engaged in public transportation'';

(3) in paragraph (3)—

(A) by striking ''urban mass'' and inserting ''public''; and

(B) by striking ''public or private mass transportation companies'' and inserting ''public transportation companies or private companies engaged in public transportation''; and

(4) in paragraph (5), by striking ''urban mass'' and inserting ''public''.

SEC. 6004. DEFINITIONS.

Section 5302(a) is amended—

(1) in paragraph (1)—

(A) in subparagraph (G)(i), by inserting ''including the intercity bus and intercity rail portions of such facility or mall,'' after ''transportation mall,'';

(B) in subparagraph (G)(ii), by inserting '', except for the intercity bus portion of intermodal facilities or malls,'' after ''commercial revenue-producing facility'';

(C) in subparagraph (H)—

(i) by striking ''and'' after ''innovative'' and inserting ''or''; and

(ii) by striking ''or'' after the semicolon at the end;

(D) in subparagraph (I), by striking the period at the end and inserting a semicolon; and

(E) by adding at the end the following:

''(J) crime prevention and security, including—

''(i) projects to refine and develop security and emergency response plans; or

''(ii) projects to detect chemical or biological agents in public transportation;

''(K) conducting emergency response drills with public transportation agencies and local first response agencies or security training for public transportation employees, except for expenses relating to operations; or

''(L) establishing a debt service reserve, made up of deposits with a bondholder's trustee, to ensure the timely payment of principal and interest on bonds issued by a grant recipient to finance an eligible project under this chapter.'';

(2) by redesignating paragraphs (8) through (17) as paragraphs (9) through (18), respectively;

(3) by striking paragraph (7) and inserting the following:

''(7) MASS TRANSPORTATION.—The term 'mass transportation' means public transportation.

''(8) MOBILITY MANAGEMENT.—The term 'mobility management' means a short-range planning or management activity or project that does not include operating public transportation services and—

''(A) improves coordination among public transportation providers, including private companies engaged in public transportation;

''(B) addresses customer needs by tailoring public transportation services to specific market niches; or

''(C) manages public transportation demand.'';

(4) by amending paragraph (11), as redesignated, to read as follows:

''(11) PUBLIC TRANSPORTATION.—The term 'public transportation' means transportation by a conveyance that provides local regular and continuing general or special transportation to the public, but does not include school bus, charter bus, intercity bus or passenger rail, or sightseeing transportation.'';

(5) in subparagraphs (A) and (E) of paragraph (16), as redesignated, by striking ''and'' each place it appears and inserting ''or''; and

(6) by amending paragraph (18), as redesignated, to read as follows:

''(18) URBANIZED AREA.—The term 'urbanized area' means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an 'urbanized area' by the Secretary of Commerce.''.

SEC. 6005. METROPOLITAN TRANSPORTATION PLANNING.

Section 5303 is amended to read as follows:

''§ 5303. Metropolitan transportation planning

''(a) DEFINITIONS.—As used in this section and in section 5304, the following definitions shall apply:

''(1) CONSULTATION.—A 'consultation' occurs when 1 party—

''(A) confers with another identified party in accordance with an established process;

''(B) prior to taking action, considers the views of the other identified party; and

''(C) periodically informs that party about action taken.

''(2) METROPOLITAN PLANNING AREA.—The term 'metropolitan planning area' means the geographic area determined by agreement between the metropolitan planning organization and the Governor under subsection (d).

''(3) METROPOLITAN PLANNING ORGANIZATION.—The term 'metropolitan planning organization' means the Policy Board of the organization designated under subsection (c).

''(4) NONMETROPOLITAN AREA.—The term 'nonmetropolitan area' means any geographic area outside all designated metropolitan planning areas.

''(5) NONMETROPOLITAN LOCAL OFFICIAL.—The term 'nonmetropolitan local official' means any elected or appointed official of general purpose local government located in a nonmetropolitan area who is responsible for transportation services for such local government.

''(b) GENERAL REQUIREMENTS.—

''(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To accomplish the objectives described in section 5301(a), each metropolitan planning organization, in cooperation with the State and public transportation operators, shall develop transportation plans and programs for metropolitan planning areas of the State in which it is located.

''(2) CONTENTS.—The plans and programs developed under paragraph (1) for each metropolitan planning area shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing the plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

''(4) PLANNING AND PROJECT DEVELOPMENT.—The metropolitan planning organization, the State Department of Transportation, and the appropriate public transportation provider shall agree upon the approaches that will be used to evaluate alternatives and identify transportation improvements that address the most complex problems and pressing transportation needs in the metropolitan area.

''(c) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

''(1) IN GENERAL.—To carry out the transportation planning process under this section, a metropolitan planning organization shall be designated for each urbanized area—

''(A) by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area); or

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

''(2) STRUCTURE.—Each metropolitan planning organization designated under paragraph (1) that serves an area identified as a transportation management area shall consist of—

''(A) local elected officials;

''(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and

''(C) appropriate State officials.

''(3) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

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

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

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

''(5) REDESIGNATION PROCEDURES.—A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the existing planning area population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area) as appropriate to carry out this section.

''(6) DESIGNATION OF MORE THAN 1 METROPOLITAN PLANNING ORGANIZATION.—More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 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 2005 shall be retained, except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in accordance with paragraph (5).

''(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—If an urbanized area is designated after the date of enactment of this paragraph in a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

''(A) shall be established in accordance with subsection (c)(1);

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

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

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

''(e) COORDINATION IN MULTISTATE AREAS.—

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

''(2) INTERSTATE COMPACTS.—States are authorized—

''(A) to enter into agreements or compacts with other States, which agreements or compacts are not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

''(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

''(3) LAKE TAHOE REGION.—

''(A) DEFINITION.—In this paragraph, the term 'Lake Tahoe region' has the meaning given the term 'region' in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96–551 (94 Stat. 3234).

''(B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

''(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

''(ii) coordinate the transportation planning process with the planning process required of State and local governments under this section and section 5304.

''(C) INTERSTATE COMPACT.—

''(i) IN GENERAL.—Subject to clause (ii) and notwithstanding subsection (c), to carry out the transportation planning process required by this section, California and Nevada may designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governor of the State of California, the Governor of the State of Nevada, and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area), or in accordance with procedures established by applicable State or local law.

''(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

''(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

''(II) FUNDING.—In addition to funds made available to the metropolitan planning organization under other provisions of title 23 and this chapter, not more than 1 percent of the funds allocated under section 202 of title 23 may be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.

''(D) ACTIVITIES.—Highway projects included in transportation plans developed under this paragraph—

''(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

''(ii) may, in accordance with chapter 2 of title 23, be funded using funds allocated under section 202 of title 23.

''(f) COORDINATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

''(1) NONATTAINMENT AREAS.—If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for

such area and the State in the coordination of plans required by this section.

''(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE METROPOLITAN PLANNING AREAS.—If a transportation improvement funded from the highway trust fund is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans regarding the transportation improvement.

''(3) INTERREGIONAL AND INTERSTATE PROJECT IMPACTS.—Planning for National Highway System, commuter rail projects, or other projects with substantial impacts outside a single metropolitan planning area or State shall be coordinated directly with the affected, contiguous, metropolitan planning organizations and States.

''(4) COORDINATION WITH OTHER PLANNING PROCESSES.—

''(A) IN GENERAL.—The Secretary shall encourage each metropolitan planning organization to coordinate its planning process, to the maximum extent practicable, with those officials responsible for other types of planning activities that are affected by transportation, including State and local land use planning, economic development, environmental protection, airport operations, housing, and freight.

''(B) OTHER CONSIDERATIONS.—The metropolitan planning process shall develop transportation plans with due consideration of, and in coordination with, other related planning activities within the metropolitan area. This should include the design and delivery of transportation services within the metropolitan area that are provided by—

''(i) recipients of assistance under this chapter;

''(ii) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

''(iii) recipients of assistance under section 204 of title 23.

''(g) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—The goals and objectives developed through the metropolitan planning process for a metropolitan planning area under this section shall address, in relation to the performance of the metropolitan area transportation systems—

''(A) supporting the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency, including through services provided by public and private operators;

''(B) increasing the safety of the transportation system for motorized and 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 2005, the Secretary shall issue regulations specifying—

''(i) the types of data to be included in the list described in subparagraph (B), including—

''(I) the name, type, purpose, and geocoded location of each project;

''(II) the Federal, State, and local identification numbers assigned to each project;

''(III) amounts obligated and expended on each project, sorted by funding source and transportation mode, and the date on which each obligation was made; and

''(IV) the status of each project; and

''(ii) the media through which the list described in subparagraph (B) will be made available to the public, including written and visual components for each of the projects listed.

''(k) TRANSPORTATION MANAGEMENT AREAS.—

''(1) REQUIRED IDENTIFICATION.—The Secretary shall identify each urbanized area with a population of more than 200,000 individuals as a transportation management area.

''(2) TRANSPORTATION PLANS AND PROGRAMS.—Transportation plans and programs for a metropolitan planning area serving a transportation management area shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and transit operators.

''(3) CONGESTION MANAGEMENT SYSTEM.—

''(A) IN GENERAL.—The transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 and this chapter through the use of travel demand reduction and operational management strategies.

''(B) PHASE-IN SCHEDULE.—The Secretary shall establish a phase-in schedule that provides for full compliance with the requirements of this section not later than 1 year after the identification of transportation management areas under paragraph (1).

''(4) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—All federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under title 23 (except for projects carried out on the National Highway System and projects carried out under the bridge program or the interstate maintenance program) or under this chapter shall be selected for implementation from the approved transportation improvement program by the metropolitan planning organization designated for the area in consultation with the State and any affected public transit operator.

''(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects on the National Highway System carried out within the boundaries of a metropolitan planning area serving a transportation management area and projects carried out within such boundaries under the bridge program or the interstate maintenance program under title 23 shall be selected for implementation from the approved transportation improvement program by the State in cooperation with the metropolitan planning organization designated for the area.

''(5) CERTIFICATION.—

''(A) IN GENERAL.—The Secretary shall—

''(i) ensure that the metropolitan planning process of a metropolitan planning organization serving a transportation management area is being carried out in accordance with Federal law; and

''(ii) subject to subparagraph (B), certify, not less frequently than once every 4 years in nonattainment and maintenance areas (as defined under the Clean Air Act) and not less frequently than once every 5 years in attainment areas (as defined under such Act), that the requirements of this paragraph are met with respect to the metropolitan planning process.

''(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

''(i) the transportation planning process complies with the requirements of this section and all other applicable Federal law; and

''(ii) a transportation plan and a transportation improvement program for the metropolitan planning area have been approved by the metropolitan planning organization and the Governor.

''(C) PENALTY FOR FAILING TO CERTIFY.—

''(i) WITHHOLDING PROJECT FUNDS.—If the metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold any funds otherwise available to the metropolitan planning area for projects funded under title 23 and this chapter.

''(ii) RESTORATION OF WITHHELD FUNDS.—Any funds withheld under clause (i) shall be restored to the metropolitan planning area when the metropolitan planning process is certified by the Secretary.

''(D) REVIEW OF CERTIFICATION.—In making a certification under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

''(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. 6006. STATEWIDE TRANSPORTATION PLANNING.

Section 5304 is amended to read as follows:

''§ 5304. Statewide transportation planning

''(a) GENERAL REQUIREMENTS.—

''(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To support the policies described in section 5301(a), each State shall develop a statewide transportation plan (referred to in this section as a ''Plan'') and a statewide transportation improvement program (referred to in this section as a ''Program'') for all areas of the State subject to section 5303.

''(2) CONTENTS.—The Plan and the Program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing the Plan and the Program shall—

''(A) provide for the consideration of all modes of transportation and the policies described in section 5301(a); and

''(B) be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

''(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—Each State shall—

''(1) coordinate planning under this section with—

''(A) the transportation planning activities under section 5303 for metropolitan areas of the State; and

''(B) other related statewide planning activities, including trade and economic development and related multistate planning efforts; and

''(2) develop the transportation portion of the State implementation plan, as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

''(c) INTERSTATE AGREEMENTS.—States may enter into agreements or compacts with other States for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

''(d) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—Each State shall carry out a statewide transportation planning process that provides for the consideration of projects, strategies, and implementing projects and services that will—

''(A) support the economic vitality of the United States, the States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

''(B) increase the safety of the transportation system for motorized and nonmotorized users;

''(C) increase the security of the transportation system for motorized and nonmotorized users;

''(D) increase the accessibility and mobility of people and freight;

''(E) protect and enhance the environment (including the protection of habitat, water quality, and agricultural and forest land, while minimizing invasive species), promote energy conservation, promote consistency between transportation improvements and State and local land use planning and economic development patterns, and improve the quality of life (including minimizing adverse health effects from mobile source air pollution and promoting the linkage of the transportation and development goals of the State);

''(F) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

''(G) promote efficient system management and operation; and

''(H) emphasize the preservation and efficient use of the existing transportation system.

''(2) SELECTION OF PROJECTS AND STRATEGIES.—After soliciting and considering any relevant public comments, the State shall determine which of the projects and strategies described in paragraph (1) are most appropriate.

''(3) MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—A transportation plan under this subsection shall include a discussion of—

''(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetland, and other environmental functions; and

''(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

''(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

''(4) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor described in paragraph (1) shall not be reviewable by any court under title 23, this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a Plan, a Program, a project or strategy, or the certification of a planning process.

''(e) ADDITIONAL REQUIREMENTS.—In carrying out planning under this section, each State shall consider—

''(1) with respect to nonmetropolitan areas, the concerns of affected local officials with responsibility for transportation;

''(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

''(3) coordination of Plans, Programs, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

''(f) STATEWIDE TRANSPORTATION PLAN.—

''(1) DEVELOPMENT.—Each State shall develop a Plan, with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN PLANNING AREAS.—The Plan shall be developed for each metropolitan planning area in the State in cooperation with the metropolitan planning organization designated for the metropolitan planning area under section 5303.

''(B) NONMETROPOLITAN AREAS.—With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in consultation with affected nonmetropolitan officials with responsibility for transportation. The consultation process shall not require the review or approval of the Secretary.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(D) CONSULTATION, COMPARISON, AND CONSIDERATION.—

''(i) IN GENERAL.—The Plan shall be developed, as appropriate, in consultation with State and local agencies responsible for—

''(I) land use management;

''(II) natural resources;

''(III) environmental protection;

''(IV) conservation; and

''(V) historic preservation.

''(ii) COMPARISON AND CONSIDERATION.—Consultation under clause (i) shall involve—

''(I) comparison of transportation plans to State conservation plans or maps, if available;

''(II) comparison of transportation plans to inventories of natural or historic resources, if available; or

''(III) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkage areas.

''(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the Plan, the State shall—

''(A) provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed Plan; and

''(B) to the maximum extent practicable—

''(i) hold any public meetings at convenient and accessible locations and times;

''(ii) employ visualization techniques to describe plans; and

''(iii) make public information available in electronically accessible format and means, such as the World Wide Web.

''(4) MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—A Plan shall include a discussion of—

''(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetlands, and other environmental functions; and

''(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

''(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

''(5) TRANSPORTATION STRATEGIES.—A Plan shall identify transportation strategies necessary to efficiently serve the mobility needs of people.

''(6) FINANCIAL PLAN.—The Plan may include a financial plan that—

''(A) demonstrates how the adopted Plan can be implemented;

''(B) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Plan;

''(C) recommends any additional financing strategies for needed projects and programs; and

''(D) may include, for illustrative purposes, additional projects that would be included in the adopted Plan if reasonable additional resources beyond those identified in the financial plan were available.

''(7) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects described in paragraph (6)(D).

''(8) EXISTING SYSTEM.—The Plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

''(9) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each Plan prepared by a State shall be published or otherwise made available, including, to the maximum extent practicable, in electronically accessible formats and means, such as the World Wide Web.

''(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—

''(1) DEVELOPMENT.—Each State shall develop a Program for all areas of the State.

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN PLANNING AREAS.—With respect to each metropolitan planning area in the State, the Program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan planning area under section 5303.

''(B) NONMETROPOLITAN AREAS.—With respect to each nonmetropolitan area in the State, the Program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation. The consultation process shall not require the review or approval of the Secretary.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Program shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the Program, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transit, representatives of users of pedestrian walkways and bicycle transportation facilities, and other interested parties with a reasonable opportunity to comment on the proposed Program.

''(4) INCLUDED PROJECTS.—

''(A) IN GENERAL.—A Program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

''(B) LISTING OF PROJECTS.—

''(i) IN GENERAL.—The Program shall cover a minimum of 4 years, identify projects by year, be fiscally constrained by year, and be updated not less than once every 4 years.

''(ii) PUBLICATION.—An annual listing of projects for which funds have been obligated in the preceding 4 years in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review. The listing shall be consistent with the funding categories identified in each metropolitan transportation improvement program.

''(C) INDIVIDUAL IDENTIFICATION.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually.

''(D) CONSISTENCY WITH STATEWIDE TRANSPORTATION PLAN.—Each project included in the list described in subparagraph (B) shall be—

''(i) consistent with the Plan developed under this section for the State;

''(ii) identical to the project or phase of the project as described in each year of the approved metropolitan transportation improvement program; and

''(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act (42 U.S.C. 7401 et seq.), if the project is carried out in an area designated as nonattainment for ozone or carbon monoxide under that Act.

''(E) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The Program shall not include a project, or an identified phase of a project, unless full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(F) FINANCIAL PLAN.—The Program may include a financial plan that—

''(i) demonstrates how the approved Program can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Program;

''(iii) recommends any additional financing strategies for needed projects and programs; and

''(iv) may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

''(G) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

''(i) NO REQUIRED SELECTION.—Notwithstanding subparagraph (F), a State shall not be required to select any project from the illustrative list of additional projects described in subparagraph (F)(iv).

''(ii) REQUIRED APPROVAL BY THE SECRETARY.—A State shall not include any project from the illustrative list of additional projects described in subparagraph (F)(iv) in an approved Program without the approval of the Secretary.

''(H) PRIORITIES.—The Program shall reflect the priorities for programming and expenditures of funds, including transportation and transit enhancement activities, required by title 23 and this chapter, and transportation control measures included in the State's air quality implementation plan.

''(5) PROJECT SELECTION FOR AREAS WITH FEWER THAN 50,000 INDIVIDUALS.—

''(A) IN GENERAL.—Each State, in cooperation with the affected nonmetropolitan local officials with responsibility for transportation, shall select projects to be carried out in areas with fewer than 50,000 individuals from the approved Program (excluding projects carried out under the National Highway System, the bridge program, or the interstate maintenance program under title 23 or sections 5310 and 5311 of this title).

''(B) CERTAIN PROGRAMS.—Each State, in consultation with the affected nonmetropolitan local officials with responsibility for transportation, shall select, from the approved Program, projects to be carried out in areas with fewer than 50,000 individuals under the National Highway System, the bridge program, or the Interstate maintenance program under title 23 or under sections 5310 and 5311 of this title.

''(6) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL.—A Program developed under this subsection shall be reviewed and based on a current planning finding approved by the Secretary not less frequently than once every 4 years.

''(7) PLANNING FINDING.—Not less frequently than once every 4 years, the Secretary shall determine whether the transportation planning process through which Plans and Programs are developed are consistent with this section and section 5303.

''(8) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, a project included in the approved Program may be advanced in place of another project in the program without the approval of the Secretary.

''(h) FUNDING.—Funds set aside pursuant to section 104(i) of title 23 and section 5308 of this title shall be available to carry out this section.

''(i) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT SYSTEMS.—For purposes of this section and section 5303, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management system under section 5303(i)(3) if the Secretary determines that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of section 5303.

''(j) CONTINUATION OF CURRENT REVIEW PRACTICE.—Any decision by the Secretary under this section, regarding a metropolitan or statewide transportation plan or the Program, shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''.

SEC. 6007. TRANSPORTATION MANAGEMENT AREAS.

Section 5305 is repealed.

SEC. 6008. PRIVATE ENTERPRISE PARTICIPATION.

Section 5306 is amended—

(1) in subsection (a)—

(A) by striking ''5305 of this title'' and inserting ''5308''; and

(B) by inserting '', as determined by local policies, criteria, and decision making,'' after ''feasible'';

(2) in subsection (b) by striking ''5303–5305 of this title'' and inserting ''5303, 5304, and 5308''; and

(3) by adding at the end the following:

''(c) REGULATIONS.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall issue regulations describing how the requirements under this chapter relating to subsection (a) shall be enforced.''.

SEC. 6009. URBANIZED AREA FORMULA GRANTS.

(a) TECHNICAL AMENDMENTS.—Section 5307 is amended—

(1) by striking subsections (h), (j) and (k); and

(2) by redesignating subsections (i), (l), (m), and (n) as subsections (h), (i), (j), and (k), respectively.

(b) DEFINITIONS.—Section 5307(a) is amended—

(1) by amending paragraph (2)(A) to read as follows:

''(A) an entity designated, in accordance with the planning process under sections 5303, 5304, and 5306, by the chief executive officer of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 that are attributable to transportation management areas designated under section 5303; or''; 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 2005 THROUGH 2007.—

''(A) INCREASED FLEXIBILITY.—The Secretary may award grants under this section, from funds made available to carry out this section for each of the fiscal years 2005 through 2007, to finance the operating cost of equipment and facilities for use in mass transportation in an urbanized area with a population of at least 200,000, as determined by the 2000 decennial census of population if—

''(i) the urbanized area had a population of less than 200,000, as determined by the 1990 decennial census of population;

''(ii) a portion of the urbanized area was a separate urbanized area with a population of less than 200,000, as determined by the 1990 decennial census of population;

''(iii) the area was not designated as an urbanized area, as determined by the 1990 decennial census of population; or

''(iv) a portion of the area was not designated as an urbanized area, as determined by the 1990 decennial census, and received assistance under section 5311 in fiscal year 2002.

''(B) MAXIMUM AMOUNTS IN FISCAL YEAR 2005.—In fiscal year 2005—

''(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

''(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than the amount apportioned to the urbanized area under this section for fiscal year 2003; and

''(iii) each portion of any area not designated as an urbanized area, as determined by the 1990 decennial census, and eligible to receive funds under subparagraph (A)(iv), shall receive an amount of funds to carry out this section that is not less than the amount the portion of the area received under section 5311 for fiscal year 2002.

''(C) MAXIMUM AMOUNTS IN FISCAL YEAR 2006.—In fiscal year 2006—

''(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 50 percent of the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

''(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 50 percent of the amount apportioned to the urbanized area under this section for fiscal year 2003; and

''(iii) each portion of any area not designated as an urbanized area, as determined by the 1990 decennial census, and eligible to receive funds under subparagraph (A)(iv), shall receive an amount of funds to carry out this section that is not less 50 percent of the amount the portion of the area received under section 5311 for fiscal year 2002.

''(D) MAXIMUM AMOUNTS IN FISCAL YEAR 2007.—In fiscal year 2007—

''(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 25 percent of the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

''(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 25 percent of the amount apportioned to the urbanized area under this section for fiscal year 2003; and

''(iii) each portion of any area not designated as an urbanized area, as determined by the 1990 decennial census, and eligible to receive funds under subparagraph (A)(iv), shall receive an amount of funds to carry out this section that is not less than 25 percent of the amount the portion of the area received under section 5311 in fiscal year 2002.''; and

(3) by striking paragraph (4).

(d) GRANT RECIPIENT REQUIREMENTS.—Section 5307(d)(1) is amended—

(1) in subparagraph (A), by inserting '', including safety and security aspects of the program'' after ''program'';

(2) in subparagraph (E), by striking ''section'' and all that follows and inserting ''section, the recipient will comply with sections 5323 and 5325;'';

(3) in subparagraph (H), by striking ''sections 5301(a) and (d), 5303–5306, and 5310(a)–(d) of this title'' and inserting ''subsections (a) and (d) of section 5301 and sections 5303 through 5306'';

(4) in subparagraph (I) by striking ''and'' at the end;

(5) in subparagraph (J), by striking the period at the end and inserting ''; and''; and

(6) by adding at the end the following:

''(K) if located in an urbanized area with a population of at least 200,000, will expend not less than 1 percent of the amount the recipient receives each fiscal year under this section for transit enhancement activities described in section 5302(a)(15).''.

(e) GOVERNMENT'S SHARE OF COSTS.—Section 5307(e) is amended—

(1) by striking the first sentence and inserting the following:

''(1) CAPITAL PROJECTS.—A grant for a capital project under this section shall cover 80 percent of the net project cost.'';

(2) by striking ''A grant for operating expenses'' and inserting the following:

''(2) OPERATING EXPENSES.—A grant for operating expenses'';

(3) by striking the fourth sentence and inserting the following:

''(3) REMAINING COSTS.—The remainder of the net project cost shall be provided in cash from non-Federal sources or revenues derived from the sale of advertising and concessions and amounts received under a service agreement with a State or local social service agency or a private social service organization.''; and

(4) by adding at the end the following: ''The prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to the remainder.''.

(f) UNDERTAKING PROJECTS IN ADVANCE.—Section 5307(g) is amended by striking paragraph (4).

(g) RELATIONSHIP TO OTHER LAWS.—Section 5307(k), as redesignated, is amended to read as follows:

''(k) RELATIONSHIP TO OTHER LAWS.—

''(1) APPLICABLE PROVISIONS.—Sections 5301, 5302, 5303, 5304, 5306, 5315(c), 5318, 5319, 5323, 5325, 5327, 5329, 5330, 5331, 5332, 5333 and 5335 apply to this section and to any grant made under this section.

''(2) INAPPLICABLE PROVISIONS.—

''(A) IN GENERAL.—Except as provided under this section, no other provision of this chapter applies to this section or to a grant made under this section.

''(B) TITLE 5.—The provision of assistance under this chapter shall not be construed as bringing within the application of chapter 15 of title 5, any nonsupervisory employee of a public transportation system (or any other agency or entity performing related functions) to which such chapter is otherwise inapplicable.''.

(h) CONTRACTED PARATRANSIT PILOT.—

(1) IN GENERAL.—Notwithstanding section 5302(a)(1)(I) of title 49, United States Code, for fiscal years 2005 through 2009, a recipient of assistance under section 5307 of title 49, United States Code, in an urbanized area with a population of 558,329 according to the 2000 decennial census of population may use not more than 20 percent of such recipient's annual formula apportionment under section 5307 of title 49, United States Code, for the provision of nonfixed route paratransit services in accordance with section 223 of the Americans with Disabilities Act (42 U.S.C. 12143), but only if the grant recipient is in compliance with applicable requirements of that Act, including both fixed route and demand responsive service and the service is acquired by contract.

(2) REPORT.—Not later than January 1, 2009, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report on the implementation of this section and any recommendations of the Secretary regarding the application of this section.

SEC. 6010. PLANNING PROGRAMS.

(a) IN GENERAL.—Section 5308 is amended to read as follows:

''§ 5308. Planning programs

''(a) GRANTS AUTHORIZED.—Under criteria established by the Secretary, the Secretary may award grants to States, authorities of the States, metropolitan planning organizations, and local governmental authorities, make agreements with other departments, agencies, or instrumentalities of the Government, or enter into contracts with private nonprofit or for-profit entities to—

''(1) develop transportation plans and programs;

''(2) plan, engineer, design, and evaluate a public transportation project; or

''(3) conduct technical studies relating to public transportation, including—

''(A) studies related to management, planning, operations, capital requirements, and economic feasibility;

''(B) evaluations of previously financed projects;

''(C) peer reviews and exchanges of technical data, information, assistance, and related activities in support of planning and environmental analyses among metropolitan planning organizations and other transportation planners; and

''(D) other similar and related activities preliminary to, and in preparation for, constructing, acquiring, or improving the operation of facilities and equipment.

''(b) PURPOSE.—To the extent practicable, the Secretary shall ensure that amounts appropriated pursuant to section 5338 to carry out this section and sections 5303, 5304, and 5306 are used to support balanced and comprehensive transportation planning that considers the relationships among land use and all transportation modes, without regard to the programmatic source of the planning amounts.

''(c) METROPOLITAN PLANNING PROGRAM.—

''(1) ALLOCATIONS TO STATES.—

''(A) IN GENERAL.—The Secretary shall allocate 80 percent of the amount made available under subsection (g)(3)(A) to States to carry out sections 5303 and 5306 in a ratio equal to the population in urbanized areas in each State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census of population.

''(B) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the total amount allocated under this paragraph.

''(2) AVAILABILITY OF FUNDS.—A State receiving an allocation under paragraph (1) shall promptly distribute such funds to metropolitan planning organizations in the State under a formula—

''(A) developed by the State in cooperation with the metropolitan planning organizations;

''(B) approved by the Secretary of Transportation;

''(C) that considers population in urbanized areas; and

''(D) that provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section.

''(3) SUPPLEMENTAL ALLOCATIONS.—

''(A) IN GENERAL.—The Secretary shall allocate 20 percent of the amount made available under subsection (g)(3)(A) to States to supplement allocations made under paragraph (1) for metropolitan planning organizations.

''(B) ALLOCATION FORMULA.—Amounts under this paragraph shall be allocated under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities in complex metropolitan planning areas under sections 5303, 5304, and 5306.

''(d) STATE PLANNING AND RESEARCH PROGRAM.—

''(1) IN GENERAL.—The Secretary shall allocate amounts made available pursuant to subsection (g)(3)(B) to States for grants and contracts to carry out sections 5304, 5306, 5315, and 5322 so that each State receives an amount equal to the ratio of the population in urbanized areas in that State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census.

''(2) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the amount allocated under this subsection.

''(3) REALLOCATION.—A State may authorize part of the amount made available under this subsection to be used to supplement amounts available under subsection (c).

''(e) PLANNING CAPACITY BUILDING PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary shall establish a Planning Capacity Building Program (referred to in this subsection as the ''Program'') to support and fund innovative practices and enhancements in transportation planning.

''(2) PURPOSE.—The purpose of the Program shall be to promote activities that support and strengthen the planning processes required under this section and sections 5303 and 5304.

''(3) ADMINISTRATION.—The Program shall be administered by the Federal Transit Administration in cooperation with the Federal Highway Administration.

''(4) USE OF FUNDS.—

''(A) IN GENERAL.—Appropriations authorized under subsection (g)(1) to carry out this subsection may be used—

''(i) to provide incentive grants to States, metropolitan planning organizations, and public transportation operators; and

''(ii) to conduct research, disseminate information, and provide technical assistance.

''(B) GRANTS, CONTRACTS, COOPERATIVE AGREEMENTS.—In carrying out the activities described in subparagraph (A), the Secretary may—

''(i) expend appropriated funds directly; or

''(ii) award grants to, or enter into contracts, cooperative agreements, and other transactions with, a Federal agency, State agency, local governmental authority, association, nonprofit or for-profit entity, or institution of higher education.

''(f) GOVERNMENT'S SHARE OF COSTS.—Amounts made available to carry out subsections (c), (d), and (e) may not exceed 80 percent of the costs of the activity unless the Secretary of Transportation determines that it is in the interest of the Government not to require State or local matching funds.

''(g) ALLOCATION OF FUNDS.—Of the amounts made available under section 5338(b)(2)(B) for fiscal year 2006 and each fiscal year thereafter to carry out this section—

''(1) $5,000,000 shall be allocated for the Planning Capacity Building Program established under subsection (e);

''(2) $20,000,000 shall be allocated for grants under subsection (a)(2) for alternatives analyses required by section 5309(e)(2)(A); and

''(3) of the remaining amount—

''(A) 82.72 percent shall be allocated for the metropolitan planning program described in subsection (d); and

''(B) 17.28 percent shall be allocated to carry out subsection (b).

''(h) REALLOCATIONS.—Any amount allocated under this section that has not been used 3 years after the end of the fiscal year in which the amount was allocated shall be reallocated among the States.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5308 in the table of sections for chapter 53 is amended to read as follows:

''5308. Planning programs.''.

SEC. 6011. CAPITAL INVESTMENT PROGRAM.

(a) SECTION HEADING.—The section heading of section 5309 is amended to read as follows:

''§ 5309. Capital investment grants''.

(b) GENERAL AUTHORITY.—Section 5309(a) is amended—

(1) in paragraph (1)—

(A) by striking ''(1) The Secretary of Transportation may make grants and loans'' and inserting the following:

''(1) GRANTS AUTHORIZED.—The Secretary may award grants'';

(B) in subparagraph (A), by striking ''alternatives analysis related to the development of systems,'';

(C) by striking subparagraphs (B), (C), (D), and (G);

(D) by redesignating subparagraphs (E), (F), and (H) as subparagraphs (B), (C), and (D), respectively;

(E) in subparagraph (C), as redesignated, by striking the semicolon at the end and inserting '', including programs of bus and bus-related projects for assistance to subrecipients which are public agencies, private companies engaged in public transportation, or private nonprofit organizations; and''; 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 2005.

''(7) RULEMAKING.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall issue regulations on the manner by which the Secretary shall evaluate and rate projects based on the results of alternatives analysis, project justification, and local financial commitment, in accordance with this subsection.

''(8) POLICY GUIDANCE.—

''(A) PUBLICATION.—The Secretary shall publish policy guidance regarding the new starts project review and evaluation process—

''(i) not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2005; and

''(ii) each time significant changes are made by the Secretary to the new starts project review and evaluation process and criteria, but not less frequently than once every 2 years.

''(B) PUBLIC COMMENT AND RESPONSE.—The Secretary shall—

''(i) invite public comment to the policy guidance published under subparagraph (A); and

''(ii) publish a response to the comments received under clause (i).''.

(f) MAJOR CAPITAL INVESTMENT PROJECTS OF LESS THAN $75,000,000.—Section 5309(f) is amended to read as follows:

''(f) MAJOR CAPITAL INVESTMENT PROJECTS OF LESS THAN $75,000,000.—

''(1) PROJECT CONSTRUCTION GRANT AGREEMENT.—

''(A) IN GENERAL.—The Secretary shall enter into a project construction grant agreement, based on evaluations and ratings required under this subsection, with each grantee receiving less than $75,000,000 under this subsection for a new fixed guideway or corridor improvement capital project that—

''(i) is authorized by law; and

''(ii) has been rated as medium, medium-high, or high, in accordance with paragraph (3)(B).

''(B) CONTENTS.—

''(i) IN GENERAL.—An agreement under this paragraph shall specify—

''(I) the scope of the project to be constructed;

''(II) the estimated net cost of the project;

''(III) the schedule under which the project shall be constructed;

''(IV) the maximum amount of funding to be obtained under this subsection;

''(V) the proposed schedule for obligation of future Federal grants; and

''(VI) the sources of non-Federal funding.

''(ii) ADDITIONAL FUNDING.—The agreement may include a commitment on the part of the Secretary to provide funding for the project in future fiscal years.

''(C) FULL FUNDING GRANT AGREEMENT.—An agreement under this paragraph shall be considered a full funding grant agreement for the purposes of subsection (g).

''(2) SELECTION PROCESS.—

''(A) SELECTION CRITERIA.—The Secretary may not award a grant under this subsection for a proposed project unless the Secretary determines that the project is—

''(i) based on the results of planning and alternatives analysis;

''(ii) justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development; and

''(iii) supported by an acceptable degree of local financial commitment.

''(B) PLANNING AND ALTERNATIVES.—In evaluating a project under subparagraph (A)(i), the Secretary shall analyze and consider the results of planning and alternatives analysis for the project.

''(C) PROJECT JUSTIFICATION.—In making the determinations under subparagraph (A)(ii), the Secretary shall—

''(i) determine the degree to which local land use policies are supportive of the public transportation project and the degree to which the project is likely to achieve local developmental goals;

''(ii) determine the cost effectiveness of the project at the time of the initiation of revenue service;

''(iii) determine the degree to which the project will have a positive effect on local economic development;

''(iv) consider the reliability of the forecasts of costs and ridership associated with the project; and

''(v) consider other factors that the Secretary determines to be appropriate to carry out this subsection.

''(D) LOCAL FINANCIAL COMMITMENT.—For purposes of subparagraph (A)(iii), the Secretary shall require that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable.

''(3) ADVANCEMENT OF PROJECT TO DEVELOPMENT AND CONSTRUCTION.—

''(A) IN GENERAL.—A proposed project under this subsection may not advance from the planning and alternatives analysis stage to project development and construction unless—

''(i) the Secretary finds that the project meets the requirements of this subsection and there is a reasonable likelihood that the project will continue to meet such requirements; and

''(ii) the metropolitan planning organization has adopted the locally preferred alternative for the project into the long-range transportation plan.

''(B) EVALUATION.—In making the findings under subparagraph (A), the Secretary shall evaluate and rate the project as high, medium-high, medium, medium-low, or low, based on the results of the analysis of the project justification criteria and the degree of local financial commitment, as required under this subsection.

''(4) IMPACT REPORT.—

''(A) IN GENERAL.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2005, the Federal Transit Administration shall submit a report on the methodology to be used in evaluating the land use and economic development impacts of non-fixed guideway or partial fixed guideway projects to—

''(i) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(ii) the Committee on Transportation and Infrastructure of the House of Representatives.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall address any qualitative and quantitative differences between fixed guideway and non-fixed guideway projects with respect to land use and economic development impacts.

''(5) REGULATIONS.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall issue regulations establishing an evaluation and rating process for proposed projects under this subsection that is based on the results of project justification and local financial commitment, as required under this subsection.''.

(g) FULL FUNDING GRANT AGREEMENTS.—Section 5309(g)(2) is amended by adding at the end the following:

''(C) BEFORE AND AFTER STUDY.—

''(i) IN GENERAL.—Each full funding grant agreement shall require the applicant to conduct a study that—

''(I) describes and analyzes the impacts of the new start project on transit services and transit ridership;

''(II) evaluates the consistency of predicted and actual project characteristics and performance; and

''(III) identifies sources of differences between predicted and actual outcomes.

''(ii) INFORMATION COLLECTION AND ANALYSIS PLAN.—

''(I) SUBMISSION OF PLAN.—Applicants seeking a full funding grant agreement shall submit a complete plan for the collection and analysis of information to identify the impacts of the new start project and the accuracy of the forecasts prepared during the development of the project. Preparation of this plan shall be included in the full funding grant agreement as an eligible activity.

''(II) CONTENTS OF PLAN.—The plan submitted under subclause (I) shall provide for—

''(aa) the collection of data on the current transit system regarding transit service levels and ridership patterns, including origins and destinations, access modes, trip purposes, and rider characteristics;

''(bb) documentation of the predicted scope, service levels, capital costs, operating costs, and ridership of the project;

''(cc) collection of data on the transit system 2 years after the opening of the new start project, including analogous information on transit service levels and ridership patterns and information on the as-built scope and capital costs of the new start project; and

''(dd) analysis of the consistency of predicted project characteristics with the after data.

''(D) COLLECTION OF DATA ON CURRENT SYSTEM.—To be eligible for a full funding grant agreement, recipients shall have collected data on the current system, according to the plan required, before the beginning of construction of the proposed new start project. Collection of this data shall be included in the full funding grant agreement as an eligible activity.

''(E) PUBLIC PRIVATE PARTNERSHIP PILOT PROGRAM.—

''(i) AUTHORIZATION.—The Secretary may establish a pilot program to demonstrate the advantages of public-private partnerships for certain fixed guideway systems development projects.

''(ii) IDENTIFICATION OF QUALIFIED PROJECTS.—The Secretary shall identify qualified public-private partnership projects as permitted by applicable State and local enabling laws and work with project sponsors to enhance project delivery and reduce overall costs.''.

(h) GOVERNMENT SHARE OF NET PROJECT COST.—Section 5309(h) is amended to read as follows:

''(h) GOVERNMENT SHARE OF ADJUSTED NET PROJECT COST.—

''(1) IN GENERAL.—The Secretary shall estimate the net project cost based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities.

''(2) ADJUSTMENT FOR COMPLETION UNDER BUDGET.—The Secretary may adjust the final net project cost of a major capital investment project evaluated under subsections (e) and (f) to include the cost of eligible activities not included in the originally defined project if the Secretary determines that the originally defined project has been completed at a cost that is significantly below the original estimate.

''(3) MAXIMUM GOVERNMENT SHARE.—

''(A) IN GENERAL.—A grant for the project shall be for 80 percent of the net project cost, or the net project cost as adjusted under paragraph (2), unless the grant recipient requests a lower grant percentage.

''(B) EXCEPTIONS.—The Secretary may provide a higher grant percentage than requested by the grant recipient if—

''(i) the Secretary determines that the net project cost of the project is not more than 10 percent higher than the net project cost estimated at the time the project was approved for advancement into preliminary engineering; and

''(ii) the ridership estimated for the project is not less than 90 percent of the ridership estimated for the project at the time the project was approved for advancement into preliminary engineering.

''(4) OTHER SOURCES.—The costs not funded by a grant under this section may be funded from—

''(A) an undistributed cash surplus;

''(B) a replacement or depreciation cash fund or reserve; or

''(C) new capital, including any Federal funds that are eligible to be expended for transportation.

''(5) PLANNED EXTENSION TO FIXED GUIDEWAY SYSTEM.—In addition to amounts allowed under paragraph (1), a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the Secretary determines that only non-Federal funds were used and that the purchase was made for use on the extension. A refund or reduction of the costs not funded by a grant under this section may be made only if a refund of a proportional amount of the grant is made at the same time.

''(6) EXCEPTION.—The prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to amounts allowed under paragraph (4).''.

(i) LOAN PROVISIONS AND FISCAL CAPACITY CONSIDERATIONS.—Section 5309 is amended—

(1) by striking subsections (i), (j), (k), and (l);

(2) by redesignating subsections (m) and (n) as subsections (i) and (j), respectively;

(3) by striking subsection (o) (as added by section 3009(i) of the Federal Transit Act of 1998); and

(4) by redesignating subsections (o) and (p) as subsections (k) and (l), respectively.

(j) ALLOCATING AMOUNTS.—Section 5309(i), as redesignated, is amended to read as follows:

''(i) ALLOCATING AMOUNTS.—

''(1) FISCAL YEAR 2005.—Of the amounts made available or appropriated for fiscal year 2005 under section 5338(a)(3)—

''(A) $1,437,829,600 shall be allocated for projects of not less than $75,000,000 for major capital projects for new fixed guideway systems and extensions of such systems under subsection (e) and projects for new fixed guideway or corridor improvement capital projects under subsection (f);

''(B) $1,204,684,800 shall be allocated for capital projects for fixed guideway modernization; and

''(C) $669,600,000 shall be allocated for capital projects for buses and bus-related equipment and facilities.

''(2) IN GENERAL.—Of the amounts made available or appropriated for fiscal year 2006 and each fiscal year thereafter for grants under this section pursuant to subsections (b)(4) and (c) of section 5338—

''(A) the amounts appropriated under section 5338(c) shall be allocated for major capital projects for—

''(i) new fixed guideway systems and extensions of not less than $75,000,000, in accordance with subsection (e); and

''(ii) projects for new fixed guideway or corridor improvement capital projects, in accordance with subsection (f); and

''(B) the amounts made available under section 5338(b)(4) shall be allocated for capital projects for buses and bus-related equipment and facilities.

''(3) FIXED GUIDEWAY MODERNIZATION.—The amounts made available for fixed guideway modernization under section 5338(b)(2)(K) for fiscal year 2006 and each fiscal year 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 2005 through 2009 for capital projects in Alaska and Hawaii for new fixed guideway systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals.

''(6) BUS AND BUS FACILITY GRANTS.—

''(A) CONSIDERATIONS.—In making grants under paragraphs (1)(C) and (2)(B), the Secretary shall consider the age and condition of buses, bus fleets, related equipment, and bus-related facilities.

''(B) PROJECTS NOT IN URBANIZED AREAS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than 5.5 percent shall be available in each fiscal year for projects that are not in urbanized areas.

''(C) INTERMODAL TERMINALS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than $75,000,000 shall be available in each fiscal year for intermodal terminal projects, including the intercity bus portion of such projects.''.

(k) REPORTS.—Section 5309 is amended by inserting at the end the following:

''(m) REPORTS.—

''(1) ANNUAL REPORT ON FUNDING RECOMMENDATIONS.—

''(A) IN GENERAL.—Not later than the first Monday of February of each year, the Secretary shall submit a report on funding recommendations to—

''(i) the Committee on Transportation and Infrastructure of the House of Representatives;

''(ii) the Committee on Banking, Housing, and Urban Affairs of the Senate;

''(iii) the Subcommittee on the Departments of Transportation, Treasury, Housing and Urban Development, The Judiciary, District of Columbia, and Independent Agencies of the Committee on Appropriations of the House of Representatives; and

''(iv) the Subcommittee on Transportation, Treasury, and General Government of the Committee on Appropriations of the Senate.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall contain—

''(i) a proposal on the allocation of amounts to finance grants for capital investment projects among grant applicants;

''(ii) a recommendation of projects to be funded based on—

''(I) the evaluations and ratings determined under subsection (e) and (f); and

''(II) existing commitments and anticipated funding levels for the subsequent 3 fiscal years; and

''(iii) detailed ratings and evaluations on each project recommended for funding.

''(2) TRIANNUAL REPORTS ON PROJECT RATINGS.—

''(A) IN GENERAL.—Not later than the first Monday of February, the first Monday of June, and the first Monday of October of each year, the Secretary shall submit a report on project ratings to—

''(i) the Committee on Transportation and Infrastructure of the House of Representatives;

''(ii) the Committee on Banking, Housing, and Urban Affairs of the Senate;

''(iii) the Subcommittee on the Departments of Transportation, Treasury, Housing and Urban Development, The Judiciary, District of Columbia, and Independent Agencies of the Committee on Appropriations of the House of Representatives; and

''(iv) the Subcommittee on Transportation, Treasury, and General Government of the Committee on Appropriations of the Senate.

''(B) CONTENTS.—Each report submitted under subparagraph (A) shall contain—

''(i) a summary of the ratings of all capital investment projects for which funding was requested under this section;

''(ii) detailed ratings and evaluations on the project of each applicant that had significant changes to the finance or project proposal or has completed alternatives analysis or preliminary engineering since the date of the latest report; and

''(iii) all relevant information supporting the evaluation and rating of each updated project, including a summary of the financial plan of each updated project.

''(3) BEFORE AND AFTER STUDY REPORTS.—Not later than the first Monday of August of each

year, the Secretary shall submit a report containing a summary of the results of the studies conducted under subsection (g)(2) to—

''(A) the Committee on Transportation and Infrastructure of the House of Representatives;

''(B) the Committee on Banking, Housing, and Urban Affairs of the Senate;

''(C) the Subcommittee on the Departments of Transportation, Treasury, Housing and Urban Development, The Judiciary, District of Columbia, and Independent Agencies of the Committee on Appropriations of the House of Representatives; and

''(D) the Subcommittee on Transportation, Treasury, and General Government of the Committee on Appropriations of the Senate.

''(4) CONTRACTOR PERFORMANCE ASSESSMENT REPORT.—

''(A) IN GENERAL.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2005, and each year thereafter, the Secretary shall submit a report analyzing the consistency and accuracy of cost and ridership estimates made by each contractor to public transportation agencies developing major investment projects to the committees and subcommittees listed under paragraph (3).

''(B) CONTENTS.—The report submitted under subparagraph (A) shall compare the cost and ridership estimates made at the time projects are approved for entrance into preliminary engineering with—

''(i) estimates made at the time projects are approved for entrance into final design;

''(ii) costs and ridership when the project commences revenue operation; and

''(iii) costs and ridership when the project has been in operation for 2 years.

''(5) ANNUAL GOVERNMENT ACCOUNTABILITY OFFICE REVIEW.—

''(A) REVIEW.—The Comptroller General of the United States shall conduct an annual review of the processes and procedures for evaluating and rating projects and recommending projects and the Secretary's implementation of such processes and procedures.

''(B) REPORT.—Not later than 90 days after the submission of each report required under paragraph (1), the Comptroller General shall submit a report to Congress that summarizes the results of the review conducted under subparagraph (A).

''(6) CONTRACTOR PERFORMANCE INCENTIVE REPORT.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2005, the Secretary shall submit a report to the committees and subcommittees listed under paragraph (3) on the suitability of allowing contractors to public transportation agencies that undertake major capital investments under this section to receive performance incentive awards if a project is completed for less than the original estimated cost.''.

(l) RESTRICTIONS ON USE OF BUS CATEGORY FUNDS FOR FIXED GUIDEWAY PROJECTS.—Funds provided to grantees under the bus and bus facility category for fixed guideway ferry and gondola projects in the Department of Transportation and Related Agencies Appropriations Acts for any of fiscal years 1998 through 2005, or accompanying committee reports, that remain available and unobligated may be used for fixed guideway projects under this section.

(m) MIAMI METRORAIL.—The Secretary may credit funds provided by the Florida Department of Transportation for the extension of the Miami Metrorail System from Earlington Heights to the Miami Intermodal Center to satisfy the matching requirements of section 5309(h)(4) of title 49, United Stated Code, for the Miami North Corridor and Miami East-West Corridor projects.

SEC. 6012. NEW FREEDOM FOR ELDERLY PERSONS AND PERSONS WITH DISABILITIES.

(a) IN GENERAL.—Section 5310 is amended to read as follows:

''§ 5310. New freedom for elderly persons and persons with disabilities

''(a) GENERAL AUTHORITY.—

''(1) AUTHORIZATION.—The Secretary may award grants to a State for capital public transportation projects that are planned, designed, and carried out to meet the needs of elderly individuals and individuals with disabilities, with priority given to the needs of these individuals to access necessary health care.

''(2) ACQUISITION OF PUBLIC TRANSPORTATION SERVICES.—A capital public transportation project under this section may include acquiring public transportation services as an eligible capital expense.

''(3) ADMINISTRATIVE COSTS.—A State may use not more than 15 percent of the amounts received under this section to administer, plan, and provide technical assistance for a project funded under this section.

''(b) ALLOTMENTS AMONG STATES.—

''(1) IN GENERAL.—From amounts made available or appropriated in each fiscal year under subsections (a)(1)(C)(iv) and (b)(2)(D) of section 5338 for grants under this section, the Secretary shall allot amounts to each State under a formula based on the number of elderly individuals and individuals with disabilities in each State.

''(2) TRANSFER OF FUNDS.—Any funds allotted to a State under paragraph (1) may be transferred by the State to the apportionments made under sections 5311(c) and 5336 if such funds are only used for eligible projects selected under this section.

''(3) REALLOCATION OF FUNDS.—A State receiving a grant under this section may reallocate such grant funds to—

''(A) a private nonprofit organization;

''(B) a public transportation agency or authority; or

''(C) a governmental authority that—

''(i) has been approved by the State to coordinate services for elderly individuals and individuals with disabilities;

''(ii) certifies that nonprofit organizations are not readily available in the area that can provide the services described under this subsection; or

''(iii) will provide services to persons with disabilities that exceed those services required by the Americans with Disabilities Act.

''(c) GOVERNMENT SHARE.—

''(1) MAXIMUM.—

''(A) IN GENERAL.—A grant for a capital project under this section may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

''(B) EXCEPTION.—A State described in section 120(d) of title 23 shall receive an increased Government share in accordance with the formula under that section.

''(2) REMAINING COSTS.—The costs of a capital project under this section that are not funded through a grant under this section—

''(A) may be funded from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and

''(B) may be derived from amounts appropriated to or made available to any Federal agency (other than the Department of Transportation, except for Federal Lands Highway funds) that are eligible to be expended for transportation.

''(3) EXCEPTION.—For purposes of paragraph (2), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

''(d) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—A grant recipient under this section shall be subject to the requirements of a grant recipient under section 5307 to the extent the Secretary determines to be appropriate.

''(2) CERTIFICATION REQUIREMENTS.—

''(A) FUND TRANSFERS.—A grant recipient under this section that transfers funds to a project funded under section 5336 in accordance with subsection (b)(2) shall certify that the project for which the funds are requested has been coordinated with private nonprofit providers of services under this section.

''(B) PROJECT SELECTION AND PLAN DEVELOPMENT.—Each grant recipient under this section shall certify that—

''(i) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and

''(ii) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

''(C) ALLOCATIONS TO SUBRECIPIENTS.—Each grant recipient under this section shall certify that allocations of the grant to subrecipients, if any, are distributed on a fair and equitable basis.

''(e) STATE PROGRAM OF PROJECTS.—

''(1) SUBMISSION TO SECRETARY.—Each State shall annually submit a program of transportation projects to the Secretary for approval with an assurance that the program provides for maximum feasible coordination between transportation services funded under this section and transportation services assisted by other Federal sources.

''(2) USE OF FUNDS.—Each State may use amounts made available to carry out this section to provide transportation services for elderly individuals and individuals with disabilities if such services are included in an approved State program of projects.

''(f) LEASING VEHICLES.—Vehicles acquired under this section may be leased to local governmental authorities to improve transportation services designed to meet the needs of elderly individuals and individuals with disabilities.

''(g) MEAL DELIVERY FOR HOMEBOUND INDIVIDUALS.—Public transportation service providers receiving assistance under this section or section 5311(c) may coordinate and assist in regularly providing meal delivery service for homebound individuals if the delivery service does not conflict with providing public transportation service or reduce service to public transportation passengers.

''(h) TRANSFERS OF FACILITIES AND EQUIPMENT.—With the consent of the recipient in possession of a facility or equipment acquired with a grant under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment will continue to be used as required under this section.

''(i) FARES NOT REQUIRED.—This section does not require that elderly individuals and individuals with disabilities be charged a fare.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5310 in the table of sections for chapter 53 is amended to read as follows:

''5310. New freedom for elderly persons and persons with disabilities.''.

SEC. 6013. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.

(a) DEFINITIONS.—Section 5311(a) is amended to read as follows:

''(a) DEFINITIONS.—As used in this section, the following definitions shall apply:

''(1) RECIPIENT.—The term 'recipient' means a State or Indian tribe that receives a Federal transit program grant directly from the Federal Government.

''(2) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, a nonprofit organization, or a private operator of public transportation or intercity bus service that receives Federal transit program grant funds indirectly through a recipient.''.

(b) GENERAL AUTHORITY.—Section 5311(b) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) GRANTS AUTHORIZED.—Except as provided under paragraph (2), the Secretary may award grants under this section to recipients located in areas other than urbanized areas for—

''(A) public transportation capital projects;

''(B) operating costs of equipment and facilities for use in public transportation; and

''(C) the acquisition of public transportation services.'';

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following:

''(2) STATE PROGRAM.—

''(A) IN GENERAL.—A project eligible for a grant under this section shall be included in a State program for public transportation service projects, including agreements with private providers of public transportation service.

''(B) SUBMISSION TO SECRETARY.—Each State shall annually submit the program described in subparagraph (A) to the Secretary.

''(C) APPROVAL.—The Secretary may not approve the program unless the Secretary determines that—

''(i) the program provides a fair distribution of amounts in the State; and

''(ii) the program provides the maximum feasible coordination of public transportation service assisted under this section with transportation service assisted by other Federal sources.'';

(4) in paragraph (3), as redesignated—

(A) by striking ''(3) The Secretary of Transportation'' and inserting the following:

''(3) RURAL TRANSPORTATION ASSISTANCE PROGRAM.—

''(A) ESTABLISHMENT.—The Secretary'';

(B) by striking ''make'' and inserting ''use not more than 2 percent of the amount made available to carry out this section to award''; and

(C) by adding at the end the following:

''(B) DATA COLLECTION.—

''(i) REPORT.—Each grantee under this section shall submit an annual report to the Secretary containing information on capital investment, operations, and service provided with funds received under this section, including—

''(I) total annual revenue;

''(II) sources of revenue;

''(III) total annual operating costs;

''(IV) total annual capital costs;

''(V) fleet size and type, and related facilities;

''(VI) revenue vehicle miles; and

''(VII) ridership.''; and

(5) by adding after paragraph (3) the following:

''(4) Of the amount made available to carry out paragraph (3)—

''(A) not more than 15 percent may be used to carry out projects of a national scope; and

''(B) any amounts not used under subparagraph (A) shall be allocated to the States.''.

(c) APPORTIONMENTS.—Section 5311(c) is amended to read as follows:

''(c) APPORTIONMENTS.—

''(1) PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(F) of section 5338, the following amounts shall be apportioned for grants to Indian tribes for any purpose eligible under this section, under such terms and conditions as may be established by the Secretary:

''(A) $8,000,000 for fiscal year 2006.

''(B) $10,000,000 for fiscal year 2007.

''(C) $12,000,000 for fiscal year 2008.

''(D) $15,000,000 for fiscal year 2009.

''(2) REMAINING AMOUNTS.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(F) of section 5338 that are not apportioned under paragraph (1)—

''(A) 20 percent shall be apportioned to the States in accordance with paragraph (3); and

''(B) 80 percent shall be apportioned to the States in accordance with paragraph (4).

''(3) APPORTIONMENTS BASED ON LAND AREA IN NONURBANIZED AREAS.—

''(A) IN GENERAL.—Subject to subparagraph (B), each State shall receive an amount that is equal to the amount apportioned under paragraph (2)(A) multiplied by the ratio of the land area in areas other than urbanized areas in that State and divided by the land area in all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.

''(B) MAXIMUM APPORTIONMENT.—No State shall receive more than 5 percent of the amount apportioned under this paragraph.

''(4) APPORTIONMENTS BASED ON POPULATION IN NONURBANIZED AREAS.—Each State shall receive an amount equal to the amount apportioned under paragraph (2)(B) multiplied by the ratio of the population of areas other than urbanized areas in that State divided by the population of all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.''.

(d) USE FOR ADMINISTRATIVE, PLANNING, AND TECHNICAL ASSISTANCE.—Section 5311(e) is amended—

(1) by striking ''AND TECHNICAL ASSISTANCE.—(1) The Secretary of Transportation'' and inserting '', PLANNING, AND TECHNICAL ASSISTANCE.—The Secretary'';

(2) by striking ''to a recipient''; and

(3) by striking paragraph (2).

(e) INTERCITY BUS TRANSPORTATION.—Section 5311(f) is amended—

(1) in paragraph (1)—

(A) by striking ''(1)'' and inserting the following:

''(1) IN GENERAL.—''; and

(B) by striking ''after September 30, 1993,''; and

(2) in paragraph (2)—

(A) by striking ''A State'' and inserting ''After consultation with affected intercity bus service providers, a State''; and

(B) by striking ''of Transportation''.

(f) GOVERNMENT SHARE OF COSTS.—Section 5311(g) is amended to read as follows:

''(g) GOVERNMENT SHARE OF COSTS.—

''(1) MAXIMUM GOVERNMENT SHARE.—

''(A) CAPITAL PROJECTS.—

''(i) IN GENERAL.—Except as provided under clause (ii), a grant awarded under this section for any purpose other than operating assistance may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

''(ii) EXCEPTION.—A State described in section 120(d) of title 23 shall receive a Government share of the net capital costs in accordance with the formula under that section.

''(B) OPERATING ASSISTANCE.—

''(i) IN GENERAL.—Except as provided under clause (ii), a grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

''(ii) EXCEPTION.—A State described in section 120(d) of title 23 shall receive a Government share of the net operating costs equal to 62.5 percent of the Government share provided for under subparagraph (A)(ii).

''(2) OTHER FUNDING SOURCES.—Funds for a project under this section that are not provided for by a grant under this section—

''(A) may be provided from—

''(i) an undistributed cash surplus;

''(ii) a replacement or depreciation cash fund or reserve;

''(iii) a service agreement with a State or local social service agency or a private social service organization; or

''(iv) new capital; and

''(B) may be derived from amounts appropriated to or made available to a Government agency (other than the Department of Transportation, except for Federal Land Highway funds) that are eligible to be expended for transportation.

''(3) USE OF GOVERNMENT GRANT.—A State carrying out a program of operating assistance under this section may not limit the level or extent of use of the Government grant for the payment of operating expenses.

''(4) EXCEPTION.—For purposes of paragraph (2)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(c)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(c)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.''.

(g) WAIVER CONDITION.—Section 5311(j)(1) is amended by striking ''but the Secretary of Labor may waive the application of section 5333(b)'' and inserting ''if the Secretary of Labor utilizes a Special Warranty that provides a fair and equitable arrangement to protect the interests of employees''.

SEC. 6014. RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.

(a) IN GENERAL.—Section 5312 is amended—

(1) by amending subsection (a) to read as follows:

''(a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—The Secretary may make grants, contracts, cooperative agreements, or other transactions (including agreements with departments, agencies, and instrumentalities of the United States Government) for research, development, demonstration or deployment projects, or evaluation of technology of national significance to public transportation that the Secretary determines will improve public transportation service or help public transportation service meet the total transportation needs at a minimum cost.

''(2) INFORMATION.—The Secretary may request and receive appropriate information from any source.

''(3) SAVINGS PROVISION.—This subsection does not limit the authority of the Secretary under any other law.'';

(2) by striking subsections (b) and (c);

(3) by redesignating subsections (d) and (e) as (b) and (c), respectively.

(4) in subsection (b)(2), as redesignated, by striking ''other agreements'' and inserting ''other transactions''; and

(5) in subsection (c)(2), as redesignated, by striking ''public and private'' and inserting ''public or private''.

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 5312 is amended to read as follows:

''§ 5312. Research, development, demonstration, and deployment projects''.

(2) TABLE OF SECTIONS.—The item relating to section 5312 in the table of sections for chapter 53 is amended to read as follows:

''5312. Research, development, demonstration, and deployment projects.''.

SEC. 6015. TRANSIT COOPERATIVE RESEARCH PROGRAM.

(a) IN GENERAL.—Section 5313 is amended—

(1) by striking subsection (b);

(2) in subsection (a)—

(A) in paragraph (1), by striking ''(1) The amounts made available under paragraphs (1) and (2)C)(ii) of section 5338(c) of this title'' and inserting ''The amounts made available under subsections (a)(5)(C)(iii) and (b)(2)(G)(i) of section 5338''; and

(B) in paragraph (2), by striking ''(2)'' and inserting the following:

''(b) GOVERNMENT ASSISTANCE.—''; and

(3) by amending subsection (c) to read as follows:

''(c) GOVERNMENT SHARE.—If there would be a clear and direct financial benefit to an entity under a grant or contract financed under this section, the Secretary shall establish a Government share consistent with such benefit.''.

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 5313 is amended to read as follows:

"§ 5313. Transit cooperative research program".

(2) TABLE OF SECTIONS.—The item relating to section 5313 in the table of sections for chapter 53 is amended to read as follows:

''5313. Transit cooperative research program.''.

SEC. 6016. NATIONAL RESEARCH PROGRAMS.

(a) IN GENERAL.—Section 5314 is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

''(1) AVAILABILITY OF FUNDS.—The Secretary may use amounts made available under subsections (a)(5)(C)(iv) and (b)(2)(G)(iv) of section 5338 for grants, contracts, cooperative agreements, or other transactions for the purposes described in sections 5312, 5315, and 5322.'';

(B) in paragraph (2), by striking ''(2) Of'' and inserting the following:

''(2) ADA COMPLIANCE.—From'';

(C) by amending paragraph (3) to read as follows:

''(3) SPECIAL DEMONSTRATION INITIATIVES.—The Secretary may use not more than 25 percent of the amounts made available under paragraph (1) for special demonstration initiatives, subject to terms that the Secretary determines to be consistent with this chapter. For a nonrenewable grant of not more than $100,000, the Secretary shall provide expedited procedures for complying with the requirements of this chapter.'';

(D) in paragraph (4)—

(i) by striking subparagraph (B); and

(ii) by redesignating subparagraph (C) as subparagraph (B); and

(E) by adding at the end the following:

''(6) MEDICAL TRANSPORTATION DEMONSTRATION GRANTS.—

''(A) GRANTS AUTHORIZED.—The Secretary may award demonstration grants, from funds made available under paragraph (1), to eligible entities to provide transportation services to individuals to access dialysis treatments and other medical treatments for renal disease.

''(B) ELIGIBLE ENTITIES.—An entity shall be eligible to receive a grant under this paragraph if the entity—

''(i) meets the conditions described in section 501(c)(3) of the Internal Revenue Code of 1986; or

''(ii) is an agency of a State or unit of local government.

''(C) USE OF FUNDS.—Grant funds received under this paragraph may be used to provide transportation services to individuals to access dialysis treatments and other medical treatments for renal disease.

''(D) APPLICATION.—

''(i) IN GENERAL.—Each eligible entity desiring a grant under this paragraph shall submit an application to the Secretary at such time, at such place, and containing such information as the Secretary may reasonably require.

''(ii) SELECTION OF GRANTEES.—In awarding grants under this paragraph, the Secretary shall give preference to eligible entities from communities with—

''(I) high incidence of renal disease; and

''(II) limited access to dialysis facilities.

''(E) RULEMAKING.—The Secretary shall issue regulations to implement and administer the grant program established under this paragraph.

''(F) REPORT.—The Secretary shall submit a report on the results of the demonstration projects funded under this paragraph to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.''; and

(2) by amending subsection (b) to read as follows:

''(b) GOVERNMENT SHARE.—If there would be a clear and direct financial benefit to an entity under a grant, contract, cooperative agreement, or other transaction financed under subsection (a) or section 5312, 5313, 5315, or 5322, the Secretary shall establish a Government share consistent with such benefit.''.

(c) NATIONAL TECHNICAL ASSISTANCE CENTER FOR SENIOR TRANSPORTATION; ALTERNATIVE FUELS STUDY.—Section 5314 is amended by adding at the end the following:

''(c) NATIONAL TECHNICAL ASSISTANCE CENTER FOR SENIOR TRANSPORTATION.—

''(1) ESTABLISHMENT.—The Secretary shall award grants to a national not-for-profit organization for the establishment and maintenance of a national technical assistance center.

''(2) ELIGIBILITY.—An organization shall be eligible to receive the grant under paragraph (1) if the organization—

''(A) focuses significantly on serving the needs of the elderly;

''(B) has demonstrated knowledge and expertise in senior transportation policy and planning issues;

''(C) has affiliates in a majority of the States;

''(D) has the capacity to convene local groups to consult on operation and development of senior transportation programs; and

''(E) has established close working relationships with the Federal Transit Administration and the Administration on Aging.

''(3) USE OF FUNDS.—The national technical assistance center established under this section shall—

''(A) gather best practices from throughout the country and provide such practices to local communities that are implementing senior transportation programs;

''(B) work with teams from local communities to identify how they are successfully meeting the transportation needs of senior and any gaps in services in order to create a plan for an integrated senior transportation program;

''(C) provide resources on ways to pay for senior transportation services;

''(D) create a web site to publicize and circulate information on senior transportation programs;

''(E) establish a clearinghouse for print, video, and audio resources on senior mobility; and

''(F) administer the demonstration grant program established under paragraph (4).

''(4) GRANTS AUTHORIZED.—

''(A) IN GENERAL.—The national technical assistance center established under this section, in consultation with the Federal Transit Administration, shall award senior transportation demonstration grants to—

''(i) local transportation organizations;

''(ii) State agencies;

''(iii) units of local government; and

''(iv) nonprofit organizations.

''(B) USE OF FUNDS.—Grant funds received under this paragraph may be used to—

''(i) evaluate the state of transportation services for senior citizens;

''(ii) recognize barriers to mobility that senior citizens encounter in their communities;

''(iii) establish partnerships and promote coordination among community stakeholders, including public, not-for-profit, and for-profit providers of transportation services for senior citizens;

''(iv) identify future transportation needs of senior citizens within local communities; and

''(v) establish strategies to meet the unique needs of healthy and frail senior citizens.

''(C) SELECTION OF GRANTEES.—The Secretary shall select grantees under this subsection based on a fair representation of various geographical locations throughout the United States.

''(5) ALLOCATIONS.—From the funds made available for each fiscal year under subsections (a)(5)(C)(iv) and (b)(2)(G)(iv) of section 5338, $3,000,000 shall be allocated to carry out this subsection.

''(d) ALTERNATIVE FUELS STUDY.—

''(1) STUDY.—The Secretary shall conduct a study of the actions necessary to facilitate the purchase of increased volumes of alternative fuels (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 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 2005, the Secretary shall submit the study completed under this subsection to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

''(e) STUDY OF METHODS TO IMPROVE ACCESSIBILITY OF PUBLIC TRANSPORTATION FOR PERSONS WITH VISUAL DISABILITIES.—Not later than October 1, 2006, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the effectiveness of alternative methods to improve the accessibility of public transportation for persons with visual disabilities. The report shall evaluate a variety of methods and techniques for improving accessibility, including installation of Remote Infrared Audible Signs for provision of wayfinding and information for people who have visual, cognitive, or learning disabilities.''.

(c) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading for section 5314 is amended to read as follows:

"§ 5314. National research programs".

(2) TABLE OF SECTIONS.—The item relating to section 5314 in the table of sections for chapter 53 is amended to read as follows:

''5314. National research programs.''.

SEC. 6017. NATIONAL TRANSIT INSTITUTE.

(a) Section 5315 is amended—

(1) by striking subsections (a) and (b) and inserting the following:

''(a) ESTABLISHMENT.—The Secretary shall award grants to Rutgers University to conduct a national transit institute.

''(b) DUTIES.—

''(1) IN GENERAL.—In cooperation with the Federal Transit Administration, State transportation departments, public transportation authorities, and national and international entities, the institute established pursuant to subsection (a) shall develop and conduct training programs for Federal, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Government-aid public transportation work.

''(2) TRAINING PROGRAMS.—The training programs developed under paragraph (1) may include courses in recent developments, techniques, and procedures related to—

''(A) intermodal and public transportation planning;

''(B) management;

''(C) environmental factors;

''(D) acquisition and joint use rights of way;
''(E) engineering and architectural design;
''(F) procurement strategies for public transportation systems;
''(G) turnkey approaches to delivering public transportation systems;
''(H) new technologies;
''(I) emission reduction technologies;
''(J) ways to make public transportation accessible to individuals with disabilities;
''(K) construction, construction management, insurance, and risk management;
''(L) maintenance;
''(M) contract administration;
''(N) inspection;
''(O) innovative finance;
''(P) workplace safety; and
''(Q) public transportation security.''; and

(2) in subsection (d), by striking ''mass'' each place it appears.

SEC. 6018. BUS TESTING FACILITY.

Section 5318 is amended—

(1) in subsection (a)—

(A) by striking ''ESTABLISHMENT.—The Secretary of Transportation shall establish one facility'' and inserting ''IN GENERAL.—The Secretary shall maintain 1 facility''; and

(B) by striking ''established by renovating'' and inserting ''maintained at''; and

(2) in subsection (d), by striking ''section 5309(m)(1)(C) of this title'' and inserting ''paragraphs (1)(C) and (2)(B) of section 5309(i)''.

SEC. 6019. BICYCLE FACILITIES.

Section 5319 is amended by striking ''5307(k)'' and inserting ''5307(d)(1)(K)''.

SEC. 6020. SUSPENDED LIGHT RAIL TECHNOLOGY PILOT PROJECT.

Section 5320 is repealed.

SEC. 6021. CRIME PREVENTION AND SECURITY.

Section 5321 is repealed.

SEC. 6022. GENERAL PROVISIONS ON ASSISTANCE.

Section 5323 is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—Financial assistance provided under this chapter to a State or a local governmental authority may be used to acquire an interest in, or to buy property of, a private company engaged in public transportation, for a capital project for property acquired from a private company engaged in public transportation after July 9, 1964, or to operate a public transportation facility or equipment in competition with, or in addition to, transportation service provided by an existing public transportation company, only if—

''(A) the Secretary determines that such financial assistance is essential to a program of projects required under sections 5303, 5304, and 5306;

''(B) the Secretary determines that the program provides for the participation of private companies engaged in public transportation to the maximum extent feasible; and

''(C) just compensation under State or local law will be paid to the company for its franchise or property.''; and

(B) in paragraph (2), by striking ''(2)'' and inserting the following:

''(2) LIMITATION.—'';

(2) by amending subsection (b) to read as follows:

''(b) NOTICE AND PUBLIC HEARING.—

''(1) IN GENERAL.—An application for a grant under this chapter for a capital project that will substantially affect a community, or the public transportation service of a community, shall include, in the environmental record for the project, evidence that the applicant has—

''(A) provided an adequate opportunity for public review and comment on the project;

''(B) held a public hearing on the project if the project affects significant economic, social, or environmental interests;

''(C) considered the economic, social, and environmental effects of the project; and

''(D) found that the project is consistent with official plans for developing the urban area.

''(2) CONTENTS OF NOTICE.—Notice of a hearing under this subsection—

''(A) shall include a concise description of the proposed project; and

''(B) shall be published in a newspaper of general circulation in the geographic area the project will serve.'';

(3) by amending subsection (e) to read as follows:

''(e) NEW TECHNOLOGY.—A grant for financial assistance under this chapter for new technology, including innovative or improved products, techniques, or methods, shall be subject to the requirements of section 5309 to the extent the Secretary determines to be appropriate.'';

(4) in subsection (f)—

(A) by striking ''(1)'' and inserting the following:

''(1) IN GENERAL.—'';

(B) by striking paragraph (2);

(C) by striking ''This subsection'' and inserting the following:

''(2) EXCEPTIONS.—This subsection; and

(D) by adding at the end the following:

''(3) PENALTY.—If the Secretary determines that an applicant, governmental authority, or publicly owned operator has violated the agreement required under paragraph (1), the Secretary shall bar the applicant, authority, or operator from receiving Federal transit assistance in an amount the Secretary determines to be appropriate.'';

(5) in subsection (g), by striking ''103(e)(4) and 142 (a) or (c)'' each place it appears and inserting ''133 and 142'';

(6) by amending subsection (h) to read as follows:

''(h) TRANSFER OF LANDS OR INTERESTS IN LANDS OWNED BY THE UNITED STATES.—

''(1) REQUEST BY SECRETARY.—If the Secretary determines that any part of the lands or interests in lands owned by the United States and made available as a result of a military base closure is necessary for transit purposes eligible under this chapter, including corridor preservation, the Secretary shall submit a request to the head of the Federal agency supervising the administration of such lands or interests in lands. Such request shall include a map showing the portion of such lands or interests in lands, which is desired to be transferred for public transportation purposes.

''(2) TRANSFER OF LAND.—If 4 months after submitting a request under paragraph (1), the Secretary does not receive a response from the Federal agency described in paragraph (1) that certifies that the proposed appropriation of land is contrary to the public interest or inconsistent with the purposes for which such land has been reserved, or if the head of such agency agrees to the utilization or transfer under conditions necessary for the adequate protection and utilization of the reserve, such land or interests in land may be utilized or transferred to a State, local governmental authority, or public transportation operator for such purposes and subject to the conditions specified by such agency.

''(3) REVERSION.—If at any time the lands or interests in land utilized or transferred under paragraph (2) are no longer needed for public transportation purposes, the State, local governmental authority, or public transportation operator that received the land shall notify to the Secretary, and such lands shall immediately revert to the control of the head of the Federal agency from which the land was originally transferred.'';

(7) in subsection (j)(5), by striking ''Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 1914)'' and inserting ''Federal Public Transportation Act of 2005'';

(8) by amending subsection (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.'';

(9) in subsection (m), by adding at the end the following: ''Requirements to perform preaward and postdelivery reviews of rolling stock purchases to ensure compliance with subsection (j) shall not apply to private nonprofit organizations or to grantees serving urbanized areas with a population of fewer than 1,000,000.'';

(10) in subsection (o), by striking ''the Transportation Infrastructure Finance and Innovation Act of 1998'' and inserting ''subchapter II of chapter 1 of title 23''; and

(11) by adding at the end the following:

''(p) BOND PROCEEDS ELIGIBLE FOR LOCAL SHARE.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, a recipient of assistance under section 5307 or 5309, may use the proceeds from the issuance of revenue bonds as part of the local matching funds for a capital project.

''(2) REIMBURSEMENT BY SECRETARY.—The Secretary may reimburse an eligible recipient for deposits of bond proceeds in a debt service reserve that the recipient established pursuant to section 5302(a)(1)(K) from amounts made available to the recipient under section 5307 or 5309.'';

''(q) PROHIBITED USE OF FUNDS.—Grant funds received under this chapter may not be used to pay ordinary governmental or nonproject operating expenses.''.

SEC. 6023. SPECIAL PROVISIONS FOR CAPITAL PROJECTS.

(a) IN GENERAL.—Section 5324 is amended to read as follows:

''§ 5324. Special provisions for capital projects

''(a) REAL PROPERTY AND RELOCATION SERVICES.—Whenever real property is acquired or furnished as a required contribution incident to a project, the Secretary shall not approve the application for financial assistance unless the applicant has made all payments and provided all assistance and assurances that are required of a State agency under sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630 and 4655). The Secretary must be advised of specific references to any State law that are believed to be an exception to section 301 or 302 of such Act (42 U.S.C. 4651 and 4652).

''(b) ADVANCE REAL PROPERTY ACQUISITIONS.—

(1) IN GENERAL.—The Secretary may participate in the acquisition of real property for any project that may use the property if the Secretary determines that external market forces are jeopardizing the potential use of the property for the project and if—

''(A) there are offers on the open real estate market to convey that property for a use that is incompatible with the project under study;

''(B) there is an imminent threat of development or redevelopment of the property for a use that is incompatible with the project under study;

''(C) recent appraisals reflect a rapid increase in the fair market value of the property;

''(D) the property, because it is located near an existing transportation facility, is likely to be developed and to be needed for a future transportation improvement; or

''(E) the property owner can demonstrate that, for health, safety, or financial reasons, retaining ownership of the property poses an undue hardship on the owner in comparison to other affected property owners and requests the acquisition to alleviate that hardship.

''(2) ENVIRONMENTAL REVIEWS.—Property acquired in accordance with this subsection may

not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

''(3) LIMITATION.—The Secretary shall limit the size and number of properties acquired under this subsection as necessary to avoid any prejudice to the Secretary's objective evaluation of project alternatives.

''(4) EXEMPTION.—An acquisition under this section shall be considered an exempt project under section 176 of the Clean Air Act (42 U.S.C. 7506).

''(c) RAILROAD CORRIDOR PRESERVATION.—

''(1) IN GENERAL.—The Secretary may assist an applicant to acquire railroad right-of-way before the completion of the environmental reviews for any project that may use the right-of-way if the acquisition is otherwise permitted under Federal law. The Secretary may establish restrictions on such an acquisition as the Secretary determines to be necessary and appropriate.

''(2) ENVIRONMENTAL REVIEWS.—Railroad right-of-way acquired under this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

''(d) CONSIDERATION OF ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—

''(1) IN GENERAL.—The Secretary may not approve an application for financial assistance for a capital project under this chapter unless the Secretary determines that the project has been developed in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary's findings under this paragraph shall be made a matter of public record.

''(2) COOPERATION AND CONSULTATION.—In carrying out section 5301(e), the Secretary shall cooperate and consult with the Secretary of the Interior and the Administrator of the Environmental Protection Agency on each project that may have a substantial impact on the environment.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5324 in the table of sections for chapter 53 is amended to read as follows:

''5324. Special provisions for capital projects.''.

SEC. 6024. CONTRACT REQUIREMENTS.

(a) IN GENERAL.—Section 5325 is amended to read as follows:

''§ 5325. Contract requirements

''(a) COMPETITION.—Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary.

''(b) ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS.—

''(1) IN GENERAL.—A contract or requirement for program management, architectural engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which Federal assistance is provided under this chapter shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, or an equivalent qualifications-based requirement of a State. This subsection does not apply to the extent a State has adopted or adopts by law a formal procedure for procuring those services.

''(2) ADDITIONAL REQUIREMENTS.—When awarding a contract described in paragraph (1), recipients of assistance under this chapter shall comply with the following requirements:

''(A) Any contract or subcontract awarded under this chapter shall be performed and audited in compliance with cost principles contained in part 31 of title 48, Code of Federal Regulations (commonly known as the Federal Acquisition Regulation).

''(B) A recipient of funds under a contract or subcontract awarded under this chapter shall accept indirect cost rates established in accordance with the Federal Acquisition Regulation for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

''(C) After a firm's indirect cost rates are accepted under subparagraph (B), the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment, and shall not be limited by administrative or de facto ceilings.

''(D) A recipient requesting or using the cost and rate data described in subparagraph (C) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided by the group of agencies sharing cost data under this subparagraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

''(c) EFFICIENT PROCUREMENT.—A recipient may award a procurement contract under this chapter to other than the lowest bidder if the award furthers an objective consistent with the purposes of this chapter, including improved long-term operating efficiency and lower long-term costs.

''(d) DESIGN-BUILD PROJECTS.—

''(1) DEFINED TERM.—As used in this subsection, the term 'design-build project'—

''(A) means a project under which a recipient enters into a contract with a seller, firm, or consortium of firms to design and build an operable segment of a public transportation system that meets specific performance criteria; and

''(B) may include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment.

''(2) FINANCIAL ASSISTANCE FOR CAPITAL COSTS.—Federal financial assistance under this chapter may be provided for the capital costs of a design-build project after the recipient complies with Government requirements.

''(e) ROLLING STOCK.—

''(1) ACQUISITION.—A recipient of financial assistance under this chapter may enter into a contract to expend that assistance to acquire rolling stock—

''(A) with a party selected through a competitive procurement process; or

''(B) based on—

''(i) initial capital costs; or

''(ii) performance, standardization, life cycle costs, and other factors.

''(2) MULTIYEAR CONTRACTS.—A recipient procuring rolling stock with Federal financial assistance under this chapter may make a multiyear contract, including options, to buy not more than 5 years of requirements for rolling stock and replacement parts. The Secretary shall allow a recipient to act on a cooperative basis to procure rolling stock under this paragraph and in accordance with other Federal procurement requirements.

''(f) EXAMINATION OF RECORDS.—Upon request, the Secretary and the Comptroller General, or any of their representatives, shall have access to and the right to examine and inspect all records, documents, and papers, including contracts, related to a project for which a grant is made under this chapter.

''(g) GRANT PROHIBITION.—A grant awarded under this chapter may not be used to support a procurement that uses an exclusionary or discriminatory specification.

''(h) BUS DEALER REQUIREMENTS.—No State law requiring buses to be purchased through in-State dealers shall apply to vehicles purchased with a grant under this chapter.

''(i) AWARDS TO RESPONSIBLE CONTRACTORS.—

''(1) IN GENERAL.—Federal financial assistance under this chapter may be provided for contracts only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement.

''(2) CRITERIA.—Before making an award to a contractor under paragraph (1), a recipient shall consider—

''(A) the integrity of the contractor;

''(B) the contractor's compliance with public policy;

''(C) the contractor's past performance, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(m)(4); and

''(D) the contractor's financial and technical resources.''.

(b) CONFORMING AMENDMENTS.—Chapter 53 is amended by striking section 5326.

SEC. 6025. PROJECT MANAGEMENT OVERSIGHT AND REVIEW.

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—Section 5327(a) is amended—

(1) in paragraph (11), by striking ''and'' at the end;

(2) in paragraph (12), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(13) safety and security management.''.

(b) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—Section 5327(c) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—The Secretary may not use more than 1 percent of amounts made available for a fiscal year to carry out any of sections 5307 through 5311, 5316, or 5317, or a project under the National Capital Transportation Act of 1969 (Public Law 91–143) to make a contract to oversee the construction of major projects under any of sections 5307 through 5311, 5316, or 5317 or under that Act.''; and

(2) in paragraph (2)—

(A) by striking ''(2)'' and inserting the following:

''(2) OTHER ALLOWABLE USES.—''; and

(B) by inserting ''and security'' after ''safety''.

SEC. 6026. PROJECT REVIEW.

Section 5328 is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking ''(1) When the Secretary of Transportation allows a new fixed guideway project to advance into the alternatives analysis stage of project review, the Secretary shall cooperate with the applicant'' and inserting the following:

''(1) ALTERNATIVES ANALYSIS.—The Secretary shall cooperate with an applicant undertaking an alternatives analysis under subsections (e) and (f) of section 5309'';

(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. 6027. INVESTIGATIONS OF SAFETY AND SECURITY RISK.

(a) IN GENERAL.—Section 5329 is amended to read as follows:

''§ 5329. Investigation of safety hazards and security risks

''(a) IN GENERAL.—The Secretary may conduct investigations into safety hazards and security risks associated with a condition in equipment, a facility, or an operation financed under this chapter to establish the nature and extent of the condition and how to eliminate, mitigate, or correct it.

''(b) SUBMISSION OF CORRECTIVE PLAN.—If the Secretary establishes that a safety hazard or security risk warrants further protective measures, the Secretary shall require the local governmental authority receiving amounts under

this chapter to submit a plan for eliminating, mitigating, or correcting it.

''(c) WITHHOLDING OF FUNDS.—Financial assistance under this chapter, in an amount to be determined by the Secretary, may be withheld until a plan is approved and carried out.

''(d) PUBLIC TRANSPORTATION SECURITY.—

''(1) IN GENERAL.—Not later than 90 days after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall enter into a memorandum of understanding with the Secretary of Homeland Security to define and clarify the respective roles and responsibilities of the Department of Transportation and the Department of Homeland Security relating to public transportation security.

''(2) CONTENTS.—The memorandum of understanding described in paragraph (1) shall—

''(A) establish national security standards for public transportation agencies;

''(B) establish funding priorities for grants from the Department of Homeland Security to public transportation agencies;

''(C) create a method of coordination with public transportation agencies on security matters; and

''(D) address any other issues determined to be appropriate by the Secretary and the Secretary of Homeland Security.''.

(b) CONFORMING AMENDMENT.—The item relating to section 5329 in the table of sections for chapter 53 is amended to read as follows:

''5329. Investigation of safety hazards and security risks.''.

SEC. 6028. STATE SAFETY OVERSIGHT.

(a) IN GENERAL.—Section 5330 is amended—

(1) by amending the heading to read as follows:

''§ 5330. Withholding amounts for noncompliance with State safety oversight requirements'';

(2) by amending subsection (a) to read as follows:

''(a) APPLICATION.—This section shall only apply to—

''(1) States that have rail fixed guideway public transportation systems that are not subject to regulation by the Federal Railroad Administration; and

''(2) States that are designing rail fixed guideway public transportation systems that will not be subjected to regulation by the Federal Railroad Administration.'';

(3) in subsection (d), by striking ''affected States'' and inserting the following: ''affected States—

''(1) shall ensure uniform safety standards and enforcement; or

''(2)''; 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. 6029. TERRORIST ATTACKS AND OTHER ACTS OF VIOLENCE AGAINST PUBLIC TRANSPORTATION SYSTEMS.

(a) IN GENERAL.—Section 1993 of title 18, United States Code, is amended—

(1) by striking ''mass'' each place it appears and inserting ''public'';

(2) in subsection (a)(5), by inserting ''controlling,'' after ''operating''; and

(3) in subsection (c)(5), by striking ''5302(a)(7) of title 49, United States Code,'' and inserting ''5302(a) of title 49,''.

(b) CONFORMING AMENDMENT.—The table of contents for chapter 97 of title 18, United States Code is amended by amending the item related to section 1993 to read as follows:

''1993. Terrorist attacks and other acts of violence against public transportation systems.''.

SEC. 6030. CONTROLLED SUBSTANCES AND ALCOHOL MISUSE TESTING.

Section 5331 is amended—

(1) in subsection (a)(3), by inserting before the period at the end the following: ''or sections 2303a, 7101(i), or 7302(e) of title 46. The Secretary may also decide that a form of public transportation is covered adequately, for employee alcohol and controlled substances testing purposes, under the alcohol and controlled substance statutes or regulations of an agency within the Department of Transportation or other Federal agency''; and

(2) in subsection (f), by striking paragraph (3).

SEC. 6031. EMPLOYEE PROTECTIVE ARRANGEMENTS.

Section 5333(b) is amended—

(1) in paragraph (3), by striking the period at the end and inserting '': Provided, That—

''(A) the protective period shall not exceed 4 years; and

''(B) the separation allowance shall not exceed 12 months.''; and

(2) by adding at the end the following:

''(4) An arrangement under this subsection shall not guarantee continuation of employment as a result of a change in private contractors through competitive bidding unless such continuation is otherwise required under subparagraph (A), (B), or (D) of paragraph (2).

''(5) Fair and equitable arrangements to protect the interests of employees utilized by the Secretary of Labor for assistance to purchase like-kind equipment or facilities, and amendments to existing assistance agreements, shall be certified without referral.

''(6) Nothing in this subsection shall affect the level of protection provided to freight railroad employees.''.

SEC. 6032. ADMINISTRATIVE PROCEDURES.

Section 5334 is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''5309–5311 of this title'' and all that follows and inserting ''5309 through 5311;'';

(B) in paragraph (9), by striking ''and'' at the end;

(C) in paragraph (10), by striking the period at the end and inserting ''; and''; and

(D) by inserting at the end the following:

''(11) issue regulations as necessary to carry out the purposes of this chapter.'';

(2) by redesignating subsections (b), (c), (d), (e), (f), (g), (h), (i), and (j) as subsections (c), (d), (e), (f), (g), (h), (i), (j), and (k), respectively;

(3) by adding after subsection (a) the following:

''(b) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—

''(1) IN GENERAL.—Except as directed by the President for purposes of national defense or in the event of a national or regional emergency, the Secretary may not regulate—

''(A) the operation, routes, or schedules of a public transportation system for which a grant is made under this chapter; or

''(B) the rates, fares, tolls, rentals, or other charges prescribed by any public or private transportation provider.

''(2) COMPLIANCE WITH AGREEMENT.—Nothing in this subsection shall prevent the Secretary from requiring a recipient of funds under this chapter to comply with the terms and conditions of its Federal assistance agreement.'';

(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)''; and

(5) by adding at the end the following:

''(l) NOTIFICATION OF PENDING DISCRETIONARY GRANTS.—Not less than 3 full business days before announcement of award by the Secretary of any discretionary grant, letter of intent, or full funding grant agreement totaling $1,000,000 or more, the Secretary shall notify the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate and Committees on Transportation and Infrastructure and Appropriation of the House of Representatives.''.

SEC. 6033. REPORTS AND AUDITS.

Section 5335 is amended—

(1) by striking subsection (b); and

(2) in subsection (a)—

(A) in paragraph (1), by striking ''(1)''; 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. 6034. APPORTIONMENTS OF APPROPRIATIONS FOR FORMULA GRANTS.

Section 5336 is amended—

(1) by striking subsections (d), (h), and (k);

(2) by redesignating subsections (a) through (c) as subsections (b) through (d), respectively;

(3) by redesignating subsection (i) and (j) as subsection (h) and (i) respectively;

(4) by adding before subsection (b), as redesignated, the following:

''(a) APPORTIONMENTS.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(vi) and (b)(2)(L) of section 5338—

''(1) there shall be apportioned, in fiscal year 2006 and each fiscal year thereafter, $35,000,000 to certain urbanized areas with populations of less than 200,000 in accordance with subsection (k); and

''(2) any amount not apportioned under paragraph (1) shall be apportioned to urbanized areas in accordance with subsections (b) through (d).'';

(5) in subsection (b), as redesignated—

(A) by striking ''Of the amount made available or appropriated under section 5338(a) of this title'' and inserting ''Of the amount apportioned under subsection (a)(3)''; and

(B) in paragraph (2), by striking ''subsections (b) and (c) of this section'' and inserting ''subsections (c) and (d)'';

(6) in subsection (c)(2), as redesignated, by striking ''subsection (a)(2) of this section'' and inserting ''subsection (b)(2)'';

(7) in subsection (d), as redesignated, by striking ''subsection (a)(2) of this section'' and inserting ''subsection (b)(2)'';

(8) in subsection (e)(1), by striking ''subsections (a) and (h)(2) of section 5338 of this title'' and inserting ''subsections (a) and (b) of section 5338'';

(9) in subsection (g), by striking ''subsection (a)(1) of this section'' each place it appears and inserting ''subsection (b)(1)''; and

(10) by adding at the end the following:

''(j) SMALL TRANSIT INTENSIVE CITIES FACTORS.—The amount apportioned under subsection (a)(1) shall be apportioned to urbanized areas as follows:

''(1) The Secretary shall calculate a factor equal to the sum of revenue vehicle hours operated within urbanized areas with a population of between 200,000 and 1,000,000 divided by the sum of the population of all such urbanized areas.

''(2) The Secretary shall designate as eligible for an apportionment under this subsection all urbanized areas with a population of under 200,000 for which the number of revenue vehicle hours operated within the urbanized area divided by the population of the urbanized area exceeds the factor calculated under paragraph (1).

''(3) For each urbanized area qualifying for an apportionment under paragraph (2), the Secretary shall calculate an amount equal to the product of the population of that urbanized area and the factor calculated under paragraph (1).

''(4) For each urbanized area qualifying for an apportionment under paragraph (2), the Secretary shall calculate an amount equal to the difference between the number of revenue vehicle hours within that urbanized area less the amount calculated in paragraph (3).

''(5) Each urbanized area qualifying for an apportionment under paragraph (2) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for that urbanized area under paragraph (4) divided by the sum of the amounts calculated under paragraph (4) for all urbanized areas qualifying for an apportionment under paragraph (2).

''(k) STUDY ON INCENTIVES IN FORMULA PROGRAMS.—

''(1) STUDY.—The Secretary shall conduct a study to assess the feasibility and appropriateness of developing and implementing an incentive funding system under sections 5307 and 5311 for operators of public transportation.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall submit a report on the results of the study conducted under paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall include—

''(i) an analysis of the availability of appropriate measures to be used as a basis for the distribution of incentive payments;

''(ii) the optimal number and size of any incentive programs;

''(iii) what types of systems should compete for various incentives;

''(iv) how incentives should be distributed; and

''(v) the likely effects of the incentive funding system.''.

SEC. 6035. 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. 6036. AUTHORIZATIONS.

Section 5338 is amended to read as follows:

''§5338. Authorizations

''(a) FISCAL YEAR 2005.—

''(1) FORMULA GRANTS.—

''(A) TRUST FUND.—For fiscal year 2005, $3,499,927,776 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5309, 5310, and 5311 of this chapter and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $499,989,824 for fiscal year 2005 to carry out sections 5307, 5309, 5310, and 5311 of this chapter and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) $4,811,150 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307;

''(ii) $6,894,400 shall be available to provide over-the-road bus accessibility grants under section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note);

''(iii) $94,526,689 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310;

''(iv) $173,040,330 shall be available to provide financial assistance for other than urbanized areas under section 5311;

''(v) $3,325,048,327 shall be available to provide financial assistance for urbanized areas under section 5307;

''(vi) $49,600,000 shall be available to provide financial assistance for buses and bus facilities under section 5309; and

''(vii) $345,996,704 shall be allocated in accordance with section 5340 to provide financial assistance for urbanized areas under section 5307 and other than urbanized areas under section 5311.''.

''(2) JOB ACCESS AND REVERSE COMMUTE.—

''(A) TRUST FUND.—For fiscal year 2005, $108,500,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 3037 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5309 note).

''(B) GENERAL FUND.—In addition to the amounts made available under paragraph (A), there are authorized to be appropriated $15,500,000 for fiscal year 2005 to carry out section 3037 of the Transportation Equity Act of the 21st Century (49 U.S.C. 5309 note).

''(3) CAPITAL PROGRAM GRANTS.—

''(A) TRUST FUND.—For fiscal year 2005, $2,898,100,224 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $414,014,176 for fiscal year 2005 to carry out section 5309.

''(4) PLANNING.—

''(A) TRUST FUND.—For fiscal year 2005, $63,364,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5308.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $9,052,000 for fiscal year 2005 to carry out section 5308.

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) 82.72 percent shall be allocated for metropolitan planning under section 5308(c); and

''(ii) 17.28 percent shall be allocated for State planning under section 5308(d).

''(5) RESEARCH.—

''(A) TRUST FUND.—For fiscal year 2005, $47,740,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5311(b), 5312, 5313, 5314, 5315, and 5322.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $6,820,000 for fiscal year 2005 to carry out sections 5311(b), 5312, 5313, 5314, 5315, and 5322.

''(C) ALLOCATION OF FUNDS.—Of the funds made available or appropriated under this paragraph—

''(i) not less than $3,968,000 shall be available to carry out programs of the National Transit Institute under section 5315;

''(ii) not less than $5,208,000 shall be available to carry out section 5311(b)(2);

''(iii) not less than $8,184,000 shall be available to carry out section 5313; and

''(iv) the remainder shall be available to carry out national research and technology programs under sections 5312, 5314, and 5322.

''(6) UNIVERSITY TRANSPORTATION RESEARCH.—

''(A) TRUST FUND.—For fiscal year 2005, $5,208,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5505 and 5506.

''(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated $744,000 for fiscal year 2005 to carry out sections 5505 and 5506.

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) $1,984,000 shall be available for grants under 5506(f)(5) to the institution identified in section 5505(j)(3)(E), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2005;

''(ii) $1,984,000 shall be available for grants under section 5505(d) to the institution identified in section 5505(j)(4)(A), as in effect on the date specified in clause (i); and

''(iii) $1,984,000 shall be available for grants under section 5505(d) to the institution identified in section 5505(j)(4)(F), as in effect on the date specified in subclause (I).

''(C) SPECIAL RULE.—Nothing in this paragraph shall be construed to limit the transportation research conducted by the centers receiving financial assistance under this section.

''(7) ADMINISTRATION.—

''(A) TRUST FUND.—For fiscal year 2005, $67,704,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334.

''(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated $9,672,000 for fiscal year 2005 to carry out section 5334.

''(8) GRANTS AS CONTRACTUAL OBLIGATIONS.—

''(A) GRANTS FINANCED FROM HIGHWAY TRUST FUND.—A grant or contract that is approved by the Secretary and financed with amounts made available under paragraph (1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), or (7)(A) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project.

''(B) GRANTS FINANCED FROM GENERAL FUND.—A grant or contract that is approved by the Secretary and financed with amounts appropriated in advance under paragraph (1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), or (7)(B) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project only to the extent that amounts are appropriated for such purpose by an Act of Congress.

''(9) AVAILABILITY OF AMOUNTS.—Amounts made available or appropriated under paragraphs (1) through (6) shall remain available until expended.''.

''(b) FORMULA GRANTS AND RESEARCH.—

''(1) IN GENERAL.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5308, 5309, 5310 through 5316, 5322, 5335, 5340, and 5505 of this title, and sections 3037 and 3038 of the Federal Transit Act of 1998 (112 Stat. 387 et seq.)—

''(A) $6,443,600,000 for fiscal year 2006;

''(B) $6,709,644,000 for fiscal year 2007;

''(C) $7,276,707,000 for fiscal year 2008; and

''(D) $7,737,026,000 for fiscal year 2009.

''(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1) for each fiscal year—

''(A) 0.092 percent shall be available for grants to the Alaska Railroad under section 5307 for improvements to its passenger operations;

''(B) 1.75 percent shall be available to carry out section 5308;

''(C) 2.05 percent shall be available to provide financial assistance for job access and reverse commute projects under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note);

''(D) 3.00 percent shall be available to provide financial assistance for services for elderly persons and persons with disabilities under section 5310;

''(E) 0.125 percent shall be available to carry out section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note);

''(F) 6.25 percent shall be available to provide financial assistance for other than urbanized areas under section 5311;

''(G) 0.89 percent shall be available to carry out transit cooperative research programs under section 5313, the National Transit Institute under section 5315, university research centers under section 5505, and national research programs under sections 5312, 5313, 5314, and 5322, of which—

''(i) 17.0 percent shall be allocated to carry out transit cooperative research programs under section 5313;

''(ii) 7.5 percent shall be allocated to carry out programs under the National Transit Institute

under section 5315, including not more than $1,000,000 to carry out section 5315(a)(16);

''(iii) 11.0 percent shall be allocated to carry out the university centers program under section 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 2006 through 2009 to carry out section 5316;

''(I) there shall be available to carry out section 5335—

''(i) $3,900,000 in fiscal year 2006;

''(ii) $4,200,000 in fiscal year 2007;

''(iii) $4,600,000 in fiscal year 2008; and

''(iv) $5,000,000 in fiscal year 2009;

''(J) 6.25 percent shall be allocated in accordance with section 5340 to provide financial assistance for urbanized areas under section 5307 and other than urbanized areas under section 5311; and

''(K) 22.0 percent shall be allocated in accordance with section 5337 to provide financial assistance under section 5309(i)(3); and

''(L) any amounts not made available under subparagraphs (A) through (K) shall be allocated in accordance with section 5336 to provide financial assistance for urbanized areas under section 5307.

''(3) UNIVERSITY CENTERS PROGRAM.—

''(A) ALLOCATION.—Of the amounts allocated under paragraph (2)(G)(iii), $1,000,000 shall be available in each of the fiscal years 2006 through 2009 for Morgan State University to provide transportation research, training, and curriculum development.

''(B) REQUIREMENTS.—The university specified under subparagraph (A) shall be considered a University Transportation Center under section 510 of title 23, and shall be subject to the requirements under subsections (c), (d), (e), and (f) of such section.

''(C) REPORT.—In addition to the report required under section 510(e)(3) of title 23, the university specified under subparagraph (A) shall annually submit a report to the Secretary that describes the university's contribution to public transportation.

''(4) BUS GRANTS.—In addition to the amounts made available under paragraph (1), there shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309(i)(2)(B)—

''(A) $864,101,000 for fiscal year 2006;

''(B) $899,778,000 for fiscal year 2007;

''(C) $975,823,000 for fiscal year 2008; and

''(D) $1,037,552,000 for fiscal year 2009.

''(c) MAJOR CAPITAL INVESTMENT GRANTS.—There are authorized to be appropriated to carry out section 5309(i)(2)(A)—

''(1) $1,503,299,000 for fiscal year 2006;

''(2) $1,565,367,000 for fiscal year 2007;

''(3) $1,697,663,000 for fiscal year 2008; and

''(4) $1,805,057,000 for fiscal year 2009.

''(d) ADMINISTRATION.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334—

''(1) $89,000,000 for fiscal year 2006;

''(2) $92,675,000 for fiscal year 2007;

''(3) $100,507,000 for fiscal year 2008; and

''(4) $106,865,000 for fiscal year 2009.

''(e) GRANTS AS CONTRACTUAL OBLIGATIONS.—

''(1) MASS TRANSIT ACCOUNT FUNDS.—A grant or contract approved by the Secretary that is financed with amounts made available under subsection (b)(1), (b)(4), or (d) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project.

''(2) APPROPRIATED FUNDS.—A grant or contract approved by the Secretary that is financed with amounts made available under subsection (c) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project only to the extent that amounts are appropriated in advance for such purpose by an Act of Congress.

''(f) AVAILABILITY OF AMOUNTS.—Amounts made available by or appropriated under subsections (b) and (c) shall remain available until expended.''.

SEC. 6037. APPORTIONMENTS BASED ON GROWING STATES FORMULA FACTORS.

(a) IN GENERAL.—Chapter 53 is amended by adding at the end the following:

''§ 5340. Apportionments based on growing States and high density State formula factors

''(a) DEFINITION.—In this section, the term 'State' shall mean each of the 50 States of the United States.

''(b) ALLOCATION.—Of the amounts made available for each fiscal year under section 5338(b)(2)(J), the Secretary shall apportion—

''(1) 50 percent to States and urbanized areas in accordance with subsection (c); and

''(2) 50 percent to States and urbanized areas in accordance with subsection (d).

''(c) GROWING STATE APPORTIONMENTS.—

''(1) APPORTIONMENT AMONG STATES.—The amounts apportioned under subsection (b)(1) shall provide each State with an amount equal to the total amount apportioned multiplied by a ratio equal to the population of that State forecast for the year that is 15 years after the most recent decennial census, divided by the total population of all States forecast for the year that is 15 years after the most recent decennial census. Such forecast shall be based on the population trend for each State between the most recent decennial census and the most recent estimate of population made by the Secretary of Commerce.

''(2) APPORTIONMENTS BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.—

''(A) IN GENERAL.—The Secretary shall apportion amounts to each State under paragraph (1) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the forecast population of all urbanized areas in that State divided by the total forecast population of that State. In making the apportionment under this subparagraph, the Secretary shall utilize any available forecasts made by the State. If no forecasts are available, the Secretary shall utilize data on urbanized areas and total population from the most recent decennial census.

''(B) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under subparagraph (A) shall be apportioned to that State and added to the amount made available for grants under section 5311.

''(3) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to urbanized areas in each State under paragraph (2)(A) so that each urbanized area receives an amount equal to the amount apportioned under paragraph (2)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307.

''(d) HIGH DENSITY STATE APPORTIONMENTS.—Amounts to be apportioned under subsection (b)(2) shall be apportioned as follows:

''(1) ELIGIBLE STATES.—The Secretary shall designate as eligible for an apportionment under this subsection all States with a population density in excess of 370 persons per square mile.

''(2) STATE URBANIZED LAND FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to—

''(A) the total land area of the State (in square miles); multiplied by

''(B) 370; multiplied by

''(C)(i) the population of the State in urbanized areas; divided by

''(ii) the total population of the State.

''(3) STATE APPORTIONMENT FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the difference between the total population of the State less the amount calculated in paragraph (2).

''(4) STATE APPORTIONMENT.—Each State qualifying for an apportionment under paragraph (1) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for the State under paragraph (3) divided by the sum of the amounts calculated under paragraph (3) for all States qualifying for an apportionment under paragraph (1).

''(5) APPORTIONMENTS BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.—

''(A) IN GENERAL.—The Secretary shall apportion amounts apportioned to each State under paragraph (4) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the population of all urbanized areas in that State divided by the total population of that State.

''(B) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under subparagraph (a) shall be apportioned to that State and added to the amount made available for grants under section 5311.

''(6) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to urbanized areas in each State under paragraph (5)(A) so that each urbanized area receives an amount equal to the amount apportioned under paragraph (5)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 53 is amended by adding at the end the following:

''5340. Apportionments based on growing States and high density States formula factors.''.

SEC. 6038. JOB ACCESS AND REVERSE COMMUTE GRANTS.

Section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by striking ''means an individual'' and inserting the following: ''means—

''(A) an individual''; and

(ii) by striking the period at the end and inserting ''; or

''(B) an individual who is eligible for assistance under the State program of Temporary Assistance to Needy Families funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et. seq.) in the State in which the recipient of a grant under this section is located.''; and

(B) in paragraph (2), by striking ''development of'' each place it appears and inserting ''development and provision of'';

(2) in subsection (i), by amending paragraph (2) to read as follows:

''(2) COORDINATION.—

''(A) IN GENERAL.—The Secretary shall coordinate activities under this section with related activities under programs of other Federal departments and agencies.

''(B) CERTIFICATION.—A recipient of funds under this section shall certify that—

''(i) the project has been derived from a locally developed, coordinated public transit human services transportation plan; and

''(ii) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.'';

(3) by amending subsection (j) to read as follows:

''(j) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—

''(A) URBANIZED AREAS.—A grant awarded under this section to a public agency or private company engaged in public transportation in an urbanized area shall be subject to the all of the terms and conditions to which a grant awarded under section 5307 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

''(B) OTHER THAN URBANIZED AREAS.—A grant awarded under this section to a public agency or a private company engaged in public transportation in an area other than urbanized areas shall be subject to all of the terms and conditions to which a grant awarded under section 5311 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

''(C) NONPROFIT ORGANIZATIONS.—A grant awarded under this section to a private nonprofit organization shall be subject to all of the terms and conditions to which a grant made under section 5310 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.

''(2) SPECIAL WARRANTY.—

''(A) IN GENERAL.—Section 5333(b) of title 49, United States Code, shall apply to grants under this section if the Secretary of Labor utilizes a Special Warranty that provides a fair and equitable arrangement to protect the interests of employees.

''(B) WAIVER.—The Secretary may waive the applicability of the Special Warranty under subparagraph (A) for private non-profit recipients on a case-by-case basis as the Secretary considers appropriate.''; and

(4) by striking subsections (k) and (l).

SEC. 6039. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.

(a) SECTION HEADING.—The section heading for section 3038 of the Federal Transit Act of 1998 (49 U.S.C. 5310 note), is amended to read as follows:

''SEC. 3038. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.''.

(b) FUNDING.—Section 3038(g) of the Federal Transit Act of 1998 (49 U.S.C. 5310 note) is amended to read as follows:

''(g) FUNDING.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(iii) and (b)(2)(E) of section 5338 of title 49, United States Code—

''(1) 75 percent shall be available, and shall remain available until expended, for operators of over-the-road buses, used substantially or exclusively in intercity, fixed-route over-the-road bus service, to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses; and

''(2) 25 percent shall be available, and shall remain available until expended, for operators of over-the-road bus service not described in paragraph (1), to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses.''.

(b) CONFORMING AMENDMENT.—The item relating to section 3038 in the table of contents for the Transportation Equity Act for the 21st Century (Public Law 105–178) is amended to read as follows:

''Sec. 3038. Over-the-road bus accessibility program.''.

SEC. 6040. ALTERNATIVE TRANSPORTATION IN PARKS AND PUBLIC LANDS.

(a) IN GENERAL.—Chapter 53 is amended by inserting after section 5315 the following:

''§5316. Alternative transportation in parks and public lands

''(a) IN GENERAL.—

''(1) AUTHORIZATION.—

''(A) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, may award a grant or enter into a contract, cooperative agreement, interagency agreement, intraagency agreement, or other transaction to carry out a qualified project under this section to enhance the protection of America's National Parks and public lands and increase the enjoyment of those visiting the parks and public lands by ensuring access to all, including persons with disabilities, improving conservation and park and public land opportunities in urban areas through partnering with state and local governments, and improving park and public land transportation infrastructure.

''(B) CONSULTATION WITH OTHER AGENCIES.—To the extent that projects are proposed or funded in eligible areas that are not within the jurisdiction of the Department of the Interior, the Secretary of the Interior shall consult with the heads of the relevant Federal land management agencies in carrying out the responsibilities under this section.

''(2) USE OF FUNDS.—A grant, cooperative agreement, interagency agreement, intraagency agreement, or other transaction for a qualified project under this section shall be available to finance the leasing of equipment and facilities for use in public transportation, subject to any regulation that the Secretary may prescribe limiting the grant or agreement to leasing arrangements that are more cost-effective than purchase or construction.

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

''(1) ELIGIBLE AREA.—The term 'eligible area' means any federally owned or managed park, refuge, or recreational area that is open to the general public, including—

''(A) a unit of the National Park System;

''(B) a unit of the National Wildlife Refuge System;

''(C) a recreational area managed by the Bureau of Land Management; and

''(D) a recreation area managed by the Bureau of Reclamation.

''(2) FEDERAL LAND MANAGEMENT AGENCY.—The term 'Federal land management agency' means a Federal agency that manages an eligible area.

''(3) ALTERNATIVE TRANSPORTATION.—The term 'alternative transportation' means transportation by bus, rail, or any other publicly or privately owned conveyance that provides to the public general or special service on a regular basis, including sightseeing service.

''(4) QUALIFIED PARTICIPANT.—The term 'qualified participant' means—

''(A) a Federal land management agency; or

''(B) a State, tribal, or local governmental authority with jurisdiction over land in the vicinity of an eligible area acting with the consent of the Federal land management agency, alone or in partnership with a Federal land management agency or other Governmental or nongovernmental participant.

''(5) QUALIFIED PROJECT.—The term 'qualified project' means a planning or capital project in or in the vicinity of an eligible area that—

''(A) is an activity described in section 5302, 5303, 5304, 5308, or 5309(a)(1)(A);

''(B) involves—

''(i) the purchase of rolling stock that incorporates clean fuel technology or the replacement of buses of a type in use on the date of enactment of this section with clean fuel vehicles; or

''(ii) the deployment of alternative transportation vehicles that introduce innovative technologies or methods;

''(C) relates to the capital costs of coordinating the Federal land management agency public transportation systems with other public transportation systems;

''(D) provides a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and nonmotorized watercraft);

''(E) provides waterborne access within or in the vicinity of an eligible area, as appropriate to and consistent with this section; or

''(F) is any other alternative transportation project that—

''(i) enhances the environment;

''(ii) prevents or mitigates an adverse impact on a natural resource;

''(iii) improves Federal land management agency resource management;

''(iv) improves visitor mobility and accessibility and the visitor experience;

''(v) reduces congestion and pollution (including noise pollution and visual pollution); or

''(vi) conserves a natural, historical, or cultural resource (excluding rehabilitation or restoration of a non-transportation facility).

''(c) FEDERAL AGENCY COOPERATIVE ARRANGEMENTS.—The Secretary shall develop cooperative arrangements with the Secretary of the Interior that provide for—

''(1) technical assistance in alternative transportation;

''(2) interagency and multidisciplinary teams to develop Federal land management agency alternative transportation policy, procedures, and coordination; and

''(3) the development of procedures and criteria relating to the planning, selection, and funding of qualified projects and the implementation and oversight of the program of projects in accordance with this section.

''(d) LIMITATION ON USE OF AVAILABLE AMOUNTS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, may use not more than 10 percent of the amount made available for a fiscal year under section 5338(b)(2)(H) to carry out planning, research, and technical assistance under this section, including the development of technology appropriate for use in a qualified project.

''(2) ADDITIONAL AMOUNTS.—Amounts made available under this subsection are in addition to amounts otherwise available to the Secretary to carry out planning, research, and technical assistance under this title or any other provision of law.

''(3) MAXIMUM AMOUNT.—No qualified project shall receive more than 12 percent of the total amount made available to carry out this section under section 5338(b)(2)(H) for any fiscal year.

''(e) PLANNING PROCESS.—In undertaking a qualified project under this section—

''(1) if the qualified participant is a Federal land management agency—

''(A) the Secretary, in cooperation with the Secretary of the Interior, shall develop transportation planning procedures that are consistent with—

''(i) the metropolitan planning provisions under section 5303 of this title;

''(ii) the statewide planning provisions under section 5304 of this title; and

''(iii) the public participation requirements under section 5307(e); and

''(B) in the case of a qualified project that is at a unit of the National Park system, the planning process shall be consistent with the general management plans of the unit of the National Park system; and

''(2) if the qualified participant is a State or local governmental authority, or more than one State or local governmental authority in more than one State, the qualified participant shall—

''(A) comply with the metropolitan planning provisions under section 5303 of this title;

''(B) comply with the statewide planning provisions under section 5304 of this title;

''(C) comply with the public participation requirements under section 5307(e) of this title; and

''(D) consult with the appropriate Federal land management agency during the planning process.

''(f) COST SHARING.—

''(1) The Secretary, in cooperation with the Secretary of the Interior, shall establish the agency share of net project cost to be provided under this section to a qualified participant.

''(2) In establishing the agency share of net project cost to be provided under this section, the Secretary shall consider—

''(A) visitation levels and the revenue derived from user fees in the eligible area in which the qualified project is carried out;

''(B) the extent to which the qualified participant coordinates with a public transportation authority or private entity engaged in public transportation;

''(C) private investment in the qualified project, including the provision of contract services, joint development activities, and the use of innovative financing mechanisms;

''(D) the clear and direct benefit to the qualified participant; and

''(E) any other matters that the Secretary considers appropriate to carry out this section.

''(3) Notwithstanding any other provision of law, Federal funds appropriated to any Federal land management agency may be counted toward the non-agency share of the net project cost of a qualified project.

''(g) SELECTION OF QUALIFIED PROJECTS.—

''(1) The Secretary of the Interior, after consultation with and in cooperation with the Secretary, shall determine the final selection and funding of an annual program of qualified projects in accordance with this section.

''(2) In determining whether to include a project in the annual program of qualified projects, the Secretary of the Interior shall consider—

''(A) the justification for the qualified project, including the extent to which the qualified project would conserve resources, prevent or mitigate adverse impact, and enhance the environment;

''(B) the location of the qualified project, to ensure that the selected qualified projects—

''(i) are geographically diverse nationwide; and

''(ii) include qualified projects in eligible areas located in both urban areas and rural areas;

''(C) the size of the qualified project, to ensure that there is a balanced distribution;

''(D) the historical and cultural significance of a qualified project;

''(E) safety;

''(F) the extent to which the qualified project would-

''(i) enhance livable communities;

''(ii) reduce pollution (including noise pollution, air pollution, and visual pollution);

''(iii) reduce congestion; and

''(iv) improve the mobility of people in the most efficient manner; and

''(G) any other matters that the Secretary considers appropriate to carry out this section, including—

''(i) visitation levels;

''(ii) the use of innovative financing or joint development strategies; and

''(iii) coordination with gateway communities.

''(h) QUALIFIED PROJECTS CARRIED OUT IN ADVANCE.—

''(1) When a qualified participant carries out any part of a qualified project without assistance under this section in accordance with all applicable procedures and requirements, the Secretary, in consultation with the Secretary of the Interior, may pay the share of the net capital project cost of a qualified project if—

''(A) the qualified participant applies for the payment;

''(B) the Secretary approves the payment; and

''(C) before carrying out that part of the qualified project, the Secretary approves the plans and specifications in the same manner as plans and specifications are approved for other projects assisted under this section.

''(2)(A) The cost of carrying out part of a qualified project under paragraph (1) includes the amount of interest earned and payable on bonds issued by a State or local governmental authority, to the extent that proceeds of the bond are expended in carrying out that part.

''(B) The rate of interest under this paragraph may not exceed the most favorable rate reasonably available for the qualified project at the time of borrowing.

''(C) The qualified participant shall certify, in a manner satisfactory to the Secretary, that the qualified participant has exercised reasonable diligence in seeking the most favorable interest rate.

''(i) RELATIONSHIP TO OTHER LAWS.—

''(1) SECTION 5307.—A qualified participant under this section shall be subject to the requirements of sections 5307 and 5333(a) to the extent the Secretary determines to be appropriate.

''(2) OTHER REQUIREMENTS.—A qualified participant under this section is subject to any other terms, conditions, requirements, and provisions that the Secretary determines to be appropriate to carry out this section, including requirements for the distribution of proceeds on disposition of real property and equipment resulting from a qualified project assisted under this section.

''(3) PROJECT MANAGEMENT PLAN.—If the amount of assistance anticipated to be required for a qualified project under this section is not less than $25,000,000—

''(A) the qualified project shall, to the extent the Secretary considers appropriate, be carried out through a full funding grant agreement, in accordance with section 5309(g); and

''(B) the qualified participant shall prepare a project management plan in accordance with section 5327(a).

''(i) ASSET MANAGEMENT.—The Secretary, in consultation with the Secretary of the Interior, may transfer the interest of the Department of Transportation in, and control over, all facilities and equipment acquired under this section to a qualified participant for use and disposition in accordance with any property management regulations that the Secretary determines to be appropriate.

''(j) COORDINATION OF RESEARCH AND DEPLOYMENT OF NEW TECHNOLOGIES.—

''(1) The Secretary, in cooperation with the Secretary of the Interior, may undertake, or make grants, cooperative agreements, contracts (including agreements with departments, agencies, and instrumentalities of the Federal Government) or other transactions for research, development, and deployment of new technologies in eligible areas that will—

''(A) conserve resources;

''(B) prevent or mitigate adverse environmental impact;

''(C) improve visitor mobility, accessibility, and enjoyment; and

''(D) reduce pollution (including noise pollution and visual pollution).

''(2) The Secretary may request and receive appropriate information from any source.

''(3) Grants, cooperative agreements, contracts or other transactions under paragraph (1) shall be awarded from amounts allocated under subsection (c)(1).

''(k) INNOVATIVE FINANCING.—A qualified project receiving financial assistance under this section shall be eligible for funding through a state infrastructure bank or other innovative financing mechanism available to finance an eligible project under this chapter.

''(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. 6041. OBLIGATION CEILING.

Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Mass Transit Account of the Highway Trust Fund by, and amounts appropriated under, subsections (a) through (c) of section 5338 of title 49, United States Code, shall not exceed—

(1) $7,646,336,000 for fiscal year 2005;

(2) $8,900,000,000 for fiscal year 2006;

(3) $9,267,464,000 for fiscal year 2007;

(4) $10,050,700,000 for fiscal year 2008; and

(5) $10,686,500,000 for fiscal year 2009.

SEC. 6042. ADJUSTMENTS FOR THE SURFACE TRANSPORTATION EXTENSION ACT OF 2004.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall reduce the total apportionments and allocations made for fiscal year 2005 to each grant recipient under section 5338 of title 49, United States Code, by the amount apportioned to that recipient pursuant to section 8 of the Surface Transportation Extension Act of 2004 part V (118 Stat. 1154).

(b) FIXED GUIDEWAY MODERNIZATION ADJUSTMENT.—In making the apportionments described in subsection (a), the Secretary shall adjust the amount apportioned for fiscal year 2005 to each urbanized area for fixed guideway modernization to reflect the apportionment method set forth in 5337(a) of title 49, United States Code.

SEC. 6043. DISADVANTAGED BUSINESS ENTERPRISE.

Section 1821(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 shall apply to all funds authorized or otherwise made available under this title.

SEC. 6044. TRANSIT PASS TRANSPORTATION FRINGE BENEFITS.

(a) TRANSIT PASS TRANSPORTATION FRINGE BENEFITS STUDY.—

(1) STUDY.—The Secretary of Transportation shall conduct a study on tax-free transit benefits and ways to promote improved access to and increased usage of such benefits, at Federal agencies in the National Capital Region, including agencies not currently offering the benefit.

(2) CONTENT.—The study under this subsection shall include—

(A) an examination of how agencies offering the benefit make its availability known to their employees and the methods agencies use to deliver the benefit to employees, including examples of best practices; and

(B) an analysis of the impact of Federal employees' use of transit on traffic congestion and pollution in the National Capital Region.

(3) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit a report to Congress on the results of the study under this subsection.

(b) AUTHORITY TO USE GOVERNMENT VEHICLES TO TRANSPORT FEDERAL EMPLOYEES BETWEEN THEIR PLACE OF EMPLOYMENT AND MASS TRANSIT FACILITIES.—

(1) IN GENERAL.—Section 1344 of title 31, United States Code, is amended—

(A) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(B) by inserting after subsection (f) the following:

''(g)(1) A passenger carrier may be used to transport an officer or employee of a Federal agency between the officer's or employee's place of employment and a mass transit facility (whether or not publicly owned) in accordance with succeeding provisions of this subsection.

''(2) Notwithstanding section 1343, a Federal agency that provides transportation services under this subsection (including by passenger carrier) shall absorb the costs of such services using any funds available to such agency, whether by appropriation or otherwise.

''(3) In carrying out this subsection, a Federal agency shall—

''(A) to the maximum extent practicable, use alternative fuel vehicles to provide transportation services;

''(B) to the extent consistent with the purposes of this subsection, provide transportation services in a manner that does not result in additional gross income for Federal income tax purposes; and

''(C) coordinate with other Federal agencies to share, and otherwise avoid duplication of, transportation services provided under this subsection.

''(4) For purposes of any determination under chapter 81 of title 5, an individual shall not be considered to be in the 'performance of duty' by virtue of the fact that such individual is receiving transportation services under this subsection.

''(5)(A) The Administrator of General Services, after consultation with the National Capital Planning Commission and other appropriate agencies, shall prescribe any regulations necessary to carry out this subsection.

''(B) Transportation services under this subsection shall be subject neither to the last sentence of subsection (d)(3) nor to any regulations under the last sentence of subsection (e)(1).

''(6) In this subsection, the term 'passenger carrier' means a passenger motor vehicle, aircraft, boat, ship, or other similar means of transportation that is owned or leased by the United States Government or the government of the District of Columbia.''.

(2) FUNDS FOR MAINTENANCE, REPAIR, ETC.—Subsection (a) of section 1344 of title 31, United States Code, is amended by adding at the end the following:

''(3) For purposes of paragraph (1), the transportation of an individual between such individual's place of employment and a mass transit facility pursuant to subsection (g) is transportation for an official purpose.''.

(3) COORDINATION.—The authority to provide transportation services under section 1344(g) of title 31, United States Code (as amended by paragraph (1)) shall be in addition to any authority otherwise available to the agency involved.

SEC. 6045. FUNDING FOR FERRY BOATS.

Section 5309(i)(5) of title 49, United States Code, as amended by section 6011(j) of this Act, is amended to read as follows:

''(5) FUNDING FOR FERRY BOATS.—Of the amounts described in paragraphs (1)(A) and (2)(A)—

''(A) $10,400,000 shall be available in fiscal year 2005 for capital projects in Alaska and Hawaii for new fixed guideway systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals;

''(B) $15,000,000 shall be available in each of fiscal years 2006 through 2009 for capital projects in Alaska and Hawaii for new fixed guideway systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals; and

''(C) $5,000,000 shall be available in each of fiscal years 2006 through 2009 for payments to the Denali Commission under the terms of section 307(e) of the Denali Commission Act of 1998, as amended (42 U.S.C. 3121 note), for docks, waterfront development projects, and related transportation infrastructure.''.

SEC. 6046. COMMUTER RAIL.

(a) IN GENERAL.—The Federal Transit Administration shall approve final design for the project authorized under section 3030(c)(1)(A)(xliv) of the Federal Transit Act of 1998 and section 1214(g) of the Transportation Equity Act for the 21st Century (16 U.S.C. 668dd note) in the absence of an access agreement with the owner of the railroad right of way.

(b) TIMELY RESOLUTION OF ISSUES.—The Secretary shall timely resolve any issues delaying the completion of the project authorized under section 1214(g) of the Transportation Equity Act for the 21st Century (16 U.S.C. 668dd note) and section 3030(c)(1)(A)(xliv) of the Federal Transit Act of 1998.

TITLE VII—SURFACE TRANSPORTATION SAFETY IMPROVEMENT

SEC. 7001. SHORT TITLE.

This title may be cited as the ''Surface Transportation Safety Improvement Act of 2005''.

SEC. 7002. AMENDMENT OF UNITED STATES CODE.

(a) AMENDMENT OF TITLE 49.—Except as otherwise specifically provided, whenever in this title (other than in chapter 1 of subtitle B) an amendment is expressed in terms of an amendment to a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

(b) AMENDMENT OF TITLE 23.—Except as otherwise expressly provided, whenever in chapter 1 of subtitle B of this title an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 23, United States Code.

Subtitle A—Motor Carrier Safety

CHAPTER 1—MOTOR CARRIERS

SEC. 7101. SHORT TITLE.

This chapter may be cited as the ''Motor Carrier Safety Reauthorization Act of 2005''.

SEC. 7102. CONTRACT AUTHORITY.

Authorizations from the Highway Trust Fund (other than the Mass Transit Account) to carry out this chapter shall be available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first. Approval by the Secretary of a grant with funds made available under this chapter imposes upon the United States Government a contractual obligation for payment of the Government's share of costs incurred in carrying out the objectives of the grant.

SEC. 7103. AUTHORIZATION OF APPROPRIATIONS.

(a) ADMINISTRATIVE EXPENSES.—Section 31104 is amended by adding at the end the following:

''(i) ADMINISTRATIVE EXPENSES.—

''(1) There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for the Secretary of Transportation to pay administrative expenses of the Federal Motor Carrier Safety Administration—

''(A) $211,400,000 for fiscal year 2006,

''(B) $217,500,000 for fiscal year 2007,

''(C) $222,600,000 for fiscal year 2008, and

''(D) $228,500,000 for fiscal year 2009,

of which $6,800,000 shall be available for each fiscal year to make grants to, or execute contracts with, States, local governments, or other persons for the commercial vehicle analysis reporting system, with the Federal share payable under any such grant to be 100 percent.

''(2) The funds authorized by this subsection shall be used for personnel costs; administrative infrastructure; rent; information technology; programs for research and technology, information management, regulatory development (including a medical review board and rules for medical examiners), performance and registration information system management, and outreach and education; other operating expenses and similar matters; and such other expenses as may from time to time become necessary to implement statutory mandates not funded from other sources.

''(3) The amounts made available under this section shall remain available until expended.''.

(b) GRANT PROGRAMS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for the following Federal Motor Carrier Safety Administration programs:

(1) Border enforcement grants under section 31107 of title 49, United States Code—

(A) $33,000,000 for fiscal year 2006;

(B) $34,000,000 for fiscal year 2007;

(C) $35,000,000 for fiscal year 2008; and

(D) $36,000,000 for fiscal year 2009.

(2) Performance and registration information system management grant program under 31109 of title 49, United States Code, $4,000,000 for each of fiscal years 2006 through 2009.

(3) Commercial driver's license and driver improvement program grants under section 31318 of title 49, United States Code—

(A) $23,000,000 for fiscal year 2006;

(B) $23,000,000 for fiscal year 2007;

(C) $24,000,000 for fiscal year 2008; and

(D) $25,000,000 for fiscal year 2009.

(4) For carrying out the commercial vehicle information systems and networks deployment program established under section 31151 of title 49, United States Code, $25,000,000 for each of fiscal years 2006 through 2009.

(c) MOTOR CARRIER SAFETY ACCOUNT.—Funds made available under subsection (a) shall be administered in the account established in the Treasury entitled ''Motor Carrier Safety Operations and Program 69–8159–0–7–401'' and the funds made available under subsection (b) shall be administered in the account established in the Treasury entitled ''Motor Carrier Safety Grants 69–8158–0–7–401''.

(d) PERIOD OF AVAILABILITY.—The amounts made available under subsection (b) of this section shall remain available until expended.

SEC. 7104. HIGH RISK CARRIER COMPLIANCE REVIEWS.

From the funds authorized by section 31104(i)(1) of title 49, United States Code, the Secretary of Transportation shall ensure that compliance reviews are completed on motor carriers that have demonstrated through performance data that they pose the highest safety risk. At a minimum, compliance reviews shall be conducted whenever a motor carrier is rated as category A or B for 2 consecutive months.

SEC. 7105. OVERDUE REPORTS, STUDIES, AND RULEMAKINGS.

(a) REQUIREMENT FOR COMPLETION.—Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a schedule for the completion of the following reports, studies, and rulemaking proceedings:

(1) Motor Carrier Replacement Information and Registration System, section 103, ICC Termination Act of 1995.

(2) General Jurisdiction Over Freight Forwarder Service, section 13531, ICC Termination Act of 1995.

(3) Performance-based CDL Testing, section 4019, Transportation Equity Act for the Twenty-First Century.

(4) Improved Flow of Driver History Pilot Program, section 4022, Transportation Equity Act for the Twenty-First Century.

(5) Employee Protections, section 4023, Transportation Equity Act for the Twenty-First Century.

(6) Federal Motor Carrier Safety Administration 2010 Strategy, section 104, Motor Carrier Safety Improvement Act of 1999.

(7) New Motor Carrier Entrant Requirements, section 210, Motor Carrier Safety Improvement Act of 1999.

(8) Certified Motor Carrier Safety Auditors, section 211, Motor Carrier Safety Improvement Act of 1999.

(9) Medical Certificate, section 215, Motor Carrier Safety Improvement Act of 1999.

(10) Truck Crash Causation Study, section 224, Motor Carrier Safety Improvement Act of 1999.

(b) FINAL RULE REQUIRED.—Unless specifically otherwise permitted by law, rulemaking proceedings shall be considered completed for purposes of this section only when the Secretary has issued a final rule and the docket for the rulemaking proceeding is closed or the rulemaking proceeding is withdrawn or terminated and the docket closed without further action.

(c) SCHEDULE FOR COMPLETION.—The Secretary shall transmit a revised schedule, indicating progress made in completing the reports, studies, and rulemaking proceedings reported under subsection (a) every 6 months after the first such report under subsection (a) until they are completed. The Inspector General of the Department of Transportation shall monitor whether the schedule is being met and report periodically to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure on progress made in completing the reports, studies, and rulemaking proceedings.

(e) COMPLETION OF NEW RULEMAKING PROCEEDINGS.—Nothing in this section delays or changes the deadlines specified for new reports, studies, or rulemaking mandates contained in this chapter.

(f) REPORT OF OTHER AGENCY ACTIONS.—Within 12 months after the date of enactment of this Act, the Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure a report on the status of the following projects:

(1) Rescinding the current regulation which prohibits truck and bus drivers from viewing television and monitor screens while operating commercial vehicles.

(2) Consolidating Out-Of-Service Criteria regulations enforced by the Federal Motor Carrier Safety Administration.

(3) Revision of the safety fitness rating system of motor carriers.

(4) Amendment of Federal Motor Carrier Safety Administration rules of practice for conducting motor carrier administrative proceedings, investigations, disqualifications, and for issuing penalties.

(5) Requiring commercial drivers to have a sufficient functional speaking and reading comprehension of the English language.

SEC. 7106. AMENDMENTS TO THE LISTED REPORTS, STUDIES, AND RULEMAKING PROCEEDINGS.

In addition to completing the reports, studies, and rulemaking proceedings listed in section 7105(a), the Secretary of Transportation shall—

(1) cause the Interim Final Rule addressing New Motor Carrier Entrant Requirements to be amended so as to require that a safety audit be immediately converted to a compliance review and appropriate enforcement actions be taken if the safety audit discloses acute safety violations by the new entrant; and

(2) ensure that Federal motor carrier safety regulations that apply to interstate operations of commercial motor vehicles designed to transport between 9 and 15 passengers (including the driver) apply to all interstate operations of such carries regardless of the distance traveled.

SEC. 7107. MOTOR CARRIER SAFETY GRANTS.

(a) MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.—

(1) Section 31102 is amended—

(A) by striking ''activities by fiscal year 2000;'' in subsection (b)(1)(A) and inserting ''activities for commercial motor vehicles of passengers and freight;'';

(B) by striking ''years before December 18, 1991;'' in subsection (b)(1)(E) and inserting ''years;'';

(C) by striking ''and'' after the semicolon in subsection (b)(1)(S);

(D) by striking ''personnel.'' in subsection (b)(1)(T) and inserting ''personnel;'';

(E) adding at the end of subsection (b)(1) the following:

''(U) ensures that inspections of motor carriers of passengers are conducted at stations, terminals, border crossings, or maintenance facilities, except in the case of an imminent or obvious safety hazard;

''(V) provides that the State will include in the training manual for the licensing examination to drive a non-commercial motor vehicle and a commercial motor vehicle, information on best practices for driving safely in the vicinity of commercial motor vehicles and in the vicinity of non-commercial vehicles, respectively; and

''(W) provides that the State will enforce the registration requirements of section 13902 by suspending the operation of any vehicle discovered to be operating without registration or beyond the scope of its registration.''; and

(F) by striking subsection (c) and inserting the following:

''(c) USE OF GRANTS TO ENFORCE OTHER LAWS.—A State may use amounts received under a grant under subsection (a) of this section for the following activities:

''(1) If the activities are carried out in conjunction with an appropriate inspection of the commercial motor vehicle to enforce Government or State commercial motor vehicle safety regulations—

''(A) enforcement of commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at specific locations such as steep grades or mountainous terrains where the weight of a commercial motor vehicle can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States; and

''(B) detection of the unlawful presence of a controlled substance (as defined under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)) in a commercial motor vehicle or on the person of any occupant (including the operator) of the vehicle.

''(2) Documented enforcement of State traffic laws and regulations designed to promote the safe operation of commercial motor vehicles, including documented enforcement of such laws and regulations against non-commercial motor vehicles when necessary to promote the safe operation of commercial motor vehicles.''.

(2) Section 31103(b) is amended—

(A) by inserting ''(1)'' after ''ACTIVITIES.—''; and

(B) by adding at the end the following:

''(2) NEW ENTRANT MOTOR CARRIER AUDIT FUNDS.—From the amounts designated under section 31104(f)(4), the Secretary may allocate new entrant motor carrier audit funds to States and local governments without requiring a matching contribution from such States or local governments.''.

(3) Section 31104(a) is amended to read as follows:

''(a) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out section 31102:

''(1) Not more than $193,620,000 for fiscal year 2006.

''(2) Not more than $197,490,000 for fiscal year 2007.

''(3) Not more than $201,440,000 for fiscal year 2008.

''(4) Not more than $205,470,000 for fiscal year 2009.''.

(4) Section 31104(f) is amended by striking paragraph (2) and inserting the following:

''(2) HIGH-PRIORITY ACTIVITIES.—The Secretary may designate up to $15,000,000 for each of fiscal years 2006 through 2009 from amounts available for allocation under paragraph (1) for States, local governments, and organizations representing government agencies or officials for carrying out high priority activities and projects that improve commercial motor vehicle safety and compliance with commercial motor vehicle safety regulations, including activities and projects that are national in scope, increase public awareness and education, or demonstrate new technologies, and will reduce the number and rate of accidents involving commercial motor vehicles. The amounts designated under this paragraph shall be allocated by the Secretary to State agencies, local governments, and organizations representing government agencies or officials that use and train qualified officers and employees in coordination with State motor vehicle safety agencies. The Secretary shall establish safety performance criteria to be used to distribute high priority program funds. At least 80 percent of the amounts designated under this paragraph shall be awarded to State agencies and local government agencies.

''(3) NEW ENTRANT AUDITS.—The Secretary shall designate up to $29,000,000 of the amounts available for allocation under paragraph (1) for audits of new entrant motor carriers conducted pursuant to 31144(f). The Secretary may withhold such funds from a State or local government that is unable to use government employees to conduct new entrant motor carrier audits, and may instead utilize the funds to conduct audits in those jurisdictions.

''(4) CDLIS MODERNIZATION.—The Secretary may designate up to $2,000,000 for fiscal year 2006 and up to $6,000,000 for fiscal years 2007 through 2009 from amounts available for allocation under paragraph (1) for commercial driver's license information system modernization under section 31309(f).''.

(b) GRANTS TO STATES FOR BORDER ENFORCEMENT.—Section 31107 is amended to read as follows:

''§ 31107. Border enforcement grants

''(a) GENERAL AUTHORITY.—From the funds authorized by section 7103(b)(1) of the Motor Carrier Safety Reauthorization Act of 2005, the Secretary may make a grant in a fiscal year to a State that shares a border with another country for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

''(b) MAINTENANCE OF EXPENDITURES.—The Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of United States Government amounts, for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 State or Federal fiscal years before October 1, 2005.''.

(c) NONCOMPLIANCE WITH CDL REQUIREMENTS.—Section 31314 is amended by inserting ''up to'' after ''withhold'' in subsections (a) and (b).

(d) CONFORMING AMENDMENTS.—(1) The chapter analysis for chapter 311 is amended—

(A) by striking the item relating to Subchapter I, and inserting the following:

''SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS'';

and

(B) by striking the item relating to section 31107, and inserting the following:

''31107. Border enforcement grants.''.

(2) Subchapter I of chapter 311 is amended by striking the subchapter heading and inserting the following:

''SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS''

SEC. 7108. TECHNICAL CORRECTIONS.

(a) JURISDICTION OF COURT OF APPEALS OVER COMMERCIAL MOTOR VEHICLE SAFETY REGULATION AND OPERATORS AND MOTOR CARRIER SAFETY.—Section 2342(3)(A) of title 28, United States Code, is amended by striking ''subtitle IV'' and inserting ''subtitle IV, subchapter III of chapter 311, chapter 313, or chapter 315''.

(b) JUDICIAL REVIEW.—Section 351(a) is amended to read as follows:

''(a) JUDICIAL REVIEW.—An action of the Secretary of Transportation in carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89–670; 80 Stat. 931), or an action of the Administrator of the Federal Railroad Administration, Federal Motor

Carrier Safety Administration, or the Federal Aviation Administration in carrying out a duty or power specifically assigned to the Administrator by that Act, may be reviewed judicially to the same extent and in the same way as if the action had been an action by the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer or assignment.''.

(c) AUTHORITY TO CARRY OUT CERTAIN TRANSFERRED DUTIES AND POWERS.—Section 352 is amended to read as follows:

''§352. Authority to carry out certain transferred duties and powers

''In carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89–670; 80 Stat. 931), the Secretary of Transportation and the Administrators of the Federal Railroad Administration, the Federal Motor Carrier Safety Administration, and the Federal Aviation Administration have the same authority that was vested in the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer. An action of the Secretary or Administrator in carrying out the duty or power has the same effect as when carried out by the department, agency, or instrumentality.''.

(d) TRANSFER OF PROVISION.—

(1) Section 345 of Public Law 104–59 is transferred to subchapter III of chapter 311 of title 49, United States Code, redesignated as section 31149, and inserted after section 31148 as section 31149. Section 31149, as transferred by the preceding sentence, is amended—

(A) by conforming the section heading to the style and format of the section headings in chapter 311 of title 49, United States Code;

(B) by striking ''of title 49, United States Code,'' in subsection (a)(1), subsection (a)(5), and subsection (e)(4); and

(C) by striking subsection (f).

(2) The chapter analysis for chapter 311 is amended by inserting after the item relating to section 31148 the following:

''31149. Exemptions from requirements relating to commercial motor vehicles and their operators.''.

(e) ELIMINATION OF COMMODITY AND SERVICE EXEMPTIONS.—

(1) Section 13506(a) is amended—

(A) by striking paragraphs (6), (11), (12), (13), and (15);

(B) by redesignating paragraphs (7), (8), (9), (10), and (14) as paragraphs (6), (7), (8), (9) and (10), respectively;

(C) by inserting ''or'' after the semicolon in paragraph (9), as redesignated; and

(D) striking ''13904(d); or'' in paragraph (10), as redesignated, and inserting ''14904(d).''.

(2) Section 13507 is amended by striking ''(6), (8), (11), (12), or (13)'' and inserting ''(6)''.

SEC. 7109. PENALTY FOR DENIAL OF ACCESS TO RECORDS.

Section 521(b)(2) is amended by adding at the end the following:

''(E) COPYING OF RECORDS AND ACCESS TO EQUIPMENT, LANDS, AND BUILDINGS.—A motor carrier subject to chapter 51 of subtitle III, a motor carrier, broker, or freight forwarder subject to part B of subtitle IV, or the owner or operator of a commercial motor vehicle subject to part B of subtitle VI of this title who fails to allow the Secretary, or an employee designated by the Secretary, promptly upon demand to inspect and copy any record or inspect and examine equipment, lands, buildings and other property in accordance with sections 504(c), 5121(c), and 14122(b) of this title shall be liable to the United States for a civil penalty not to exceed $500 for each offense, and each day the Secretary is denied the right to inspect and copy any record or inspect and examine equipment, lands, buildings and other property shall constitute a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed $5,000. It shall be a defense to such penalty that the records did not exist at the time of the Secretary's request or could not be timely produced without unreasonable expense or effort. Nothing herein amends or supersedes any remedy available to the Secretary under sections 502(d), 507(c), or other provision of this title.''.

SEC. 7110. MEDICAL PROGRAM.

(a) IN GENERAL.—Subchapter III of chapter 311, as amended by section 7108(d) of this chapter, is amended by adding at the end the following:

''§31150. Medical program

''(a) MEDICAL REVIEW BOARD.—

''(1) ESTABLISHMENT AND FUNCTION.—The Secretary of Transportation shall establish a Medical Review Board to provide the Federal Motor Carrier Safety Administration with medical advice and recommendations on driver qualification medical standards and guidelines, medical examiner education, and medical research.

''(2) COMPOSITION.—The Medical Review Board shall be appointed by the Secretary and shall consist of 5 members selected from medical institutions and private practice. The membership shall reflect expertise in a variety of specialties relevant to the functions of the Federal Motor Carrier Safety Administration.

''(b) CHIEF MEDICAL EXAMINER.—The Secretary shall appoint a chief medical examiner who shall be an employee of the Federal Motor Carrier Safety Administration according to the SL schedule.

''(c) MEDICAL STANDARDS AND REQUIREMENTS.—

''(1) IN GENERAL.— The Secretary, with the advice of the Medical Review Board and the chief medical examiner, shall—

''(A) establish, review, and revise—

''(i) medical standards for applicants for and holders of commercial driver's licenses that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely;

''(ii) requirements for periodic physical examinations of such operators performed by medical examiners who have successfully completed training in physical and medical examination standards and are listed on a national registry maintained by the Department of Transportation; and

''(B) issue certificates to such holders and applicants that have been found, upon examination, to be physically qualified to operate a commercial motor vehicle and to meet applicable medical standards unless the authority to issue certificates has been delegated to medical examiners under subparagraph (d)(2) of this section;

''(C) require each holder of a commercial driver's license or learner's permit who operates a commercial vehicle in interstate commerce to have a current valid medical certificate;

''(D) conduct periodic reviews of a select number of medical examiners on the national registry to ensure that proper examinations of applicants and holders are being conducted;

''(E) develop, as appropriate, specific courses and materials for medical examiners listed in the national registry established under this section, and require those medical examiners to complete specific training, including refresher courses, to be listed in the registry;

''(F) require medical examiners to transmit the name of the applicant and numerical identifier, as determined by the Administrator, for any completed medical examination report required under section 391.43 of title 49, Code of Federal Regulations, electronically to the Chief Medical Examiner on monthly basis; and

''(G) periodically review a representative sample of the medical examination reports associated with the name and numerical identifiers of applicants transmitted under subparagraph (F) for errors, omissions, or other indications of improper certification.

''(2) MONITORING PERFORMANCE.—The Secretary shall investigate patterns of errors or improper certification by a medical examiner. If the Secretary finds that a medical examiner has issued a medical certificate to an applicant or holder who fails to meet the applicable standards at the time of the examination, such a medical examiner may be removed from the registry and the medical certificate of the applicant or holder may be deemed void.

''(d) NATIONAL REGISTRY OF MEDICAL EXAMINERS.—The Secretary, through the Federal Motor Carrier Safety Administration—

''(1) shall establish and maintain a current national registry of medical examiners who are qualified to perform examinations and issue medical certificates;

''(2) shall delegate to those examiners the authority to issue such certificates upon successfully completing the required training;

''(3) shall remove from the registry the name of any medical examiner that fails to meet or maintain the qualifications established by the Secretary for being listed in the registry or otherwise does not meet the requirements of this section or regulation issued there under; and

''(4) shall accept as valid only medical certificates issued by persons on the national registry of medical examiners.

''(e) REGULATIONS.—The Secretary is authorized to promulgate such regulations as may be necessary to carry out this section.''.

(b) MEDICAL EXAMINERS.—Section 31136(a)(3) is amended to read as follows:

''(3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely, and the periodic physical examinations required of such operators are performed by medical examiners who have received training in physical and medical examination standards and are listed on a national registry maintained by the Department of Transportation; and''.

(c) DEFINITION OF MEDICAL EXAMINER.—Section 31132 is amended—

(1) by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively; and

(2) by inserting after paragraph (5) the following:

''(6) 'medical examiner' means an individual licensed, certified, or registered in accordance with regulations issued by the Federal Motor Carrier Safety Administration as a medical examiner.''.

(d) FUNDING.—Amounts made available pursuant to section 31104(i)(1) of title 49, United States Code, shall be used by the Secretary to carry out section 31150 of title 49, United States Code.

(e) CONFORMING AMENDMENT.—The chapter analysis for chapter 311, as amended by section 7108(d) of this chapter, is amended by inserting after the item relating to section 31149 the following:

''31150. Medical program''.

(f) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 1 year after the date of enactment of this Act.

SEC. 7111. OPERATION OF COMMERCIAL MOTOR VEHICLES BY INDIVIDUALS WHO USE INSULIN TO TREAT DIABETES MELLITUS.

(a) REVISION OF FINAL RULE.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall revise the final rule to allow individuals who use insulin to treat their diabetes to operate commercial motor vehicles in interstate commerce. The revised final rule shall provide for the individual assessment of applicants who use insulin to treat their diabetes and who are, except for their use of insulin, otherwise qualified under the Federal Motor Carrier Safety Regulations. The revised final rule shall be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305 note) and shall conclude the 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. 7112. FINANCIAL RESPONSIBILITY FOR PRIVATE MOTOR CARRIERS.

(a) TRANSPORTATION OF PASSENGERS.—

(1) Section 31138(a) is amended to read as follows:

''(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability and property damage for the transportation of passengers by motor vehicle in the United States between a place in a State and—

''(1) a place in another State;

''(2) another place in the same State through a place outside of that State; or

''(3) a place outside the United States.''.

(2) Section 31138(c) is amended by adding at the end the following:

''(4) The Secretary may require a person, other than a motor carrier as defined in section 13102(12) of this title, transporting passengers by motor vehicle to file with the Secretary the evidence of financial responsibility specified in subsection (c)(1) of this section in an amount not less than that required by this section, and the laws of the State or States in which the person is operating, to the extent applicable. The extent of the financial responsibility must be sufficient to pay, not more than the amount of the financial responsibility, for each final judgment against the person for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles, or for loss or damage to property, or both.''.

(b) TRANSPORTATION OF PROPERTY.—Section 31139 is amended—

(1) by striking so much of subsection (b) as precedes paragraph (2) and inserting the following:

''(b) GENERAL REQUIREMENTS AND MINIMUM AMOUNT.—

''(1) The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and environmental restoration for the transportation of property by motor vehicle in the United States between a place in a State and—

''(A) a place in another State;

''(B) another place in the same State through a place outside of that State; or

''(C) a place outside the United States.'';

(2) by aligning the left margin of paragraph (2) of subsection (b) with the left margin of paragraph (1) of that subsection (as amended by paragraph (1) of this subsection); and

(3) by redesignating subsection (c) through (g) as subsections (d) through (h), respectively, and inserting after subsection (b) the following:

''(c) FILING OF EVIDENCE OF FINANCIAL RESPONSIBILITY.—The Secretary may require a motor private carrier, as defined in section 13102 of this title, to file with the Secretary the evidence of financial responsibility specified in subsection (b) of this section in an amount not less than that required by this section, and the laws of the State or States in which the motor private carrier is operating, to the extent applicable. The amount of the financial responsibility must be sufficient to pay, not more than the amount of the financial responsibility, for each final judgment against the motor private carrier for bodily injury to, or death of, an individual resulting from negligent operation, maintenance, or use of motor vehicles, or for loss or damage to property, or both.''.

SEC. 7113. INCREASED PENALTIES FOR OUT-OF-SERVICE VIOLATIONS AND FALSE RECORDS.

(a) Section 521(b)(2)(B) is amended to read as follows:

''(B) RECORDKEEPING AND REPORTING VIOLATIONS.—A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under section 504 of this title or under any regulation issued by the Secretary pursuant to subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title about transportation by motor carrier, motor carrier of migrant workers, or motor private carrier, or an officer, agent, or employee of that person—

''(i) who does not make that report, does not specifically, completely, and truthfully answer that question in 30 days from the date the Secretary requires the question to be answered, or does not make, prepare, or preserve that record in the form and manner prescribed by the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed $1,000 for each offense, and each day of the violation shall constitute a separate offense, except that the total of all civil penalties assessed against any violator for all offenses related to any single violation shall not exceed $10,000; or

''(ii) who knowingly falsifies, destroys, mutilates, or changes a required report or record, knowingly files a false report with the Secretary, knowingly makes or causes or permits to be made a false or incomplete entry in that record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation or order of the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each violation, if any such action can be shown to have misrepresented a fact that constitutes a violation other than a reporting or recordkeeping violation.''.

(b) Section 31310(i)(2) is amended to read as follows:

''(2) The Secretary shall prescribe regulations establishing sanctions and penalties related to violations of out-of-service orders by individuals operating commercial motor vehicles. The regulations shall require at least that—

''(A) an operator of a commercial motor vehicle found to have committed a first violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 180 days and liable for a civil penalty of at least $2,500;

''(B) an operator of a commercial motor vehicle found to have committed a second violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 2 years and not more than 5 years and liable for a civil penalty of at least $5,000;

''(C) an employer that knowingly allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall be liable for a civil penalty of not more than $25,000; and

''(D) an employer that knowingly and willfully allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall, upon conviction, be subject for each offense to imprisonment for a term not to exceed 1 year or a fine under title 18, United States Code, or both.''.

SEC. 7114. INTRASTATE OPERATIONS OF INTERSTATE MOTOR CARRIERS.

(a) Subsection (a) of section 31144 is amended to read as follows:

''(a) IN GENERAL.—The Secretary shall—

''(1) determine whether an owner or operator is fit to operate safely commercial motor vehicles, utilizing among other things the accident record of an owner or operator operating in interstate commerce and the accident record and safety inspection record of such owner or operator in operations that affect interstate commerce within the United States, and in Canada and Mexico if the owner or operator also conducts operations within the United States;

''(2) periodically update such safety fitness determinations;

''(3) make such final safety fitness determinations readily available to the public; and

''(4) prescribe by regulation penalties for violations of this section consistent with section 521.''.

(b) Subsection (c) of section 31144 is amended by adding at the end the following:

''(5) TRANSPORTATION AFFECTING INTERSTATE COMMERCE.—Owners or operators of commercial motor vehicles prohibited from operating in interstate commerce pursuant to paragraphs (1) through (3) of this section may not operate any commercial motor vehicle that affects interstate commerce until the Secretary determines that such owner or operator is fit.''.

(c) Section 31144 is amended by redesignating subsections (d), (e), and the second subsection (c) as subsections (e), (f), and (g), respectively, and inserting after subsection (c) the following:

''(d) DETERMINATION OF UNFITNESS BY A STATE.—If a State that receives Motor Carrier Safety Assistance Program funds pursuant to section 31102 of this title determines, by applying the standards prescribed by the Secretary under subsection (b) of this section, that an owner or operator of commercial motor vehicles that has its principal place of business in that State and operates in intrastate commerce is unfit under such standards and prohibits the owner or operator from operating such vehicles in the State, the Secretary shall prohibit the owner or operator from operating such vehicles in interstate commerce until the State determines that the owner or operator is fit.''.

SEC. 7115. AUTHORITY TO STOP COMMERCIAL MOTOR VEHICLES.

(a) IN GENERAL.—Chapter 2 of title 18, United States Code, is amended by adding at the end the following:

''§ 39. Commercial motor vehicles required to stop for inspections

''(a) A driver of a commercial motor vehicle, as defined in section 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 38 the following:

''39. Commercial motor vehicles required to stop for inspections.''.

(2) The chapter analysis for chapter 203 of title 18, United States Code, is amended by inserting after the item relating to section 3063 the following:

''3064. Powers of Federal Motor Carrier Safety Administration.''.

SEC. 7116. REVOCATION OF OPERATING AUTHORITY.

Section 13905(e) is amended—

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

''(1) PROTECTION OF SAFETY.—Notwithstanding subchapter II of chapter 5 of title 5, the Secretary—

''(A) may suspend the registration of a motor carrier, a freight forwarder, or a broker for failure to comply with requirements of the Secretary pursuant to section 13904(c) or 13906 of this title, or an order or regulation of the Secretary prescribed under those sections; and

''(B) shall revoke the registration of a motor carrier that has been prohibited from operating in interstate commerce for failure to comply with the safety fitness requirements of section 31144 of this title.'';

(2) by striking ''may suspend a registration'' in paragraph (2) and inserting ''shall revoke the registration''; and

(3) by striking paragraph (3) and inserting the following:

''(3) NOTICE; PERIOD OF SUSPENSION.—The Secretary may suspend or revoke under this subsection the registration only after giving notice of the suspension or revocation to the registrant. A suspension remains in effect until the registrant complies with the applicable sections or, in the case of a suspension under paragraph (2), until the Secretary revokes the suspension.''.

SEC. 7117. PATTERN OF SAFETY VIOLATIONS BY MOTOR CARRIER MANAGEMENT.

(a) IN GENERAL.—Section 31135 is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''Each''; and

(2) by adding at the end the following:

''(b) PATTERN OF NON-COMPLIANCE.—If an officer of a motor carrier engages in a pattern or practice of avoiding compliance, or masking or otherwise concealing non-compliance, with regulations on commercial motor vehicle safety prescribed under this subchapter, the Secretary may suspend, amend, or revoke any part of the motor carrier's registration under section 13905 of this title.

''(c) REGULATIONS.—Within 1 year after the date of enactment of the Motor Carrier Safety Reauthorization Act of 2005, the Secretary shall by regulation establish standards to implement subsection (b).

''(d) DEFINITIONS.—In this section:

''(1) MOTOR CARRIER.—The term 'motor carrier' has the meaning given the term in section 13102(12) of this title.

''(2) OFFICER.—The term 'officer' means an owner, director, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier, regardless of the title attached to those functions, and any person, however designated, exercising controlling influence over the operations of the motor carrier.''.

(b) CROSS-REFERENCE.—Section 13902(a)(1)(B) is amended to read as follows:

''(B) any safety regulations imposed by the Secretary, the duties of employers and employees established by the Secretary under section 31135, and the safety fitness requirements established by the Secretary under section 31144; and''.

SEC. 7118. MOTOR CARRIER RESEARCH AND TECHNOLOGY PROGRAM.

(a) IN GENERAL.—Section 31108 is amended to read as follows:

''§ 31108. Motor carrier research and technology program

''(a) RESEARCH, TECHNOLOGY, AND TECHNOLOGY TRANSFER ACTIVITIES.—

''(1) The Secretary of Transportation shall establish and carry out a motor carrier and motor coach research and technology program. The Secretary may carry out research, development, technology, and technology transfer activities with respect to—

''(A) the causes of accidents, injuries and fatalities involving commercial motor vehicles; and

''(B) means of reducing the number and severity of accidents, injuries and fatalities involving commercial motor vehicles.

''(2) The Secretary may test, develop, or assist in testing and developing any material, invention, patented article, or process related to the research and technology program.

''(3) The Secretary may use the funds appropriated to carry out this section for training or education of commercial motor vehicle safety personnel, including, but not limited to, training in accident reconstruction and detection of controlled substances or other contraband, and stolen cargo or vehicles.

''(4) The Secretary may carry out this section—

''(A) independently;

''(B) in cooperation with other Federal departments, agencies, and instrumentalities and Federal laboratories; or

''(C) by making grants to, or entering into contracts, cooperative agreements, and other transactions with, any Federal laboratory, State agency, authority, association, institution, for-profit or non-profit corporation, organization, foreign country, or person.

''(5) The Secretary shall use funds made available to carry out this section to develop, administer, communicate, and promote the use of products of research, technology, and technology transfer programs under this section.

''(b) COLLABORATIVE RESEARCH AND DEVELOPMENT.—

''(1) To advance innovative solutions to problems involving commercial motor vehicle and motor carrier safety, security, and efficiency, and to stimulate the deployment of emerging technology, the Secretary may carry out, on a cost-shared basis, collaborative research and development with—

''(A) non-Federal entities, including State and local governments, foreign governments, colleges and universities, corporations, institutions, partnerships, and sole proprietorships that are incorporated or established under the laws of any State; and

''(B) Federal laboratories.

''(2) In carrying out this subsection, the Secretary may enter into cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)).

''(3)(A) The Federal share of the cost of activities carried out under a cooperative research and development agreement entered into under this subsection shall not exceed 50 percent, except that if there is substantial public interest or benefit, the Secretary may approve a greater Federal share.

''(B) All costs directly incurred by the non-Federal partners, including personnel, travel, and hardware or software development costs, shall be credited toward the non-Federal share of the cost of the activities described in subparagraph (A).

''(4) The research, development, or use of a technology under a cooperative research and development agreement entered into under this subsection, including the terms under which the technology may be licensed and the resulting royalties may be distributed, shall be subject to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

''(c) AVAILABILITY OF AMOUNTS.—The amounts made available under section 7103(a) of the Motor Carrier Safety Reauthorization Act of 2005 to carry out this section shall remain available until expended.

''(d) CONTRACT AUTHORITY.—Approval by the Secretary of a grant with funds made available under section 7103(a) of the Motor Carrier Safety Reauthorization Act of 2005 to carry out this section imposes upon the United States Government a contractual obligation for payment of the Government's share of costs incurred in carrying out the objectives of the grant.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 311 is amended by striking the item relating to section 31108, and inserting the following:

''31108. Motor carrier research and technology program.''.

SEC. 7119. INTERNATIONAL COOPERATION.

(a) IN GENERAL.—Chapter 311 is amended by inserting at the end the following:

''Subchapter IV—Miscellaneous

''§ 31161. International cooperation

''The Secretary is authorized to use funds appropriated under section 31104(i) of this title to participate and cooperate in international activities to enhance motor carrier, commercial motor vehicle, driver, and highway safety by such means as exchanging information, conducting research, and examining needs, best practices, and new technology.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 311 is amended by adding at the end the following:

''SUBCHAPTER IV—MISCELLANEOUS

''31161. International cooperation.''.

SEC. 7120. PERFORMANCE AND REGISTRATION INFORMATION SYSTEM MANAGEMENT.

(a) IN GENERAL.—Section 31106(b) is amended—

(1) by striking paragraphs (2) and (3) and inserting the following:

''(2) DESIGN.—The program shall link Federal motor carrier safety information systems with State commercial vehicle registration and licensing systems and shall be designed to enable a State to—

''(A) determine the safety fitness of a motor carrier or registrant when licensing or registering the registrant or motor carrier or while the license or registration is in effect; and

''(B) deny, suspend, or revoke the commercial motor vehicle registrations of a motor carrier or registrant that has been issued an operations out-of-service order by the Secretary.

''(3) CONDITIONS FOR PARTICIPATION.—The Secretary shall require States, as a condition of participation in the program, to—

''(A) comply with the uniform policies, procedures, and technical and operational standards prescribed by the Secretary under subsection (a)(4);

''(B) possess the authority to impose sanctions relating to commercial motor vehicle registration on the basis of a Federal safety fitness determination; and

''(C) cancel the motor vehicle registration and seize the registration plates of an employer found liable under section 31310(i)(2)(C) of this title for knowingly allowing or requiring an employee to operate a commercial motor vehicle in violation of an out-of-service order.''; and

(2) by striking paragraph (4).

(b) PERFORMANCE AND REGISTRATION INFORMATION SYSTEM MANAGEMENT GRANTS.—

(1) Subchapter I of chapter 311, as amended by section 7118 of this chapter, is further amended by adding at the end the following:

"§ 31109. Performance and Registration Information System Management

''(a) IN GENERAL.—From the funds authorized by section 7103(b)(2) of the Motor Carrier Safety Reauthorization Act of 2005, the Secretary may make a grant in a fiscal year to a State to implement the performance and registration information system management requirements of section 31106(b).

''(b) AVAILABILITY OF AMOUNTS.—Amounts made available to a State under section 7103(b)(2) of the Motor Carrier Safety Reauthorization Act of 2005 to carry out this section shall remain available until expended.

''(c) SECRETARY'S APPROVAL.—Approval by the Secretary of a grant to a State under section 7103(b)(2) of the Motor Carrier Safety Reauthorization Act of 2005 to carry out this section is a contractual obligation of the Government for payment of the amount of the grant.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 311 is amended by inserting after the item relating to section 31108 the following:

''31109. Performance and Registration Information System Management.''.

SEC. 7121. COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS DEPLOYMENT.

(a) IN GENERAL.—Subchapter III of chapter 311, as amended by section 7110, is amended by adding at the end the following:

"§ 31151. Commercial vehicle information systems and networks

''(a) IN GENERAL.—The Secretary shall carry out a commercial vehicle information systems and networks program to—

''(1) improve the safety and productivity of commercial vehicles; and

''(2) reduce costs associated with commercial vehicle operations and Federal and State commercial vehicle regulatory requirements.

''(b) PURPOSE.—The program shall advance the technological capability and promote the deployment of intelligent transportation system applications for commercial vehicle operations, including commercial vehicle, commercial driver, and carrier-specific information systems and networks.

''(c) CORE DEPLOYMENT GRANTS.—

''(1) IN GENERAL.—The Secretary shall make grants to eligible States for the core deployment of commercial vehicle information systems and networks.

''(2) ELIGIBILITY.—To be eligible for a core deployment grant under this section, a State—

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

''(B) shall certify to the Secretary that its commercial vehicle information systems and networks deployment activities, including hardware procurement, software and system development, and infrastructure modifications, are consistent with the national intelligent transportation systems and commercial vehicle information systems and networks architectures and available standards, and promote interoperability and efficiency to the extent practicable; and

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

''(3) AMOUNT OF GRANTS.—The maximum aggregate amount a State may receive under this section for the core deployment of commercial vehicle information systems and networks may not exceed $2,500,000.

''(4) USE OF FUNDS.—Funds from a grant under this subsection may only be used for the core deployment of commercial vehicle information systems and networks. Eligible States that have either completed the core deployment of commercial vehicle information systems and networks or completed such deployment before core deployment grant funds are expended may use the remaining core deployment grant funds for the expanded deployment of commercial vehicle information systems and networks in their State.

''(d) EXPANDED DEPLOYMENT GRANTS.—

''(1) IN GENERAL.—For each fiscal year, from the funds remaining after the Secretary has made core deployment grants under subsection (c) of this section, the Secretary may make grants to each eligible State, upon request, for the expanded deployment of commercial vehicle information systems and networks.

''(2) ELIGIBILITY.—Each State that has completed the core deployment of commercial vehicle information systems and networks is eligible for an expanded deployment grant.

''(3) AMOUNT OF GRANTS.—Each fiscal year, the Secretary may distribute funds available for expanded deployment grants equally among the eligible States, but not to exceed $1,000,000 per State.

''(4) USE OF FUNDS.—A State may use funds from a grant under this subsection only for the expanded deployment of commercial vehicle information systems and networks.

''(e) FEDERAL SHARE.—The Federal share of the cost of a project payable from funds made available to carry out this section shall not exceed 50 percent. The total Federal share of the cost of a project payable from all eligible sources shall not exceed 80 percent.

''(f) AVAILABILITY OF FUNDS.—Funds authorized to be appropriated under section 7103(b)(4) of the Motor Carrier Safety Reauthorization Act of 2005 shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under chapter 1 of title 23, United States Code, except that such funds shall remain available until expended.

''(g) DEFINITIONS.—In this section:

''(1) COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS.—The term 'commercial vehicle information systems and networks' means the information systems and communications networks that provide the capability to—

''(A) improve the safety of commercial vehicle operations;

''(B) increase the efficiency of regulatory inspection processes to reduce administrative burdens by advancing technology to facilitate inspections and increase the effectiveness of enforcement efforts;

''(C) advance electronic processing of registration information, driver licensing information, fuel tax information, inspection and crash data, and other safety information;

''(D) enhance the safe passage of commercial vehicles across the United States and across international borders; and

''(E) promote the communication of information among the States and encourage multistate cooperation and corridor development.

''(2) COMMERCIAL VEHICLE OPERATIONS.—The term 'commercial vehicle operations'—

''(A) means motor carrier operations and motor vehicle regulatory activities associated with the commercial movement of goods, including hazardous materials, and passengers; and

''(B) with respect to the public sector, includes the issuance of operating credentials, the administration of motor vehicle and fuel taxes, and roadside safety and border crossing inspection and regulatory compliance operations.

''(3) CORE DEPLOYMENT.—The term 'core deployment' means the deployment of systems in a State necessary to provide the State with the following capabilities:

''(A) SAFETY INFORMATION EXCHANGE.—Safety information exchange to—

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

''(ii) connect to the Safety and Fitness Electronic Records system for access to interstate carrier and commercial vehicle data, summaries of past safety performance, and commercial vehicle credentials information; and

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

''(B) INTERSTATE CREDENTIALS ADMINISTRATION.—Interstate credentials administration to—

''(i) perform end-to-end processing, including carrier application, jurisdiction application processing, and credential issuance, of at least the International Registration Plan and International Fuel Tax Agreement credentials and subsequently extend this processing to other credentials, including intrastate, titling, oversize/overweight, carrier registration, and hazardous materials;

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

''(iii) have at least 10 percent of the transaction volume handled electronically, and have the capability to add more carriers and to extend to branch offices where applicable.

''(C) ROADSIDE SCREENING.—Roadside electronic screening to electronically screen transponder-equipped commercial vehicles at a minimum of 1 fixed or mobile inspection sites and to replicate this screening at other sites.

''(4) EXPANDED DEPLOYMENT.—The term 'expanded deployment' means the deployment of systems in a State that exceed the requirements of an core deployment of commercial vehicle information systems and networks, improve safety and the productivity of commercial vehicle operations, and enhance transportation security.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 311 is amended by inserting after the item relating to section 31150 the following:

''31151. Commercial vehicle information systems and networks''.

SEC. 7122. OUTREACH AND EDUCATION.

(a) IN GENERAL.—The Secretary of Transportation, through the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration, may undertake outreach and education initiatives, including the ''Share the Road Safely'' program, that will reduce the number of highway accidents, injuries, and fatalities involving commercial motor vehicles.

(b) STUDY.—The Comptroller General shall update the Government Accountability Office's evaluation of the ''Share the Road Safely'' program to determine if it has achieved reductions in the number and severity of commercial motor vehicle crashes, including reductions in the number of deaths and the severity of injuries sustained in these crashes, and shall report its updated evaluation to Congress no later than June 30, 2006.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of fiscal years 2006 through 2009 to carry out this section—

(1) $1,000,000 for the Federal Motor Carrier Safety Administration; and

(2) $3,000,000 for the National Highway Traffic Safety Administration.

SEC. 7123. FOREIGN COMMERCIAL MOTOR VEHICLES.

(a) OPERATING AUTHORITY ENFORCEMENT ASSISTANCE FOR STATES.—Within 180 days after the date of enactment of this Act, the Federal Motor Carrier Safety Administration shall conduct outreach and provide training as necessary to State personnel engaged in the enforcement of Federal Motor Carrier Safety Administration safety regulations to ensure their awareness of the process to be used for verification of the operating authority of motor carriers, including buses, and to ensure proper enforcement when

motor carriers are found to be in violation of operating authority requirements. The Inspector General of the Department of Transportation may periodically assess the implementation and effectiveness of the training and outreach program.

(b) STUDY OF FOREIGN COMMERCIAL MOTOR VEHICLES.—

(1) REVIEW.—Within 1 year after the date of enactment of this Act, the Federal Motor Carrier Safety Administration shall conduct a review to determine the degree to which Canadian and Mexican commercial motor vehicles, including buses, currently operating or expected to operate, in the United States comply with the Federal Motor Vehicle Safety Standards.

(2) REPORTS.—Within 1 year after the date of enactment of this Act, the Adminstrator shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure containing the findings and conclusions of the review. Within 4 months after the report is transmitted to the Committees, the Inspector General of the Department of Transportation shall provide comments and observations to the Committees on the scope and methodology of the review.

SEC. 7124. PRE-EMPLOYMENT SAFETY SCREENING.

(a) IN GENERAL.—Subchapter III of chapter 311, as amended by section 7121, is amended by adding at the end the following:

''§ 31152. Pre-employment safety screening

''(a) IN GENERAL.—The Secretary of Transportation shall provide companies conducting pre-employment screening services for the motor carrier industry electronic access to—

''(1) commercial motor vehicle accident report information contained in the Motor Carrier Management Information System; and

''(2) all driver safety violations contained in the Motor Carrier Management Information System.

''(b) ESTABLISHMENT.—Prior to making information available to such companies under subsection (a), the Secretary shall—

''(1) ensure that any information released is done in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and all applicable Federal laws;

''(2) require the driver applicant's written consent as a condition of releasing the information;

''(3) ensure that the information made available to companies providing pre-employment screening services is not released to any other unauthorized company or individual, unless expressly authorized or required by law; and

''(4) provide a procedure for drivers to remedy incorrect information in a timely manner.

''(c) DESIGN.—To be eligible to have access to information under subsection (a), a company conducting pre-employment screening services for the motor carrier industry shall utilize a screening process—

''(1) that is designed to assist the motor carrier industry in assessing an individual driver's crash and safety violation history as a pre-employment condition;

''(2) the use of which is not mandatory; and

''(3) which is used only during the pre-employment assessment of a driver-applicant.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 311, as amended by section 7121, is amended by inserting after the item relating to section 31151 the following:

''31152. Pre-employment safety screening.''.

SEC. 7125. CLASS OR CATEGORY EXEMPTIONS.

(a) IN GENERAL.—The Secretary of Transportation may grant exemptions for categories or classes of drivers of commercial motor vehicles not required to hold a commercial driver's license under section 31301(4) of title 49, United States Code, from compliance in whole or in part with a regulation issued under chapter 315 of title 49, United States Code, or with regulations issued under section 31502 of that title governing hours of service if the Secretary determines that it is in the public interest to grant the exemption and that the exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption subject to such conditions as the Secretary may impose. An exemption may be granted for no longer than 2 years from its initial approval date and may be renewed upon application to the Secretary.

(b) AUTHORITY TO REVOKE EXEMPTION.—The Secretary shall immediately revoke an exemption if—

(1) the exemption has resulted in a lower level of safety than was maintained before the exemption was granted; or

(2) continuation of the exemption would not be consistent with the goals and objectives of that chapter or section 31136, as the case may be.

(c) REQUESTS FOR EXEMPTION.—

(1) INTERIM FINAL RULE.—Not later than 180 days after the date of enactment of this Act, the Secretary shall specify by interim final rule the procedures by which an exemption for a category or class of drivers may be requested under this section. The rule shall, at a minimum, require the motor carrier or other entity requesting the exemption to provide the following information:

(A) The provisions from which the motor carrier or other entity requests exemption.

(B) The reason for which the exemption is requested.

(C) The time period during which the requested exemption would apply.

(D) An analysis of the safety impacts the requested exemption may cause.

(E) The specific countermeasures the motor carrier or other entity will undertake to ensure an equivalent or greater level of safety than would be achieved absent the requested exemption.

(F) The benefits to be derived from the exemption.

(2) FINAL RULE.—Not later than 2 years after the date of enactment of this Act, and after notice and an opportunity for comment, the Secretary shall promulgate a final rule specifying the procedures by which an exemption for a category or class of drivers may be requested under this section.

(d) NOTICE AND COMMENT.—

(1) UPON RECEIPT OF A REQUEST.—Upon receipt of an exemption request, the Secretary shall publish in the Federal Register a notice explaining the request that has been filed and shall give the public an opportunity to inspect the safety analysis and any other relevant information known to the Secretary and to comment on the request. This subparagraph does not require the release of information protected by law from public disclosure.

(2) UPON GRANTING A REQUEST.—Upon granting a request for exemption, the Secretary shall publish in the Federal Register the name of the motor carrier or other entity granted the exemption, the provisions from which the category or class of vehicles will be exempt, the effective period, and all terms and conditions of the exemption.

(3) AFTER DENYING A REQUEST.—After denying a request for exemption, the Secretary shall publish in the Federal Register the name of the motor carrier or other entity denied the exemption, the category or class of vehicles for which the exemption was requested, and the reasons for such denial. The Secretary may meet the requirement of this subparagraph by periodically publishing in the Federal Register the names of motor carriers or other entities denied exemptions, the categories or classes of vehicles for which the exemption was requested, and the reasons for such denials.

(e) APPLICATIONS TO BE DEALT WITH PROMPTLY.—The Secretary shall grant or deny an exemption request after a thorough review of its safety implications, but in no case later than 90 days after the filing date of such request.

(f) TERMS AND CONDITIONS.—The Secretary shall establish terms and conditions for each exemption to ensure that it will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The Secretary shall monitor the implementation of the exemption to ensure compliance with its terms and conditions.

(g) NOTIFICATION OF STATE COMPLIANCE AND ENFORCEMENT PERSONNEL.—Before granting a request for exemption, the Secretary shall notify State safety compliance and enforcement personnel, including roadside inspectors, and the public that a motor carrier or other entity will be operating pursuant to an exemption and any terms and conditions that will apply to the exemption.

(h) PREEMPTION OF STATE RULES.—During the time period that an exemption is in effect under this section, no State shall enforce any law or regulation that conflicts with or is inconsistent with the exemption with respect to the category or class of vehicles to which the exemption applies.

SEC. 7126. DECALS.

The Commercial Vehicle Safety Alliance may not restrict the sale of any inspection decal to the Federal Motor Carrier Safety Administration unless the Administration fails to meet its responsibilities under its memorandum of understanding with the Alliance (other than a failure due to the Administration's compliance with Federal law).

SEC. 7127. ROADABILITY.

(a) INSPECTION, REPAIR AND MAINTENANCE OF INTERMODAL EQUIPMENT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, after providing notice and opportunity for comment, shall issue regulations establishing a program to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained.

(2) INTERMODAL EQUIPMENT SAFETY REGULATIONS.—The Secretary shall promulgate regulations under this section as a subpart of the regulations of the Federal Motor Carrier Safety Administration of the Department of Transportation.

(3) CONTENTS.—The regulations issued under this section shall include, at a minimum—

(A) a requirement to identify intermodal equipment providers responsible for the inspection and maintenance of intermodal equipment that is interchanged or intended for interchange to motor carriers in intermodal transportation;

(B) a requirement to match intermodal equipment readily to an intermodal equipment provider through a unique identifying number;

(C) a requirement that an intermodal equipment provider identified under the requirement of subparagraph (A) systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, intermodal equipment described in subparagraph (A) that is intended for interchange with a motor carrier;

(D) a requirement to ensure that each intermodal equipment provider identified under the requirement of subparagraph (A) maintains a system of maintenance and repair records for such equipment;

(E) requirements that—

(i) a specific list of intermodal equipment components or items be identified for the visual or audible inspection of which a driver is responsible before operating the equipment over the road; and

(ii) the inspection be conducted as part of the Federal requirement in effect on the date of enactment of this Act that a driver be satisfied that the components are in good working order before operating the equipment over the road;

(F) a requirement that a facility at which an intermodal equipment provider regularly makes

equipment available for interchange have an operational process and space readily available for a motor carrier to have an equipment defect identified pursuant to subparagraph (E) repaired or the equipment replaced prior to departure;

(G) a provision that establishes a program for the evaluation and audit of compliance by intermodal equipment providers with applicable Federal Motor Carrier Safety Administration regulations;

(H) a provision that—

(i) establishes a civil penalty structure consistent with section 521(b) of title 49, United States Code, for intermodal equipment providers that fail to attain satisfactory compliance with applicable regulations; and

(ii) prohibits intermodal equipment providers from placing intermodal equipment in service on the public highways to the extent such providers or their equipment are found to pose an imminent hazard;

(I) a provision that establishes a process by which motor carriers and agents of motor carriers may request the Federal Motor Carrier Safety Administration to undertake an investigation of an intermodal equipment provider identified under the requirement of subparagraph (A) that is alleged to be not in compliance with the regulations established pursuant to this section;

(J) a provision that establishes a process by which equipment providers and agents of equipment providers may request the Federal Motor Carrier Safety Administration to undertake an investigation of a motor carrier that is alleged to be not in compliance with applicable Federal motor carrier safety regulations;

(K) a provision that establishes a process by which drivers or motor carriers are required to report any actual damage or defect in the intermodal equipment of which the driver or motor carrier is aware at the time the intermodal equipment is returned to the equipment provider;

(L) a requirement that any actual damage or defect identified in the process established under subparagraph (K) be repaired before the equipment is made available for interchange to a motor carrier, and that repairs of equipment made pursuant to the requirements of this subparagraph and reports made pursuant to subparagraph (K) process be documented in the maintenance records for such equipment; and

(M) a procedure under which motor carriers, drivers and intermodal equipment providers may seek correction of their safety records through the deletion from those records of violations of safety regulations attributable to deficiencies in the intermodal chassis or trailer for which they should not have been held responsible.

(4) DEADLINE FOR RULEMAKING PROCEEDING.—Within 120 days after the date of enactment of this Act, the Secretary shall initiate a rulemaking proceeding for regulations under this section.

(b) JURISDICTION OF DEPARTMENT OF TRANSPORTATION.—Section 31136 is amended by adding at the end the following:

''(g) INSPECTION, REPAIR, AND MAINTENANCE OF INTERMODAL EQUIPMENT.—The Secretary or an employee of the Department of Transportation designated by the Secretary may inspect intermodal equipment, and copy related maintenance and repair records for such equipment, on demand and display of proper credentials.

''(h) OUT-OF-SERVICE UNTIL REPAIR.—Any intermodal equipment that is determined under this section to fail to comply with applicable safety regulations may be placed out of service and may not be used on a public highway until the repairs necessary to bring such equipment into compliance have been completed. Repairs of equipment taken out of service shall be documented in the maintenance records for such equipment.''.

(c) PREEMPTION OF STATE LAWS.—

(1) IN GENERAL.—Section 31141 is amended by adding at the end the following:

''(h) PREEMPTION GENERALLY.—Except as otherwise authorized by law and as provided in subsection (i), a law, regulation, order, or other requirement of a State, a political subdivision of a State, or a tribal organization, is preempted if such law, regulation, order, or other requirement exceeds or is inconsistent with a requirement imposed under or pursuant to this chapter.

''(i) PRE-EXISTING STATE REQUIREMENTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a State requirement for the periodic inspection of intermodal chassis by intermodal equipment providers that was in effect on January 1, 2005, shall remain in effect only until the date on which requirements prescribed under section 7127 of the Surface Transportation Safety Improvement Act of 2005 take effect.

''(2) NON-PREEMPTION DETERMINATIONS.—

''(A) IN GENERAL.—A State requirement described in paragraph (1) is not preempted by a Federal requirement prescribed under section 7127 of that Act if the Secretary determines that the State requirement is as effective as the Federal requirement and does not unduly burden interstate commerce.

''(B) APPLICATION REQUIRED.—Subparagraph (A) applies to a State requirement only if the State applies to the Secretary for a determination under this paragraph with respect to the requirement before the date on which requirements prescribed under section 7127 of that Act take effect. The Secretary shall make a determination with respect to any such application within 6 months after the date on which the Secretary receives the application.

''(C) AMENDED STATE REQUIREMENTS.—Any amendment to a State requirement not preempted under this subsection because of a determination by the Secretary under subparagraph (A) may not take effect unless—

''(i) it is submitted to the Secretary before the effective date of the amendment; and

''(ii) the Secretary determines that the amendment would not cause the State requirement to be less effective than the Federal requirement and would not unduly burden interstate commerce.

(2) CONFORMING AMENDMENT.—Section 31141(c)(1) is amended by striking ''The Secretary'' the first place it appears and inserting ''Except as provided by subsection (h), the Secretary''.

(d) DEFINITIONS.—In this section:

(1) INTERMODAL EQUIPMENT.—The term ''intermodal equipment'' means trailing equipment that is used in the intermodal transportation of freight over public highways in interstate commerce (as defined in section 31132 of title 49, United States Code), including trailers and chassis.

(2) INTERMODAL EQUIPMENT INTERCHANGE AGREEMENT.—The term ''Intermodal equipment interchange agreement'' means the Uniform Intermodal Interchange and Facilities Access Agreement or any other written document executed by an intermodal equipment provider or its agent and a motor carrier or its agent, the primary purpose of which is to establish the responsibilities and liabilities of both parties with respect to the interchange of the intermodal equipment.

(3) INTERMODAL EQUIPMENT PROVIDER.—The term ''intermodal equipment provider'' means any person that interchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment.

(4) INTERCHANGE.—The term ''interchange''—

(A) means the act of providing intermodal equipment to a motor carrier pursuant to an Intermodal equipment interchange agreement for the purpose of transporting the equipment for loading or unloading by any person or repositioning the equipment for the benefit of the equipment provider; but

(B) does not include the leasing of equipment to a motor carrier for primary use in the motor carrier's freight hauling operations.

SEC. 7128. MOTOR CARRIER REGULATIONS.

(a) IN GENERAL.—Section 31149, as amended by section 7108(d), is further amended—

(1) by striking paragraph (1) of subsection (a) and inserting the following:

''(1) TRANSPORTATION OF AGRICULTURAL COMMODITIES AND FARM SUPPLIES.—Regulations prescribed by the Secretary under sections 31136 and 31502 of this title regarding maximum driving and on-duty time for drivers used by motor carriers shall not apply during planting and harvest periods, as determined by each State, to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies.'';

(2) by adding at the end of subsection (e) the following:

''(7) AGRICULTURAL COMMODITY.—The term 'agricultural commodity' means any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in section 602 of the Emergency Livestock Feed Assistance Act of 1988 (7 U.S.C. 1471) and insects).

''(8) FARM SUPPLIES FOR AGRICULTURAL PURPOSES.—The term 'farm supplies for agricultural purposes' means products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons within each State, as determined by the State, and livestock feed at any time of the year.''.

(b) REGULATIONS FOR MOVIE PRODUCTION SITES.—Notwithstanding sections 31136 and 31502 of title 49, United States Code, and any other provision of law, the maximum daily hours of service for an operator of a commercial motor vehicle providing transportation of property or passengers to or from a theatrical or television motion picture production site located within a 100 air mile radius of the work reporting location of such operator shall be those in effect under the regulations in effect under those sections on April 27, 2003.

(c) UTILITY SERVICE VEHICLES.—Section 31149(a)(4) (as so transferred) is amended to read as follows:

''(4) OPERATORS OF UTILITY SERVICE VEHICLES.—

''(A) INAPPLICABILITY OF FEDERAL REGULATIONS.—Such regulations may not apply to a driver of a utility service vehicle.

''(B) PROHIBITION ON STATE REGULATIONS.—A State, a political subdivision of a State, an interstate agency, or other entity consisting of 2 or more States, shall not enact or enforce any law, rule, regulation, or standard that imposes requirements on a driver of a utility service vehicle that are similar to the requirements contained in such regulations.'';

(2) by striking ''Nothing'' in subsection (b) and inserting ''Except as provided in subsection (a)(4), nothing''; and

(3) by striking ''paragraph (2)'' in the first sentence of subsection (c) and inserting ''an exemption under paragraph (1), (2), or (4)''.

SEC. 7129. VEHICLE TOWING.

(a) STATE LAWS RELATING TO VEHICLE TOWING.—Section 14501(c) is amended by adding at the end the following:

''(5) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prevent a State from requiring that, in the case of vehicles towed from private property without the consent of the owner or operator of the vehicle, towing companies have prior written authorization from the property owner or lessee (or an employee or agent thereof), or that such owner or lessee (or an employee or agent thereof) be present at the time the vehicle is towed from the property, or both.''.

(b) PREDATORY TOW TRUCK OPERATIONS.—Within 1 year after the date of enactment of this Act, the Secretary of Transportation, in conjunction with other appropriate Federal agencies, shall—

(1) conduct a review of Federal, State and local regulation of the tow truck industry before the date of enactment of the ICC Termination Act of 1995; and

(2) conduct a study to identify issues related to the protection of the rights of consumers who are towed, to establish the scope and geographic reach of any such issues identified, and to identify potential remedies for those issues.

SEC. 7130. CERTIFICATION OF VEHICLE EMISSION PERFORMANCE STANDARDS.

(a) REGISTRATION OF MOTOR CARRIERS.—Section 13902(a)(1) of title 49, United States Code (as amended by section 7117(b)), is amended—

(1) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

(2) by inserting after subparagraph (A) the following:

''(B) a requirement that a motor carrier certify that, beginning on January 1, 2007, any vehicle operated by the motor carrier will comply with the heavy duty vehicle and engine emissions performance standards and related regulations established by the Administrator of the Environmental Protection Agency under section 202(a)(3) of the Clean Air Act (42 U.S.C. 7521(a)(3));''.

(b) STUDY.—Not later than 180 days after the date of enactment of this Act, the Secretary shall make recommendations to Congress on methods of ensuring that trucks built before January 1, 2007, that are operating in the United States comply with any emissions performance standard under the Clean Air Act (42 U.S.C. 7401 et seq.) that was applicable to the truck on the date on which the engine of the truck was manufactured.

CHAPTER 2—UNIFIED CARRIER REGISTRATION

SEC. 7131. SHORT TITLE.

This chapter may be cited as the ''Unified Carrier Registration Act of 2005''.

SEC. 7132. RELATIONSHIP TO OTHER LAWS.

Except as provided in section 14504 of title 49, United States Code, and sections 14504a and 14506 of title 49, United States Code, as added by this chapter, this chapter is not intended to prohibit any State or any political subdivision of any State from enacting, imposing, or enforcing any law or regulation with respect to a motor carrier, motor private carrier, broker, freight forwarder, or leasing company that is not otherwise prohibited by law.

SEC. 7133. INCLUSION OF MOTOR PRIVATE AND EXEMPT CARRIERS.

(a) PERSONS REGISTERED TO PROVIDE TRANSPORTATION OR SERVICE AS A MOTOR CARRIER OR MOTOR PRIVATE CARRIER.—Section 13905 is amended by—

(1) redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e), and (f), respectively; and

(2) inserting after subsection (a) the following:

''(b) PERSON REGISTERED WITH SECRETARY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), any person having registered with the Secretary to provide transportation or service as a motor carrier or motor private carrier under this title, as in effect on January 1, 2005, but not having registered pursuant to section 13902(a) of this title, shall be deemed, for purposes of this part, to be registered to provide such transportation or service for purposes of sections 13908 and 14504a of this title.

''(2) EXCLUSIVELY INTRASTATE OPERATORS.—Paragraph (1) does not apply to a motor carrier or motor private carrier (including a transporter of waste or recyclable materials) engaged exclusively in intrastate transportation operations.''.

(b) SECURITY REQUIREMENT.—Section 13906(a) is amended by—

(1) redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) inserting the following:

''(2) SECURITY REQUIREMENT.—Not later than 120 days after the date of enactment of the Unified Carrier Registration Act of 2005, any person, other than a motor private carrier, registered with the Secretary to provide transportation or service as a motor carrier under section 13905(b) of this title shall file with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than required by sections 31138 and 31139 of this title.''.

(c) TERMINATION OF TRANSITION RULE.—Section 13902 is amended—

(1) by adding at the end of subsection (d) the following:

''(3) TERMINATION.—This subsection shall cease to be in effect on the transition termination date.''; and

(2) by redesignating subsection (f) as subsection (g), and inserting after subsection (e) the following:

''(f) MODIFICATION OF CARRIER REGISTRATION.—

''(1) IN GENERAL.—On and after the transition termination date, the Secretary—

''(A) may not register a motor carrier under this section as a motor common carrier or a motor contract carrier;

''(B) shall register applicants under this section as motor carriers; and

''(C) shall issue any motor carrier registered under this section after that date a motor carrier certificate of registration that specifies whether the holder of the certificate may provide transportation of persons, household goods, other property, or any combination thereof.

''(2) PRE-EXISTING CERTIFICATES AND PERMITS.—The Secretary shall redesignate any motor carrier certificate or permit issued before the transition termination date as a motor carrier certificate of registration. On and after the transition termination date, any person holding a motor carrier certificate of registration redesignated under this paragraph may provide both contract carriage (as defined in section 13102(4)(B) of this title) and transportation under terms and conditions meeting the requirements of section 13710(a)(1) of this title. The Secretary may not, pursuant to any regulation or form issued before or after the transition termination date, make any distinction among holders of motor carrier certificates of registration on the basis of whether the holder would have been classified as a common carrier or as a contract carrier under—

''(A) subsection (d) of this section, as that section was in effect before the transition termination date; or

''(B) any other provision of this title that was in effect before the transition termination date.

''(3) TRANSITION TERMINATION DATE DEFINED.—In subsection (d) and this subsection, the term 'transition termination date' means the first day of January occurring more than 12 months after the date of enactment of the Unified Carrier Registration Act of 2005.''.

(d) CONFORMING AMENDMENTS.—

(1) CAPTION OF SECTION 13906.—The section caption for section 13906 is amended by inserting ''***motor private carriers,***'' after ''***motor carriers,***''.

(2) CHAPTER ANALYSIS.—The chapter analysis for chapter 139 is amended by striking the item relating to section 13906 and inserting the following:

''13906. Security of motor carriers, motor private carriers, brokers, and freight forwarders.''.

SEC. 7134. UNIFIED CARRIER REGISTRATION SYSTEM.

(a) Section 13908 is amended to read as follows:

''§ 13908. Registration and other reforms

''(a) ESTABLISHMENT OF UNIFIED CARRIER REGISTRATION SYSTEM.—The Secretary, in cooperation with the States, representatives of the motor carrier, motor private carrier, freight forwarder and broker industries, and after notice and opportunity for public comment, shall issue within 1 year after the date of enactment of the Unified Carrier Registration Act of 2005 regulations to establish, an online, Federal registration system to be named the Unified Carrier Registration System to replace—

''(1) the current Department of Transportation identification number system, the Single State Registration System under section 14504 of this title;

''(2) the registration system contained in this chapter and the financial responsibility information system under section 13906; and

''(3) the service of process agent systems under sections 503 and 13304 of this title.

''(b) ROLE AS CLEARINGHOUSE AND DEPOSITORY OF INFORMATION.—The Unified Carrier Registration System shall serve as a clearinghouse and depository of information on, and identification of, all foreign and domestic motor carriers, motor private carriers, brokers, and freight forwarders, and others required to register with the Department, including information with respect to a carrier's safety rating, compliance with required levels of financial responsibility, and compliance with the provisions of section 14504a of this title. The Secretary shall ensure that Federal agencies, States, representatives of the motor carrier industry, and the public have access to the Unified Carrier Registration System, including the records and information contained in the System.

''(c) PROCEDURES FOR CORRECTING INFORMATION.—Not later than 60 days after the effective date of this section, the Secretary shall prescribe regulations establishing procedures that enable a motor carrier to correct erroneous information contained in any part of the Unified Carrier Registration System.

''(d) FEE SYSTEM.—The Secretary shall establish, under section 9701 of title 31, a fee system for the Unified Carrier Registration System according to the following guidelines:

''(1) REGISTRATION AND FILING EVIDENCE OF FINANCIAL RESPONSIBILITY.—The fee for new registrants shall as nearly as possible cover the costs of processing the registration and conducting the safety audit or examination, if required, but shall not exceed $300.

''(2) EVIDENCE OF FINANCIAL RESPONSIBILITY.—The fee for filing evidence of financial responsibility pursuant to this section shall not exceed $10 per filing. No fee shall be charged for a filing for purposes of designating an agent for service of process or the filing of other information relating to financial responsibility.

''(3) ACCESS AND RETRIEVAL FEES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the fee system shall include a nominal fee for the access to or retrieval of information from the Unified Carrier Registration System to cover the costs of operating and upgrading the System, including the personnel costs incurred by the Department and the costs of administration of the Unified Carrier Registration Agreement.

''(B) EXCEPTIONS.—There shall be no fee charged—

''(i) to any agency of the Federal Government or a State government or any political subdivision of any such government for the access to or retrieval of information and data from the Unified Carrier Registration System for its own use; or

''(ii) to any representative of a motor carrier, motor private carrier, leasing company, broker, or freight forwarder (as each is defined in section 14504a of this title) for the access to or retrieval of the individual information related to such entity from the Unified Carrier Registration System for the individual use of such entity.

''(e) APPLICATION TO CERTAIN INTRASTATE OPERATIONS.—Nothing in this section requires the registration of a motor carrier, a motor private carrier of property, or a transporter of waste or recyclable materials operating exclusively in intrastate transportation not otherwise required to register with the Secretary under another provision of this title.''.

SEC. 7135. REGISTRATION OF MOTOR CARRIERS BY STATES.

(a) TERMINATION OF REGISTRATION PROVISIONS.—Section 14504 is amended by adding at the end the following:

''(d) TERMINATION OF PROVISIONS.—Subsections (b) and (c) shall cease to be effective on the first January 1st occurring more than 12 months after the date of enactment of the Unified Carrier Registration Act of 2005.''.

(b) UNIFIED CARRIER REGISTRATION SYSTEM PLAN AND AGREEMENT.—Chapter 145 is amended by inserting after section 14504 the following:

''§ 14504a. Unified carrier registration system plan and agreement

''(a) DEFINITIONS.—In this section and section 14506 of this title:

''(1) COMMERCIAL MOTOR VEHICLE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'commercial motor vehicle' has the meaning given the term in section 31101 of this title.

''(B) EXCEPTION.—With respect to motor carriers required to make any filing or pay any fee to a State with respect to the motor carrier's authority or insurance related to operation within such State, the term 'commercial motor vehicle' means any self-propelled vehicle used on the highway in commerce to transport passengers or property for compensation regardless of the gross vehicle weight rating of the vehicle or the number of passengers transported by such vehicle.

''(2) BASE-STATE.—

''(A) IN GENERAL.—The term 'Base-State' means, with respect to the Unified Carrier Registration Agreement, a State—

''(i) that is in compliance with the requirements of subsection (e); and

''(ii) in which the motor carrier, motor private carrier, broker, freight forwarder or leasing company maintains its principal place of business.

''(B) DESIGNATION OF BASE-STATE.—A motor carrier, motor private carrier, broker, freight forwarder or leasing company may designate another State in which it maintains an office or operating facility as its Base-State in the event that—

''(i) the State in which the motor carrier, motor private carrier, broker, freight forwarder or leasing company maintains its principal place of business is not in compliance with the requirements of subsection (e); or

''(ii) the motor carrier, motor private carrier, broker, freight forwarder or leasing company does not have a principal place of business in the United States.

''(3) INTRASTATE FEE.—The term 'intrastate fee' means any fee, tax, or other type of assessment, including per vehicle fees and gross receipts taxes, imposed on a motor carrier or motor private carrier for the renewal of the intrastate authority or insurance filings of such carrier with a State.

''(4) LEASING COMPANY.—The term 'leasing company' means a lessor that is engaged in the business of leasing or renting for compensation motor vehicles without drivers to a motor carrier, motor private carrier, or freight forwarder.

''(5) MOTOR CARRIER.—The term 'motor carrier' has the meaning given the term in section 13102(12) of this title, but shall include all carriers that are otherwise exempt from the provisions of part B of this title pursuant to the provisions of chapter 135 of this title or exemption actions by the former Interstate Commerce Commission under this title.

''(6) PARTICIPATING STATE.—The term 'participating state' means a State that has complied with the requirements of subsection (e) of this section.

''(7) SSRS.—The term 'SSRS' means the Single State Registration System in effect on the date of enactment of the Unified Carrier Registration Act of 2005.

''(8) UNIFIED CARRIER REGISTRATION AGREEMENT.—The terms 'Unified Carrier Registration Agreement' and 'UCR Agreement' mean the interstate agreement developed under the Unified Carrier Registration Plan governing the collection and distribution of registration and financial responsibility information provided and fees paid by motor carriers, motor private carriers, brokers, freight forwarders and leasing companies pursuant to this section.

''(9) UNIFIED CARRIER REGISTRATION PLAN.—The terms 'Unified Carrier Registration Plan' and 'UCR Plan' mean the organization of State, Federal and industry representatives responsible for developing, implementing and administering the Unified Carrier Registration Agreement.

''(10) VEHICLE REGISTRATION.—The term 'vehicle registration' means the registration of any commercial motor vehicle under the International Registration Plan or any other registration law or regulation of a jurisdiction.

''(b) APPLICABILITY OF PROVISIONS TO FREIGHT FORWARDERS.—A Freight forwarder that operates commercial motor vehicles and is not required to register as a carrier pursuant to section 13903(b) of this title shall be subject to the provisions of this section as if a motor carrier.

''(c) UNREASONABLE BURDEN.—For purposes of this section, it shall be considered an 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 recyclable materials by any carrier); or

''(2) to require any interstate motor carrier or motor private carrier to pay any fee or tax, not proscribed by paragraph (1)(D) of this subsection, that a motor carrier or motor private carrier that pays a fee which is proscribed by that paragraph is not required to pay.

''(d) UNIFIED CARRIER REGISTRATION PLAN.—

''(1) BOARD OF DIRECTORS.—

''(A) GOVERNANCE OF PLAN.—The Unified Carrier Registration Plan shall be governed by a Board of Directors consisting of representatives of the Department of Transportation, Participating States, and the motor carrier industry.

''(B) NUMBER.—The Board shall consist of 15 directors.

''(C) COMPOSITION.—The Board shall be composed of directors appointed as follows:

''(i) FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION.—The Secretary shall appoint 1 director from each of the Federal Motor Carrier Safety Administration's 4 Service Areas (as those areas were defined by the Federal Motor Carrier Safety Administration on January 1, 2005), from among the chief administrative officers of the State agencies responsible for overseeing the administration of the UCR Agreement.

''(ii) STATE AGENCIES.—The Secretary shall appoint 5 directors from the professional staffs of State agencies responsible for overseeing the administration of the UCR Agreement in their respective States. Nominees for these 5 directorships shall be submitted to the Secretary by the national association of professional employees of the State agencies responsible for overseeing the administration of the UCR Agreement in their respective States.

''(iii) MOTOR CARRIER INDUSTRY.—The Secretary shall appoint 5 directors from the motor carrier industry. At least 1 of the appointees shall be an employee of the national trade association representing the general motor carrier of property industry.

''(iv) DEPARTMENT OF TRANSPORTATION.—The Secretary shall appoint the Deputy Administrator of the Federal Motor Carrier Safety Administration, or such other presidential appointee from the United States Department of Transportation, as the Secretary may designate, to serve as a director.

''(D) CHAIRPERSON AND VICE-CHAIRPERSON.—The Secretary shall designate 1 director as Chairperson and 1 director as Vice-Chairperson of the Board. The Chairperson and Vice-Chairperson shall serve in such capacity for the term of their appointment as directors.

''(E) TERM.—In appointing the initial Board, the Secretary shall designate 5 of the appointed directors for initial terms of 3 years, 5 of the appointed directors for initial terms of 2 years, and 5 of the appointed directors for initial terms of 1 year. Thereafter, all directors shall be appointed for terms of 3 years, except that the term of the Deputy Administrator or other individual designated by the Secretary under subparagraph (C)(iv) shall be at the discretion of the Secretary. A director may be appointed to succeed himself or herself. A director may continue to serve on the Board until his or her successor is appointed.

''(2) RULES AND REGULATIONS GOVERNING THE UCR AGREEMENT.—The Board of Directors shall issue rules and regulations to govern the UCR Agreement. The rules and regulations shall—

''(A) prescribe uniform forms and formats, for—

''(i) the annual submission of the information required by a Base-State of a motor carrier, motor private carrier, leasing company, broker, or freight forwarder;

''(ii) the transmission of information by a Participating State to the Unified Carrier Registration System;

''(iii) the payment of excess fees by a State to the designated depository and the distribution of fees by the depository to those States so entitled; and

''(iv) the providing of notice by a motor carrier, motor private carrier, broker, freight forwarder, or leasing company to the Board of the intent of such entity to change its Base-State, and the procedures for a State to object to such a change under subparagraph (C) of this paragraph;

''(B) provide for the administration of the Unified Carrier Registration Agreement, including procedures for amending the Agreement and obtaining clarification of any provision of the Agreement;

''(C) provide procedures for dispute resolution that provide due process for all involved parties; and

''(D) designate a depository.

''(3) COMPENSATION AND EXPENSES.—Except for the representative of the Department of

Transportation appointed pursuant to paragraph (1)(D), no director shall receive any compensation or other benefits from the Federal Government for serving on the Board or be considered a Federal employee as a result of such service. All Directors shall be reimbursed for expenses they incur attending duly called meetings of the Board. In addition, the Board may approve the reimbursement of expenses incurred by members of any subcommittee or task force appointed pursuant to paragraph (5). The reimbursement of expenses to directors and 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 Participating States and the motor carrier industry.

''(6) DELEGATION OF AUTHORITY.—The Board may contract with any private commercial or non-profit entity or any agency of a State to perform administrative functions required under the Unified Carrier Registration Agreement, but may not delegate its decision or policy-making responsibilities.

''(7) DETERMINATION OF FEES.—

''(A) RECOMMENDATION BY BOARD.—The Board shall recommend to the Secretary the initial annual fees to be assessed carriers, leasing companies, brokers, and freight forwarders pursuant to the Unified Carrier Registration Agreement. In making its recommendation to the Secretary for the level of fees to be assessed in any Agreement year, and in setting the fee level, the Board and the Secretary shall consider—

''(i) the administrative costs associated with the Unified Carrier Registration Plan and the Agreement;

''(ii) whether the revenues generated in the previous year and any surplus or shortage from that or prior years enable the Participating States to achieve the revenue levels set by the Board; and

''(iii) the parameters for fees set forth in subsection (f)(1).

''(B) SETTING FEES.—The Secretary shall set the initial annual fees for the next Agreement year and any subsequent adjustment of those fees—

''(i) within 90 days after receiving the Board's recommendation under subparagraph (A); and

''(ii) after notice and opportunity for public comment.

''(8) LIABILITY PROTECTIONS FOR DIRECTORS.—No individual appointed to serve on the Board shall be liable to any other 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 2005, a plan—

''(A) identifying the State agency that has or will have the legal authority, resources, and qualified personnel necessary to administer the Unified Carrier Registration Agreement in accordance with the rules and regulations promulgated by the Board of Directors of the Unified Carrier Registration Plan; and

''(B) containing assurances that an amount at least equal to the revenue derived by the State from the Unified Carrier Registration Agreement shall be used for motor carrier safety programs, enforcement, and financial responsibility, or the administration of the UCR Plan and UCR Agreement.

''(2) AMENDED PLANS.—A State may change the agency designated in the plan submitted under this subsection by filing an amended plan with the Secretary and the Chairperson of the Unified Carrier Registration Plan.

''(3) WITHDRAWAL OF PLAN.—If a State withdraws, or notifies the Secretary that it is withdrawing, the plan submitted under this subsection, then the State may no longer participate in the Unified Carrier Registration Agreement or receive any portion of the revenues derived under the Agreement. The Secretary shall notify the Chairperson upon receiving notice from a State that it is withdrawing its plan or withdrawing from the Agreement.

''(4) TERMINATION OF ELIGIBILITY.—If a State fails to submit a plan to the Secretary as required by paragraph (1) or withdraws its plan under paragraph (3), the State shall be prohibited from subsequently submitting or resubmitting a plan or participating in the Agreement.

''(5) PROVISION OF PLAN TO CHAIRPERSON.—The Secretary shall provide a copy of each plan submitted under this subsection to the initial Chairperson of the Board of Directors of the Unified Carrier Registration Plan not later than 90 days of appointing the Chairperson.

''(f) CONTENTS OF UNIFIED CARRIER REGISTRATION AGREEMENT.—The Unified Carrier Registration Agreement shall provide the following:

''(1) DETERMINATION OF FEES.—

''(A) Fees charged motor carriers, motor private carriers, or freight forwarders in connection with the filing of proof of financial responsibility under the UCR Agreement shall be based on the number of commercial motor vehicles owned or operated by the motor carrier, motor private carrier, or freight forwarder. Brokers and leasing companies shall pay the same fees as the smallest bracket of motor carriers, motor private carriers, and freight forwarders.

''(B) The fees shall be determined by the Secretary based upon the recommendation of the Board under subsection (d)(7).

''(C) The Board shall develop no more than 6 and no less than 4 brackets of carriers by size of fleet.

''(D) The fee scale shall be progressive and use different vehicle ratios for each bracket of carrier fleet size.

''(E) The Board may ask the Secretary to adjust the fees within a reasonable range on an annual basis if the revenues derived from the fees—

''(i) are insufficient to provide the revenues to which the States are entitled under this section; or

''(ii) exceed those revenues.

''(2) DETERMINATION OF OWNERSHIP OR OPERATION.—Commercial motor vehicles owned or operated by a motor carrier, motor private carrier, or freight forwarder shall mean those commercial motor vehicles registered in the name of the motor carrier, motor private carrier, or freight forwarder or controlled by the motor carrier, motor private carrier, or freight forwarder under a long term lease during a vehicle registration year.

''(3) CALCULATION OF NUMBER OF COMMERCIAL MOTOR VEHICLES OWNED OR OPERATED.—The number of commercial motor vehicles owned or operated by a motor carrier, motor private carrier, or freight forwarder for purposes of paragraph (1) of this subsection shall be based either on the number of commercial motor vehicles the motor carrier, motor private carrier, or freight forwarder has indicated it operates on its most recently filed MCS–150 or the total number of such vehicles it owned or operated for the 12-month period ending on June 30 of the year immediately prior to the each registration year of the Unified Carrier Registration System. Commercial motor vehicles used exclusively in the intrastate transportation of property, waste, or recyclable material may not be included in determining the number of commercial motor vehicles owned or operated by a motor carrier or motor private carrier for purposes of paragraph (1) of this subsection.

''(4) PAYMENT OF FEES.—Motor carriers, motor private carriers, leasing companies, brokers, and freight forwarders shall pay all fees required under this section to their Base-State pursuant to the UCR Agreement.

''(g) PAYMENT OF FEES.—Revenues derived under the UCR Agreement shall be allocated to Participating States as follows:

''(1) A State that participated in the Single State Registration System in the last SSRS registration year ending before the date of enactment of the Unified Carrier Registration Act of 2005 and complies with the requirements of subsection (e) of this section is entitled to receive a portion of the UCR Agreement revenues generated under the Agreement equivalent to the revenues it received under the SSRS in the last SSRS registration year ending before the date of enactment of the Unified Carrier Registration Act of 2005, as long as the State continues to comply with the provisions of subsection (e).

''(2) A State that collected intrastate registration fees from interstate motor carriers, interstate motor private carriers, or interstate exempt carriers and complies with the requirements of subsection (e) of this section is entitled to receive an additional portion of the UCR Agreement revenues generated under the Agreement equivalent to the revenues it received from such interstate carriers in the last calendar year ending before the date of enactment of the Unified Carrier Registration Act of 2005, as long as the State continues to comply with the provisions of subsection (e).

''(3) States that comply with the requirements of subsection (e) of this section but did not participate in SSRS during the last SSRS registration year ending before the date of enactment of

the Unified Carrier Registration Act of 2005 shall be entitled to an annual allotment not to exceed $500,000 from the UCR Agreement revenues generated under the Agreement as long as the State continues to comply with the provisions of subsection (e).

''(4) The amount of UCR Agreement revenues to which a State is entitled under this section shall be calculated by the Board and approved by the Secretary.

''(h) DISTRIBUTION OF UCR AGREEMENT REVENUES.—

''(1) ELIGIBILITY.—Each State that is in compliance with the provisions of subsection (e) shall be entitled to a portion of the revenues derived from the UCR Agreement in accordance with subsection (g).

''(2) ENTITLEMENT TO REVENUES.—A State that is in compliance with the provisions of subsection (e) may retain an amount of the gross revenues it collects from motor carriers, motor private carriers, brokers, freight forwarders and leasing companies under the UCR Agreement equivalent to the portion of revenues to which the State is entitled under subsection (g). All revenues a Participating State collects in excess of the amount to which the State is so entitled shall be forwarded to the depository designated by the Board under subsection (d)(2)(D).

''(3) DISTRIBUTION OF FUNDS FROM DEPOSITORY.—The excess funds collected in the depository shall be distributed as follows:

''(A) Excess funds shall be distributed on a pro rata basis to each Participating State that did not collect revenues under the UCR Agreement equivalent to the amount such State is entitled under subsection (g), except that the sum of the gross UCR Agreement revenues collected by a Participating State and the amount distributed to it from the depository shall not exceed the amount to which the State is entitled under subsection (g).

''(B) Any excess funds held by the depository after all distributions under subparagraph (A) have been made shall be used to pay the administrative costs of the UCR Plan and the UCR Agreement.

''(C) Any excess funds held by the depository after distributions and payments under subparagraphs (A) and (B) shall be retained in the depository, and the UCR Agreement fees for motor carriers, motor private carriers, leasing companies, freight forwarders, and brokers for the next fee year shall be reduced by the Secretary accordingly.

''(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.''.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 145 is amended by inserting after the item relating to section 14504 the following:

''14504a. Unified carrier registration system plan and agreement''.

SEC. 7136. IDENTIFICATION OF VEHICLES.

(a) IN GENERAL.—Chapter 145 is amended by adding at the end the following:

''§ 14506. Identification of vehicles

''(a) RESTRICTION ON REQUIREMENTS.—No State, political subdivision of a State, interstate agency, or other political agency of 2 or more States may enact or enforce any law, rule, regulation standard, or other provision having the force and effect of law that requires a motor carrier, motor private carrier, freight forwarder, or leasing company to display any form of identification on or in a commercial motor vehicle, other than forms of identification required by the Secretary of Transportation under section 390.21 of title 49, Code of Federal Regulations.

''(b) EXCEPTION.—Notwithstanding paragraph (a), a State may continue to require display of credentials that are required—

''(1) under the International Registration Plan under section 31704 of this title;

''(2) under the International Fuel Tax Agreement under section 31705 of this title;

''(3) in connection with Federal requirements for hazardous materials transportation under section 5103 of this title; or

''(4) in connection with the Federal vehicle inspection standards under section 31136 of this title.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 145 is amended by inserting after the item relating to section 14505 the following:

''14506. Identification of vehicles''.

SEC. 7137. USE OF UCR AGREEMENT REVENUES AS MATCHING FUNDS.

Section 31103(a) is amended by inserting ''Amounts generated by the Unified Carrier Registration Agreement, under section 14504a of this title and received by a State and used for motor carrier safety purposes may be included as part of the State's share not provided by the United States.'' after ''United States Government.''.

SEC. 7138. FACILITATION OF INTERNATIONAL REGISTRATION PLANS AND INTERNATIONAL FUEL TAX AGREEMENTS.

(a) IN GENERAL.—Chapter 317 is amended by adding at the end the following:

''§ 31708. Facilitation of international registration plans and international fuel tax agreements

''The Secretary may provide assistance to any State that is participating in the International Registration Plan and International Fuel Tax Agreement, as provided in sections 31704 and 31705, respectively, and that serves as a base jurisdiction for motor carriers that are domiciled in Mexico, to assist the State with administrative costs resulting from serving as a base jurisdiction for motor carriers from Mexico.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 317 of title 49, United States Code, is amended by adding at the end the following:

''31708. Facilitation of international registration plans and international fuel tax agreements.''.

SEC. 7139. IDENTITY AUTHENTICATION STANDARDS.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1824(a)), is amended by adding at the end the following:

''§ 179. Identity authentication standards

''(a) DEFINITION OF INFORMATION-BASED IDENTITY AUTHENTICATION.—In this section, the term 'information-based identity authentication' means the determination of the identity of an individual, through the comparison of information provided by a person, with other information previously verified as accurate pertaining to that individual.

''(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) ensure accurate 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;

''(4) incorporate a comprehensive program ensuring administrative, technical, and physical safeguards to protect the privacy and security of means of identification (as defined in section 1028(d) of title 18, United States Code), against unauthorized and fraudulent access or uses;

''(5) impose limitations to ensure that any information containing means of identification transferred or shared with third-party vendors for the purposes of the information-based identity authentication described in this section is only used by the third-party vendors for the specific purposes authorized under this section;

''(6) include procedures to ensure accuracy and enable applicants for commercial driver's licenses who are denied licenses as a result of the information-based identity authentication described in this section, to appeal the determination and correct information upon which the comparison described in subsection (a) is based;

''(7) ensure that the information-based identity authentication described in this section—

''(A) can accurately assess and authenticate identities; and

''(B) will not produce a large number of false positives or unjustified adverse consequences;

''(8) create penalties for knowing use of inaccurate information as a basis for comparison in authenticating identity; and

''(9) adopt policies and procedures establishing effective oversight of the information-based identity authentication systems of State departments of motor vehicles.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter I of title 23, United States Code (as amended by section 1824(b)), is amended by adding at the end the following:

''179. Identity authentication standards.''.

SEC. 7140. OFF-DUTY TIME FOR DRIVERS OF COMMERCIAL VEHICLES.

Paragraph (2) of section 31149(a), as transferred by section 7108, is amended by adding at

the end the following: ''No additional off-duty time for a driver of such a vehicle shall be required in order for the driver to operate the vehicle.''.

CHAPTER 3—COMMERCIAL DRIVER'S LICENSES

SEC. 7151. CDL TASK FORCE.

(a) IN GENERAL.—The Secretary of Transportation shall convene a task force to study and address current impediments and foreseeable challenges to the commercial driver's license program's effectiveness and measures needed to realize the full safety potential of the commercial driver's license program. The task force shall address such issues as State enforcement practices, operational procedures to detect and deter fraud, needed improvements for seamless information sharing between States, effective methods for accurately sharing electronic data between States, adequate proof of citizenship, updated technology, and timely notification from judicial bodies concerning traffic and criminal convictions of commercial driver's license holders.

(b) MEMBERSHIP.—Members of the task force should include State motor vehicle administrators, organizations representing government agencies or officials, members of the Judicial Conference, representatives of the trucking industry, representatives of labor organizations, safety advocates, and other significant stakeholders.

(c) REPORT.—Within 2 years after the date of enactment of this Act, the Secretary, on behalf of the task force, shall complete a report of the task force's findings and recommendations for legislative, regulatory, and enforcement changes to improve the commercial driver's license program. The Secretary shall promptly transmit the report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(d) FUNDING.—From the funds authorized by section 7103(b)(3) of this subtitle, $200,000 shall be made available for each of fiscal years 2006 and 2007 to carry out this section.

SEC. 7152. CDL LEARNER'S PERMIT PROGRAM.

Chapter 313 is amended—

(1) by striking ''time.'' in section 31302 and inserting ''license, and may have only 1 learner's permit at any time.'';

(2) by inserting ''and learners' permits'' after ''licenses'' the first place it appears in section 31308;

(3) by striking ''licenses.'' in section 31308 and inserting ''licenses and permits.'';

(4) by redesignating paragraphs (2) and (3) of section 31308 as paragraphs (3) and (4), respectively, and inserting after paragraph (1) the following:

''(2) before a commercial driver's license learner's permit can be issued to an individual, the individual must pass a written test on the operation of a commercial motor vehicle that complies with the minimum standards prescribed by the Secretary under section 31305(a) of this title;'';

(5) by inserting ''or learner's permit'' after ''license'' each place it appears in paragraphs (3) and (4), as redesignated, of section 31308; and

(6) by inserting ''or learner's permit'' after ''license'' each place it appears in section 31309(b).

SEC. 7153. GRANTS TO STATES FOR COMMERCIAL DRIVER'S LICENSE IMPROVEMENTS.

(a) IN GENERAL.—Chapter 313 is amended by adding at the end the following:

''§ 31318. Grants for commercial driver's license program improvements

''(a) GENERAL AUTHORITY.—From the funds authorized by section 7103(b)(3) of the Motor Carrier Safety Reauthorization Act of 2005, the Secretary may make a grant to a State, except as otherwise provided in subsection (e), in a fiscal year to improve its implementation of the commercial driver's license program, providing the State is making a good faith effort toward substantial compliance with the requirements of section 31311 and this section. The Secretary shall establish criteria for the distribution of grants and notify the States annually of such criteria.

''(b) CONDITIONS.—Except as otherwise provided in subsection (e), a State may use a grant under this section only for expenses related to its commercial driver's license program, including, but not limited to, computer hardware and software, publications, testing, personnel, training, and quality control. The grant may not be used to rent, lease, or buy land or buildings. The Secretary shall give priority to grants that will be used to achieve compliance with the requirements of the Motor Carrier Safety Improvement Act of 1999. The Secretary may allocate the funds appropriated for such grants in a fiscal year among the eligible States whose applications for grants have been approved, under criteria established by the Secretary.

''(c) MAINTENANCE OF EXPENDITURES.—Except as otherwise provided in subsection (e), the Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of United States Government amounts, for the operation of the commercial driver's license program will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years before October 1, 2005.

''(d) GOVERNMENT SHARE.—Except as otherwise provided in subsection (e), the Secretary shall reimburse a State, from a grant made under this section, an amount that is not more than 80 percent of the costs incurred by the State in a fiscal year in implementing the commercial driver's license improvements described in subsection (b). In determining those costs, the Secretary shall include in-kind contributions by the State.

''(e) HIGH-PRIORITY ACTIVITIES.—

''(1) The Secretary may make a grant to a State agency, local government, or organization representing government agencies or officials for the full cost of research, development, demonstration projects, public education, or other special activities and projects relating to commercial driver licensing and motor vehicle safety that are of benefit to all jurisdictions or designed to address national safety concerns and circumstances.

''(2) The Secretary may designate up to 10 percent of the amounts made available under section 7103(b)(3) of the Motor Carrier Safety Reauthorization Act of 2005 in a fiscal year for high-priority activities under subsection (e)(1).

''(f) EMERGING ISSUES.—The Secretary may designate up to 10 percent of the amounts made available under section 7103(b)(3) of the Motor Carrier Safety Reauthorization Act of 2005 in a fiscal year for allocation to a State agency, local government, or other person at the discretion of the Secretary to address emerging issues relating to commercial driver's license improvements.

''(g) APPORTIONMENT.—Except as otherwise provided in subsections (e) and (f), all amounts available in a fiscal year to carry out this section shall be apportioned to States according to a formula prescribed by the Secretary.

''(h) DEDUCTION FOR ADMINISTRATIVE EXPENSES.—On October 1 of each fiscal year or as soon after that date as practicable, the Secretary may deduct, from amounts made available under section 7103(b)(3) of the Motor Carrier Safety Reauthorization Act of 2005 for that fiscal year, up to 0.75 percent of those amounts for administrative expenses incurred in carrying out this section in that fiscal year.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 313 is amended by inserting the following after the item relating to section 31317:

''31318. Grants for commercial driver's license program improvements.''.

SEC. 7154. MODERNIZATION OF CDL INFORMATION SYSTEM.

(a) INFORMATION SYSTEM MODERNIZATION ACCOUNT.—Section 31309 of title 49, United States Code, is amended—

(1) by striking ''The Secretary'' in the last sentence and inserting ''Except as provided in subsection (e), the Secretary''; and

(2) by adding at the end the following:

''(e) INFORMATION SYSTEM MODERNIZATION ACCOUNT.—

''(1) ESTABLISHMENT.—The Secretary of Transportation shall establish an account to be known as the Information System Modernization Account within the Department of Transportation.

''(2) CREDITS.—Fees collected for any fiscal year beginning after fiscal year 2006 under subsection (d) by the Secretary of Transportation, or an organization that represents the interests of the States, in excess of the costs of operating the information system in that fiscal year shall be and credited to the Information System Modernization Account.

''(3) USE OF FUNDS.—Amounts credited to the Information System Modernization Account shall be available exclusively for the purpose of modernizing the information system under subsection (f). At the end of fiscal year 2008, the Inspector General of the Department of Transportation shall complete an assessment of whether the fees collected in excess of the costs of operating the information system are property credited to the Information System Modernization Account.''.

(b) MODERNIZATION PLAN.—Section 31309 of title 49, United States Code, is further amended by adding at the end the following:

''(f) MODERNIZATION PLAN.—

''(1) IN GENERAL.—The Secretary shall develop a comprehensive plan for modernization of the information system that—

''(A) complies with applicable Federal information technology security standards;

''(B) provides for the electronic exchange of all information including the posting of convictions;

''(C) contains self auditing features to ensure that data is being posted correctly and consistently by the States;

''(D) integrates the commercial driver's license and the medical certificate; and

''(E) provides a schedule for modernization of the system.

''(2) COMPETITIVE CONTRACTING.—The Secretary may use non-Federal entities selected by an open, merit-based, competitive process to develop and implement the modernization plan.

''(3) STATE PARTICIPATION.—

''(A) DEADLINE.—The Secretary shall establish a date by which each State must convert to the new information system.

''(B) FUNDING.—A State may use funds made available under section 31318 of this title to develop or modify its system to be compatible with the modernized information system developed by the Secretary under this subsection.''.

(c) BASELINE AUDIT.—Within 1 year after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Inspector General of the Department of Transportation, shall perform a baseline audit of the information system maintained under section 31309 of title 49, United States Code. The audit shall include—

(1) an assessment of the validity of data in the information system on a State-by-State basis;

(2) an assessment of the extent to which convictions are validly posted on a driver's record;

(3) recommendations to the Secretary of Transportation on how to update the baseline audit annually to ensure that any shortcomings in the information system are addressed, and a methodology for conducting the update; and

(4) identification, on a State-by-State basis, of any actions that the Inspector General finds necessary to improve the integrity of data collected by the system and to ensure the proper posting of convictions.

SEC. 7155. SCHOOL BUS ENDORSEMENT KNOWLEDGE TEST REQUIREMENT.

The Secretary shall recognize any driver who passes a test approved by the Federal Motor Carrier Safety Administration as meeting the knowledge test requirement for a school bus endorsement under section 383.123 of title 49, Code of Federal Regulations.

Subtitle B—Highway and Vehicular Safety

SEC. 7201. SHORT TITLE.

This subtitle may be cited as the ''Highway and Vehicular Safety Reauthorization Act of 2005''.

CHAPTER 1—HIGHWAY SAFETY GRANT PROGRAM

SEC. 7211. SHORT TITLE.

This chapter may be cited as the ''Highway Safety Grant Program Reauthorization Act of 2005''.

SEC. 7212. AUTHORIZATION OF APPROPRIATIONS.

(a) AMOUNTS FOR FISCAL YEARS 2006 THROUGH 2009.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to the Secretary of Transportation for the National Highway Traffic Safety Administration the following:

(1) To carry out the Highway Safety Programs under section 402 of title 23, United States Code, $209,217,985 in fiscal year 2006, $210,224,035 in fiscal year 2007, $221,906,185 in fiscal year 2008, and $226,969,685 in fiscal year 2009.

(2) To carry out the Highway Safety Research and Outreach Programs under section 403 of title 23, United States Code, $141,852,000 in fiscal year 2006, $142,323,000 in fiscal year 2007, $141,560,000 in fiscal year 2008, and $141,952,000 in fiscal year 2009.

(3) To carry out the Occupant Protection Programs under section 405 of title 23, United States Code, $149,667,110 in fiscal year 2006, $149,787,000 in fiscal year 2007, $149,509,185 in fiscal year 2008, and $149,006,000 in fiscal year 2009.

(4) To carry out the Demonstration Programs related to older drivers, law enforcement, and motorcycle training under section 406 of title 23, United States Code, $7,400,000 in each of fiscal years 2006 through 2009.

(5) To carry out the Emergency Medical Services Program under section 407A of title 23, United States Code, $5,000,000 in each of fiscal years 2006 through 2009.

(6) To carry out the Impaired Driving Program under section 410 of title 23, United States Code, $115,721,000 in fiscal year 2006, $129,065,000 in fiscal year 2007, $134,819,000 in fiscal year 2008, and $147,615,000 in fiscal year 2009.

(7) To carry out the State Traffic Safety Information System Improvements under section 412 of title 23, United States Code, $45,000,000 in each of fiscal years 2006 through 2009.

(8) To carry out chapter 303 of title 49, United States Code, $4,000,000 for each of fiscal years 2006 through 2009, to be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code.

(9) To pay administrative and related operating expenses under section 402, section 405, section 406, section 407A, section 410, section 412, section 413, and section 414 of title 23, United States Code, and section 223 of the Highway Safety Grant Program Reauthorization Act of 2005, $17,868,000 for fiscal year 2006, $18,150,000 for fiscal year 2007, $18,837,000 for fiscal year 2008, and $19,350,000 for fiscal year 2009.

(b) PROHIBITION ON OTHER USES.—Except as otherwise provided in this chapter, the amounts allocated from the Highway Trust Fund for programs provided for in chapter 4 of title 23, United States Code, shall only be used for such programs and may not be used by States or local governments for construction purposes.

(c) PROPORTIONAL INCREASES.—For each fiscal year from 2006 through 2009, if revenue to the Highway Trust Fund increases above the amounts for each such fiscal year assumed in the fiscal year 2006 joint budget resolution, then the amounts made available in such year for the programs in sections 402, 403, 405, and 410 shall increase by the same percentage. If revenue to the Highway Trust Fund for a fiscal year is lower than the amounts for such fiscal year assumed in the fiscal year 2006 joint budget resolution, then the amounts authorized to be made available in such year for those programs shall not decrease.

SEC. 7213. HIGHWAY SAFETY PROGRAMS.

(a) PROGRAMS TO BE INCLUDED.—

(1) MOTOR VEHICLE AIRBAGS PUBLIC AWARENESS.—Section 402(a)(2) is amended by striking ''vehicles and to increase public awareness of the benefit of motor vehicles equipped with airbags'' and inserting ''vehicles,''.

(2) AGGRESSIVE DRIVING.—Section 402(a) is further amended—

(A) by redesignating clause (6) as clause (8);

(B) by inserting after ''involving school buses,'' at the end of clause (5) the following: ''(6) to reduce aggressive driving and to educate drivers about defensive driving, (7) to reduce accidents resulting from fatigued and distracted drivers, including distractions arising from the use of electronic devices in vehicles,''; and

(C) by inserting ''aggressive driving, distracted driving,'' after ''school bus accidents,''.

(3) ADMINISTRATION OF STATE PROGRAMS.—Section 402(b)(1) is amended—

(A) by striking ''and'' after the semicolon in subparagraph (C);

(B) by striking ''State.'' in subparagraph (D) and inserting ''State; and''; and

(C) by adding at the end the following:

''(E) provide satisfactory assurances that the State will implement activities in support of national highway safety priorities and performance goals, including—

''(i) mobilizations, including high visibility enforcement and paid media, in support of efforts to improve occupant protection and reduce impaired driving;

''(ii) sustained enforcement of statutes addressing impaired driving, occupant protection, and driving in excess of posted speed limits;

''(iii) an annual statewide safety belt use survey in accordance with criteria established by the Secretary for the measurement of State safety belt use rates to ensure that the measurements are accurate and representative;

''(iv) development of statewide data systems to provide timely and effective data analysis to support allocation of highway safety resources;

''(v) effective efforts to adopt Model Minimum Uniform Crash Criteria and National Emergency Medical System Information System data elements; and

''(vi) safety priority programs identified by the Secretary based on national data trends unless a State can demonstrate with data that any such safety priority program is not a matter of significant concern in its jurisdiction.

(b) APPORTIONMENT.—

(1) TRIBAL GOVERNMENT PROGRAMS.—Section 402(c) is amended—

(A) by striking the second sentence; and

(B) by striking ''three-fourths of 1 percent'' and inserting ''2 percent''.

(c) LAW ENFORCEMENT CHASE TRAINING.—Section 402 is amended by adding at the end the following:

''(l) LIMITATION RELATING TO LAW ENFORCEMENT VEHICULAR PURSUIT TRAINING.—No State may receive any funds available for fiscal years after fiscal year 2007 for programs under this chapter until the State submits to the Secretary a written statement that the State actively encourages all relevant law enforcement agencies in that State to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police that are in effect on the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005, or as revised and in effect after that date as determined by the Secretary.

''(m) CONSOLIDATION OF GRANT APPLICATIONS.—The Secretary shall establish an approval process by which a State may apply for all grants included under this chapter through a single application with a single annual deadline. The Bureau of Indian Affairs shall establish a similarly simplified process for applications from Indian tribes.''.

SEC. 7214. HIGHWAY SAFETY RESEARCH AND OUTREACH PROGRAMS.

(a) REVISED AUTHORITY AND REQUIREMENTS.—Section 403 is amended to read as follows:

''§403. Highway safety research and development

''(a) AUTHORITY OF THE SECRETARY.—The Secretary is authorized to use funds appropriated to carry out this section to—

''(1) conduct research on all phases of highway safety and traffic conditions, including accident causation, highway or driver characteristics, communications, and emergency care;

''(2) conduct ongoing research into driver behavior and its effect on traffic safety;

''(3) conduct research on, launch initiatives to counter, and conduct demonstration projects on fatigued driving by drivers of motor vehicles and distracted driving in such vehicles, including the effect that the use of electronic devices and other factors deemed relevant by the Secretary have on driving;

''(4) conduct training or education programs in cooperation with other Federal departments and agencies, States, private sector persons, highway safety personnel, and law enforcement personnel;

''(5) conduct research on, and evaluate the effectiveness of, traffic safety countermeasures, including seat belts and impaired driving initiatives;

''(6) conduct research on, evaluate, and develop best practices related to driver education programs, including driver education curricula, instructor training and certification, program administration and delivery mechanisms, and make recommendations for harmonizing driver education and multistage graduated licensing systems;

''(7) conduct research, training, and education programs related to older drivers; and

''(8) conduct demonstration projects.

''(b) NATIONWIDE TRAFFIC SAFETY CAMPAIGNS.—

''(1) REQUIREMENT FOR CAMPAIGNS.—The Administrator of the National Highway Traffic Safety Administration shall establish and administer a program under which at least 2 high-visibility traffic safety law enforcement campaigns will be carried out for the purposes specified in paragraph (2) in each of years 2006 through 2009.

''(2) PURPOSE.—The purpose of each law enforcement campaign is to achieve either or both of the following objectives:

''(A) Reduce alcohol-impaired or drug-impaired operation of motor vehicles.

''(B) Increase use of seat belts by occupants of motor vehicles.

''(3) ADVERTISING.—The Administrator may use, or authorize the use of, funds available under this section to pay for the development, production, and use of broadcast and print media advertising in carrying out traffic safety law enforcement campaigns under this subsection. Consideration shall be given to advertising directed at non-English speaking populations, including those who listen, read, or watch nontraditional media.

''(4) COORDINATION WITH STATES.—The Administrator shall coordinate with the States in carrying out the traffic safety law enforcement campaigns under this subsection, including advertising funded under paragraph (3), with a view to—

''(A) relying on States to provide the law enforcement resources for the campaigns out of

funding available under this section and sections 402, 405, and 410 of this title; and

''(B) providing out of National Highway Traffic Safety Administration resources most of the means necessary for national advertising and education efforts associated with the law enforcement campaigns.

''(5) ANNUAL EVALUATION.—The Secretary shall conduct an annual evaluation of the effectiveness of such initiatives.

''(6) FUNDING.—The Secretary shall use $24,000,000 in each of fiscal years 2006 through 2009 for advertising and educational initiatives to be carried out nationwide in support of the campaigns under this section.

''(c) INTERNATIONAL COOPERATION.—

''(1) AUTHORITY.—The Administrator of the National Highway Traffic Safety Administration may participate and cooperate in international activities to enhance highway safety.

''(2) AMOUNT FOR PROGRAM.—Of the amount available for a fiscal year to carry out this section, $200,000 may be used for activities authorized under paragraph (1).''.

(b) SPECIFIC RESEARCH PROGRAMS.—

(1) REQUIRED PROGRAMS.—The Secretary shall conduct research under section 403 of title 23, United States Code, on the following:

(A) EFFECTS OF USE OF CONTROLLED SUBSTANCES.—A study on the effects of the use of controlled substances on driver behavior to determine—

(i) methodologies for measuring driver impairment resulting from use of the most common controlled substances (including the use of such substances in combination with alcohol); and

(ii) effective and efficient methods for training law enforcement personnel to detect or measure the level of impairment of a driver who is under the influence of a controlled substance by the use of technology or otherwise.

The Secretary may develop model State legislation based on research conducted under this subparagraph.

(B) ON-SCENE MOTOR VEHICLE COLLISION CAUSATION.—A nationally representative study to collect on-scene motor vehicle collision data, and to determine crash causation, for which the Secretary shall enter into a contract with the National Academy of Sciences to conduct a review of the research, design, methodology, and implementation of the study.

(C) TOLL FACILITIES WORKPLACE SAFETY.—A study on the safety of highway toll collection facilities, including toll booths, conducted in cooperation with State and local highway safety organizations to determine the safety of highway toll collection facilities for the toll collectors who work in and around such facilities and to develop best practices that would be of benefit to State and local highway safety organizations. The study shall consider—

(i) any problems resulting from design or construction of facilities that contribute to the occurrence of vehicle collisions with the facilities;

(ii) the safety of crosswalks used by toll collectors in transit to and from toll booths;

(iii) the extent of the enforcement of speed limits at and in the vicinity of toll facilities;

(iv) the use of warning devices, such as vibration and rumble strips, to alert drivers approaching toll facilities;

(v) the use of cameras to record traffic violations in the vicinity of toll facilities;

(vi) the use of traffic control arms in the vicinity of toll facilities;

(vii) law enforcement practices and jurisdictional issues that affect safety at and in the vicinity of toll facilities; and

(viii) data (which shall be collected in conducting the research) regarding the incidence of accidents and injuries at and around toll booth facilities.

(2) TIME FOR COMPLETION OF STUDIES.—The studies conducted in subparagraphs (A), (B), and (C) of paragraph (1) may be conducted in concert with other Federal departments and agencies with relevant expertise. The Secretary shall submit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the progress of each study conducted under this subsection.

(3) REPORTS.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit a report on the studies to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(4) RESEARCH ON DISTRACTED, INATTENTIVE, AND FATIGUED DRIVERS.—In conducting research under section 403(a)(3) of title 23, United States Code, the Secretary shall carry out not less than 2 demonstration projects to evaluate new and innovative means of combating traffic system problems caused by distracted, inattentive, or fatigued drivers. The demonstration projects shall be in addition to any other research carried out under this subsection.

(5) PEDESTRIAN SAFETY.—

(A) IN GENERAL.—The Secretary of Transportation shall—

(i) produce a comprehensive report on pedestrian safety that builds on the current level of knowledge of pedestrian safety countermeasures by identifying the most effective advanced technology and intelligent transportation systems, such as automated pedestrian detection and warning systems (infrastructure-based and vehicle-based), road design, and vehicle structural design that could potentially mitigate the crash forces on pedestrians in the event of a crash; and

(ii) include in the report recommendations on how new technological developments could be incorporated into educational and enforcement efforts and how they could be integrated into national design guidelines developed by the American Association of State Highway and Transportation Officials.

(B) DUE DATE.—The Secretary shall complete the report not less than 2 years after the date of enactment of this Act and transmit a copy of the report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(6) STUDY ON REFUSAL OF INTOXICATION TESTING.—

(A) REQUIREMENT FOR STUDY.—In addition to studies under section 403 of title 23, United States Code, the Secretary of Transportation shall carry out a study of the frequency with which persons arrested for the offense of operating a motor vehicle under the influence of alcohol and persons arrested for the offense of operating a motor vehicle while intoxicated refuse to take a test to determine blood alcohol concentration levels and the effect such refusals have on the ability of States to prosecute such persons for those offenses.

(B) CONSULTATION.—In carrying out the study under this paragraph, the Secretary shall consult with the Governors of the States, the States' Attorneys General, and the United States Sentencing Commission.

(C) REPORT.—

(i) REQUIREMENT FOR REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report on the results of the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(ii) CONTENT.—The report shall include any recommendation for legislation, including any recommended model State legislation, and any other recommendations that the Secretary considers appropriate for implementing a program designed to decrease the occurrence refusals by arrested persons to submit to a test to determine blood alcohol concentration levels.

SEC. 7215. NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE TECHNICAL CORRECTION.

Section 404(d) is amended by striking ''Commerce'' and inserting ''Transportation''.

SEC. 7216. OCCUPANT PROTECTION GRANTS.

(a) IN GENERAL.—Section 405 is amended to read as follows:

''§ 405. Safety belt performance grants

''(a) IN GENERAL.—The Secretary of Transportation shall make grants to States in accordance with the provisions of this section to encourage the enactment and enforcement of laws requiring the use of safety belts in passenger motor vehicles.

''(b) GRANTS FOR ENACTING PRIMARY SAFETY BELT USE LAWS.—

''(1) IN GENERAL.—The Secretary shall make a single grant to each State that either—

''(A) enacts for the first time after December 31, 2002, and has in effect and is enforcing a conforming primary safety belt use law for all passenger motor vehicles; or

''(B) in the case of a State that does not have such a primary safety belt use law, has a State safety belt use rate for each of the 2 calendar years immediately preceding the fiscal year of a grant of 90 percent or more, as measured under criteria determined by the Secretary.

''(2) AMOUNT.—The amount of a grant available to a State in fiscal year 2006 or in a subsequent fiscal year under paragraph (1) of this subsection is equal to 500 percent of the amount apportioned to the State for fiscal year 2003 under section 402(c) of this title.

''(3) JULY 1 CUT-OFF.—For the purpose of determining the eligibility of a State for a grant under paragraph (1)(A), a primary safety belt use law enacted after June 30th of any year shall—

''(A) not be considered to have been enacted in the Federal fiscal year in which that June 30th falls; but

''(B) be considered as if it were enacted after the beginning of the next Federal fiscal year.

''(4) SHORTFALL.—If the total amount of grants provided for by this subsection for a fiscal year exceeds the amount of funds available for such grants for that fiscal year, then the Secretary shall make grants under this subsection to States in the order in which—

''(A) the primary safety belt use law came into effect; or

''(B) the State's safety belt use rate was 90 percent or more for 2 consecutive calendar years (as measured by criteria determined by the Secretary),

whichever first occurs.

''(5) CATCH-UP GRANTS.—The Secretary shall make a grant to any State eligible for a grant under this subsection that did not receive a grant for a fiscal year because of the application of paragraph (4), in the next fiscal year if the State's primary safety belt use law remains in effect or its safety belt use rate is 90 percent or more for the 2 consecutive calendar years preceding such next fiscal year (subject to paragraph (4)).

''(c) GRANTS FOR PRE-2003 LAWS.—To the extent that amounts made available for any of fiscal years 2006 through 2009 exceed the total amounts to be awarded under subsection (b) for the fiscal year, including amounts to be awarded for catch-up grants under subsection (b)(5), the Secretary shall make a single grant to each State that enacted, has in effect, and is enforcing a primary safety belt use law for all passenger motor vehicles that was in effect before January 1, 2003. The amount of a grant available to a State under this subsection shall be equal to 250 percent of the amount of funds apportioned to the State under section 402(c) of this title for fiscal year 2003. The Secretary may award the grant in up to 4 installments over a period of 4 fiscal years beginning with fiscal year 2006.

''(d) ALLOCATION OF UNUSED GRANT FUNDS.—The Secretary shall make additional grants

under this section of any amounts available for grants under this section that, on July 1, 2009, are neither obligated nor expended. The additional grants made under this subsection shall be allocated among all States that, as of that date, have enacted, have in effect, and are enforcing primary safety belt laws for all passenger motor vehicles. The allocations shall be made in accordance with the formula for apportioning funds among the States under section 402(c) of this title.

''(e) USE OF GRANT FUNDS.—

''(1) IN GENERAL.—Subject to paragraph (2), a State may use a grant under this section for any safety purpose under this title or for any project that corrects or improves a hazardous roadway location or feature or proactively addresses highway safety problems, including—

''(A) intersection improvements;

''(B) pavement and shoulder widening;

''(C) installation of rumble strips and other warning devices;

''(D) improving skid resistance;

''(E) improvements for pedestrian or bicyclist safety;

''(F) railway-highway crossing safety;

''(G) traffic calming;

''(H) the elimination of roadside obstacles;

''(I) improving highway signage and pavement marking;

''(J) installing priority control systems for emergency vehicles at signalized intersections;

''(K) installing traffic control or warning devices at locations with high accident potential;

''(L) safety-conscious planning; and

''(M) improving crash data collection and analysis.

''(2) SAFETY ACTIVITY REQUIREMENT.—Notwithstanding paragraph (1), the Secretary shall ensure that at least $1,000,000 of amounts received by States under this section are obligated or expended for safety activities under this chapter.

''(3) SUPPORT ACTIVITY.—The Secretary or his designee may engage in activities with States and State legislators to consider proposals related to safety belt use laws.

''(f) CARRY-FORWARD OF EXCESS FUNDS.—If the amount available for grants under this section for any fiscal year exceeds the sum of the grants made under this section for that fiscal year, the excess amount and obligational authority shall be carried forward and made available for grants under this section in the succeeding fiscal year.

''(g) FEDERAL SHARE.—The Federal share payable for grants under this subsection is 100 percent.

''(h) PASSENGER MOTOR VEHICLE DEFINED.—In this section, the term 'passenger motor vehicle' means—

''(1) a passenger car,

''(2) a pickup truck,

''(3) a van, minivan, or sport utility vehicle,

with a gross vehicle weight rating of less than 10,000 pounds.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 4 is amended by striking the item relating to section 405 and inserting the following:

''405. Safety belt performance grants''.

SEC. 7217. OLDER DRIVER SAFETY; LAW ENFORCEMENT TRAINING.

(a) IN GENERAL.—Section 406 is amended to read as follows:

''§ 406. Older driver safety; law enforcement training

''(a) IMPROVING OLDER DRIVER SAFETY.—

''(1) IN GENERAL.—Of the funds made available under this section, the Secretary shall allocate $2,000,000 in each of fiscal years 2006 through 2009 to conduct a comprehensive research and demonstration program to improve traffic safety pertaining to older drivers. The program shall—

''(A) provide information and guidelines to assist physicians and other related medical personnel, families, licensing agencies, enforcement officers, and various public and transit agencies in enhancing the safety of older drivers;

''(B) improve the scientific basis of medical standards and screenings strategies used in the licensing of all drivers in a non-discriminatory manner;

''(C) conduct field tests to assess the safety benefits and mobility impacts of different driver licensing strategies and driver assessment and rehabilitation methods;

''(D) assess the value and improve the safety potential of driver retraining courses of particular benefit to older drivers; and

''(E) conduct other activities to accomplish the objectives of this section.

''(2) FORMULATION OF PLAN.—After consultation with affected parties, the Secretary shall formulate an older driver traffic safety plan to guide the design and implementation of this program. The plan shall be submitted to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation within 1 year after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005.

''(b) LAW ENFORCEMENT TRAINING.—

''(1) REQUIREMENT FOR PROGRAM.—The Administrator of the National Highway Traffic Safety Administration shall carry out a program to train law enforcement personnel of each State and political subdivision thereof in police chase techniques that are consistent with the police chase guidelines issued by the International Association of Chiefs of Police.

''(2) AMOUNT FOR PROGRAM.—Of the amount available for a fiscal year to carry out this section, $200,000 shall be available for carrying out this subsection.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 4 is amended by striking the item relating to section 406 and inserting the following:

''406. Older driver safety; law enforcement training''.

SEC. 7218. EMERGENCY MEDICAL SERVICES.

(a) FEDERAL COORDINATION AND ENHANCED SUPPORT OF EMERGENCY MEDICAL SERVICES.—Chapter 4 is amended by inserting after section 407 the following:

''§ 407A. Federal coordination and enhanced support of emergency medical services

''(a) FEDERAL INTERAGENCY COMMITTEE ON EMERGENCY MEDICAL SERVICES.—

''(1) ESTABLISHMENT.—The Secretary of Transportation and the Secretary of Homeland Security, through the Under Secretary for Emergency Preparedness and Response, shall establish a Federal Interagency Committee on Emergency Medical Services. In establishing the Interagency Committee, the Secretary of Transportation and the Secretary of Homeland Security through the Under Secretary for Emergency Preparedness and Response shall consult with the Secretary of Health and Human Services.

''(2) MEMBERSHIP.—The Interagency Committee shall consist of the following officials, or their designees:

''(A) The Administrator, National Highway Traffic Safety Administration.

''(B) The Director, Preparedness Division, Emergency Preparedness and Response Directorate, Department of Homeland Security.

''(C) The Administrator, Health Resources and Services Administration, Department of Health and Human Services.

''(D) The Director, Centers for Disease Control and Prevention, Department of Health and Human Services.

''(E) The Administrator, United States Fire Administration, Emergency Preparedness and Response Directorate, Department of Homeland Security.

''(F) The Director, Center for Medicare and Medicaid Services, Department of Health and Human Services.

''(G) The Undersecretary of Defense for Personnel and Readiness.

''(H) The Director, Indian Health Service, Department of Health and Human Services.

''(I) The Chief, Wireless Telecom Bureau, Federal Communications Commission.

''(J) A representative of any other Federal agency identified by the Secretary of Transportation or the Secretary of Homeland Security through the Under Secretary for Emergency Preparedness and Response, in consultation with the Secretary of Health and Human Services, as having a significant role in relation to the purposes of the Interagency Committee.

''(K) A State Emergency Medical Services Director.

''(3) PURPOSES.—The purposes of the Interagency Committee are as follows:

''(A) To ensure coordination among the Federal agencies involved with State, local, tribal, or regional emergency medical services and 9–1–1 systems.

''(B) To identify State, local, tribal, or regional emergency medical services and 9–1–1 needs.

''(C) To recommend new or expanded programs, including grant programs, for improving State, local, tribal, or regional emergency medical services and implementing improved emergency medical services communications technologies, including wireless 9–1–1.

''(D) To identify ways to streamline the process through which Federal agencies support State, local, tribal or regional emergency medical services.

''(E) To assist State, local, tribal or regional emergency medical services in setting priorities based on identified needs.

''(F) To advise, consult, and make recommendations on matters relating to the implementation of the coordinated State emergency medical services programs.

''(4) ADMINISTRATION.—The Administrator of the National Highway Traffic Safety Administration, in cooperation with the Director, Preparedness Division, Emergency Preparedness and Response Directorate, Department of Homeland Security, shall provide administrative support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

''(5) LEADERSHIP.—The members of the Interagency Committee shall select a chairperson of the Committee annually.

''(6) MEETINGS.—The Interagency Committee shall meet as frequently as is determined necessary by the chairperson of the Committee.

''(7) ANNUAL REPORTS.—The Interagency Committee shall prepare an annual report to Congress on the Committee's activities, actions, and recommendations.

''(b) COORDINATED NATIONWIDE EMERGENCY MEDICAL SERVICES PROGRAM.—

''(1) PROGRAM REQUIREMENT.—The Secretary of Transportation, acting through the Administrator of the National Highway Traffic Safety Administration, shall coordinate with officials of other Federal departments and agencies, and may assist State and local governments and emergency medical services organizations (whether or not a firefighter organization), private industry, and other interested parties, to ensure the development and implementation of a coordinated nationwide emergency medical services program that is designed to strengthen transportation safety and public health and to implement improved emergency medical services communication systems, including 9–1–1.

''(2) COORDINATED STATE EMERGENCY MEDICAL SERVICES PROGRAM.—Each State shall establish a program, to be approved by the Secretary, to coordinate the emergency medical services and resources deployed throughout the State, so as to ensure—

''(A) improved emergency medical services communication systems, including 9–1–1;

''(B) utilization of established best practices in system design and operations;

''(C) implementation of quality assurance programs; and

''(D) incorporation of data collection and analysis programs that facilitate system development and data linkages with other systems and programs useful to emergency medical services.

''(3) ADMINISTRATION OF STATE PROGRAMS.—The Secretary may not approve a coordinated State emergency medical services program under this subsection unless the program—

''(A) provides that the Governor of the State is responsible for its administration through a State office of emergency medical services that has adequate powers and is suitably equipped and organized to carry out such program and coordinates such program with the highway safety office of the State; and

''(B) authorizes political subdivisions of the State to participate in and receive funds under such program, consistent with a goal of achieving statewide coordination of emergency medical services and 9–1–1 activities.

''(4) FUNDING.—

''(A) USE OF FUNDS.—Funds authorized to be appropriated to carry out this subsection shall be used to aid the States in conducting coordinated emergency medical services and 9–1–1 programs as described in paragraph (2).

''(B) APPORTIONMENT.—

''(i) APPORTIONMENT FORMULA.—The funds shall be apportioned as follows: 75 percent in the ratio that the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and 25 percent in the ratio that the public road mileage in each State bears to the total public road mileage in all States. For the purpose of this subparagraph, a 'public road' means any road under the jurisdiction of and maintained by a public authority and open to public travel. Public road mileage as used in this subsection shall be determined as of the end of the calendar year prior to the year in which the funds are apportioned and shall be certified by the Governor of the State and subject to approval by the Secretary.

''(ii) MINIMUM APPORTIONMENT.—The annual apportionment to each State shall not be less than 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. 7219. REPEAL OF AUTHORITY FOR ALCOHOL TRAFFIC SAFETY PROGRAMS.

(a) REPEAL.—Section 408 is repealed.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 4 is amended by striking the item relating to section 408.

SEC. 7220. IMPAIRED DRIVING PROGRAM.

(a) MAINTENANCE OF EFFORT.—Section 410(a)(2) is amended by striking ''the Transportation Equity Act for the 21st Century'' and inserting ''the Highway Safety Grant Program Reauthorization Act of 2005''.

(b) REVISED GRANT AUTHORITY.—Section 410 is amended—

(1) by striking paragraph (3) of subsection (a) and redesignating paragraph (4) as paragraph (3); and

(2) by striking subsections (b) through (f) and inserting the following:

''(b) PROGRAM-RELATED ELIGIBILITY REQUIREMENTS.—To be eligible for a grant under this section, a State shall—

''(1) for fiscal year 2006 or 2007, carry out 4 of the programs required under subsection (c);

''(2) for fiscal year 2008 or 2009, carry out 5 of the programs required under subsection (c); and

''(3) for any such fiscal year—

''(A) comply with the additional requirements set forth in subsection (d) with respect to such programs and activities; and

''(B) comply with any additional requirements of the Secretary.

''(c) STATE PROGRAMS AND ACTIVITIES.—To qualify for a grant under this subsection, a State shall select programs from among the following:

''(1) CHECK-POINT, SATURATION PATROL PROGRAM.—

''(A) A State program to conduct a series of high-visibility, Statewide law enforcement campaigns in which law enforcement personnel monitor for impaired driving, either through use of sobriety check-points or saturation patrols, on a nondiscriminatory, lawful basis for the purpose of determining whether the operators of the motor vehicles are driving while under the influence of alcohol or controlled substances that meets the requirements of subparagraphs (B) and (C).

''(B) A program meets the requirements of this subparagraph only if a State organizes the campaigns in cooperation with related periodic national campaigns organized by the National Highway Traffic Safety Administration, but this subparagraph does not preclude a State from initiating sustained high-visibility, Statewide law enforcement campaigns independently of the cooperative efforts.

''(C) A program meets the requirements of this subparagraph only if, for each fiscal year, a State demonstrates to the Secretary that the State and the political subdivisions of the State that receive funds under this section have increased, in the aggregate, the total number of impaired driving law enforcement activities at high incident locations, as described in subparagraph (A) (or any other similar activity approved by the Secretary), initiated in such State during the preceding fiscal year by a factor that the Secretary determines meaningful for the State over the number of such activities initiated in such State during the preceding fiscal year, which shall not be less than 5 percent.

''(2) PROSECUTION AND ADJUDICATION PROGRAM.—A State prosecution and adjudication program under which—

''(A) judges and prosecutors are actively encouraged to prosecute and adjudicate cases of defendants who repeatedly commit impaired driving offenses by reducing the use of State diversion programs, or other means that have the effect of avoiding or expunging a permanent record of impaired driving in such cases;

''(B) the courts in a majority of the judicial jurisdictions of the State are monitored on the courts' adjudication of cases of impaired driving offenses; or

''(C) annual Statewide outreach is provided for judges and prosecutors on innovative approaches to the prosecution and adjudication of cases of impaired driving offenses that have the potential for significantly improving the prosecution and adjudication of such cases.

''(3) IMPAIRED OPERATOR INFORMATION SYSTEM.—

''(A) A State impaired operator information system that—

''(i) tracks drivers who are arrested or convicted for violation of laws prohibiting impaired operation of motor vehicles;

''(ii) includes information about each case of an impaired driver beginning at the time of arrest through case disposition, including information about any trial, plea, plea agreement, conviction or other disposition, sentencing or other imposition of sanctions, and substance abuse treatment;

''(iii) provides—

''(I) accessibility to the information for law enforcement personnel Statewide and for United States law enforcement personnel; and

''(II) linkage for the sharing of the information and of the information in State traffic record systems among jurisdictions and appropriate agencies, court systems and offices of the States;

''(iv) shares information with the National Highway Traffic Safety Administration for compilation and use for the tracking of impaired operators of motor vehicles who move from State to State; and

''(v) meets the requirements of subparagraphs (B), (C), and (D) of this paragraph, as applicable.

''(B) A program meets the requirements of this subparagraph only if, during fiscal years 2006 and 2007, a State—

''(i) assesses the system used by the State for tracking drivers who are arrested or convicted for violation of laws prohibiting impaired operation of motor vehicles;

''(ii) identifies ways to improve the system, as well as to enhance the capability of the system to provide information in coordination with impaired operator information systems of other States; and

''(iii) develops a strategic plan that sets forth the actions to be taken and the resources necessary to achieve the identified improvements and to enhance the capability for coordination with the systems of other States.

''(C) A program meets the requirements of this subparagraph only if, in each of fiscal years 2008 and 2009, a State demonstrates to the Secretary that the State has made substantial and meaningful progress in improving the State's impaired operator information system, and makes public a report on the progress of the information system.

''(4) IMPAIRED DRIVING PERFORMANCE.—The percentage of fatally-injured drivers with 0.08 percent or greater blood alcohol concentration in the State has decreased in each of the 2 most recent calendar years for which data are available.

''(5) SELF-SUSTAINING IMPAIRED DRIVING PREVENTION PROGRAM.—A program under which a significant portion of the fines or surcharges collected from individuals who are fined for operating a motor vehicle while under the influence of alcohol are returned to communities for

comprehensive programs for the prevention of impaired driving.

''(6) LAWS FOR HIGH RISK DRIVERS.—A law that establishes stronger sanctions or additional penalties for individuals convicted of operating a motor vehicle while under the influence of alcohol whose blood alcohol concentration is 0.15 percent or more than for individuals convicted of the same offense but with a lower blood alcohol concentration. For purposes of this paragraph, the term 'additional penalties' includes—

''(A) a 1-year suspension of a driver's license, but with the individual whose license is suspended becoming eligible after 45 days of such suspension to obtain a provisional driver's license that would permit the individual to drive—

''(i) only to and from the individual's place of employment or school; and

''(ii) only an automobile equipped with a certified alcohol ignition interlock device; and

''(B) a mandatory assessment by a certified substance abuse official of whether the individual has an alcohol abuse problem that includes the possibility of a referral to counseling if the official determines that such a referral is appropriate.

''(7) IMPAIRED DRIVING COURTS.—

''(A) IN GENERAL.—A program to consolidate and coordinate impaired driving cases into courts that specialize in impaired driving cases, with the emphasis on tracking and processing offenders of impaired driving laws, (hereinafter referred to as DWI courts) that meets the requirements of this paragraph.

''(B) CHARACTERISTICS.—A DWI Court is a distinct function performed by a court system for the purpose of changing the behavior of alcohol or drug dependent offenders arrested for driving while impaired. A DWI Court can be a dedicated court with dedicated personnel, including judges, prosecutors and probation officers. A DWI court may be an existing court system that serves the following essential DWI Court functions:

''(i) A DWI Court performs an assessment of high-risk offenders utilizing a team headed by the judge and including all criminal justice stakeholders (prosecutors, defense attorneys, probations officers, law enforcement personnel and others) along with alcohol/drug treatment professionals.

''(ii) The DWI Court team recommends a specific plea agreement or contract for each offender that can include incarceration, treatment, and close community supervision. The agreement maximizes the probability of rehabilitation and minimizes the likelihood of recidivism.

''(iii) Compliance with the agreement is verified with thorough monitoring and frequent alcohol testing. Periodic status hearings assess offender progress and allow an opportunity for modifying the sentence if necessary.

''(C) ASSESSMENT.—In the first year of operation, the States shall assess the number of court systems in its jurisdiction that are consistently performing the DWI Court functions.

''(D) PLAN.—In the second year of operation, the State shall develop a strategic plan for increasing the number of courts performing the DWI function.

''(E) PROGRESS.—In subsequent years of operation, the State shall demonstrate progress in increasing the number of DWI Courts and in increasing the number of high-risk offenders participating in and successfully completing DWI Court agreements.

''(d) USES OF GRANTS.—Grants made under this section may be used for programs and activities described in subsection (c) and to defray the following costs:

''(1) Labor costs, management costs, and equipment procurement costs for the high-visibility, Statewide law enforcement campaigns under subsection (c)(1).

''(2) The costs of the training of law enforcement personnel and the procurement of technology and equipment, such as and including video equipment and passive alcohol sensors, to counter directly impaired operation of motor vehicles.

''(3) The costs of public awareness, advertising, and educational campaigns that publicize use of sobriety check points or increased law enforcement efforts to counter impaired operation of motor vehicles.

''(4) The costs of public awareness, advertising, and educational campaigns that target impaired operation of motor vehicles by persons under 34 years of age.

''(5) The costs of the development and implementation of a State impaired operator information system described in subsection (c)(3).

''(6) The costs of operating programs that result in vehicle forfeiture or impoundment or license plate impoundment.

''(e) ADDITIONAL AUTHORITIES FOR CERTAIN AUTHORIZED USES.—

''(1) COMBINATION OF GRANT PROCEEDS.—Grant funds used for a campaign under subsection (d)(3) may be combined, or expended in coordination, with proceeds of grants under section 402 of this title.

''(2) COORDINATION OF USES.—Grant funds used for a campaign under paragraph (3) or (4) of subsection (d) may be expended—

''(A) in coordination with employers, schools, entities in the hospitality industry, and nonprofit traffic safety groups; and

''(B) in coordination with sporting events and concerts and other entertainment events.

''(f) FUNDING.—

''(1) IN GENERAL.—Grant funding under this section shall be allocated among States that meet the eligibility criteria in subsection (b) on the basis of the apportionment formula that applies for apportionments under section 402(c) of this title.

''(2) HIGH FATALITY-RATE STATES.—A State that is among the 10 States with the highest impaired driving-related fatality rates for the calendar year immediately preceding the fiscal year in which the grant may be made shall be eligible for a grant under this section if the State meets the requirements of subsection (g). A State that receives a grant based upon its eligibility under this paragraph may also receive a grant under subsection (b) if it meets the eligibility requirements of that subsection.

''(g) USE OF FUNDS BY HIGH FATALITY-RATE STATES.—

''(1) REQUIRED USES.—At least ½ of the amounts allocated to States under subsection (f)(2) shall be used for the program described in subsection (c)(1).

''(2) REQUIREMENT FOR PLAN.—A State receiving an allocation of grant funds under subsection (f)(2) shall expend those funds only after receiving approval from the Administrator of the National Highway Traffic Safety Administration for a plan regarding such expenditures.

''(h) DEFINITIONS.—In this section:

''(1) IMPAIRED OPERATOR.—The term 'impaired operator' means a person who, while operating a motor vehicle—

''(A) has a blood alcohol content of 0.08 percent or higher; or

''(B) is under the influence of a controlled substance.

''(2) IMPAIRED DRIVING-RELATED FATALITY RATE.—The term 'impaired driving-related fatality rate' means the rate of alcohol-related fatalities, as calculated in accordance with regulations which the Administrator of the National Highway Traffic Safety Administration shall prescribe.''.

(c) NHTSA TO ISSUE REGULATIONS.—Not later than 12 months after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005, the National Highway Traffic Safety Administration shall issue guidelines to the States specifying the types and formats of data that States should collect relating to drivers who are arrested or convicted for violation of laws prohibiting the impaired operation of motor vehicles.

SEC. 7221. STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.

(a) GRANT PROGRAM AUTHORITY.—Chapter 4 is amended by adding at the end the following:

''§ 412. State traffic safety information system improvements

''(a) GRANT AUTHORITY.—Subject to the requirements of this section, the Secretary shall make grants of financial assistance to eligible States to support the development and implementation of effective programs by such States to—

''(1) improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the safety data of the State that is needed to identify priorities for national, State, and local highway and traffic safety programs;

''(2) evaluate the effectiveness of efforts to make such improvements;

''(3) link the State data systems, including traffic records, with other data systems within the State, such as systems that contain medical, roadway, and economic data; and

''(4) improve the compatibility and interoperability of the data systems of the State with national data systems and data systems of other States and enhance the ability of the Secretary to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances.

''(b) FIRST-YEAR GRANTS.—

''(1) ELIGIBILITY.—To be eligible for a first-year grant under this section in a fiscal year, a State shall demonstrate to the satisfaction of the Secretary that the State has—

''(A) established a highway safety data and traffic records coordinating committee with a multidisciplinary membership that includes, among others, managers, collectors, and users of traffic records and public health and injury control data systems;

''(B) completed or updated, within the preceding 5 years, an assessment or an audit of the highway safety data and traffic records system of the State; and

''(C) developed a multiyear highway safety data and traffic records system strategic plan that addresses existing deficiencies in the State's highway safety data and traffic records system, is approved by the highway safety data and traffic records coordinating committee, and—

''(i) specifies how existing deficiencies in the State's highway safety data and traffic records system were identified;

''(ii) prioritizes, on the basis of the identified highway safety data and traffic records system deficiencies, the highway safety data and traffic records system needs and goals of the State, including the activities under subsection (a);

''(iii) identifies performance-based measures by which progress toward those goals will be determined; and

''(iv) specifies how the grant funds and any other funds of the State are to be used to address needs and goals identified in the multiyear plan.

''(2) GRANT AMOUNT.—Subject to subsection (d)(3), the amount of a first-year grant to a State for a fiscal year shall be the higher of—

''(A) the amount determined by multiplying—

''(i) the amount appropriated to carry out this section for such fiscal year, by

''(ii) the ratio that the funds apportioned to the State under section 402 of this title for fiscal year 2003 bears to the funds apportioned to all States under such section for fiscal year 2003; or

''(B) $300,000.

''(c) SUCCESSIVE YEAR GRANTS.—

''(1) ELIGIBILITY.—A State shall be eligible for a grant under this subsection in a fiscal year succeeding the first fiscal year in which the State receives a grant under subsection (b) if the State, to the satisfaction of the Secretary—

''(A) certifies that an assessment or audit of the State's highway safety data and traffic records system has been conducted or updated within the preceding 5 years;

''(B) submits an updated multiyear plan that meets the requirements of subsection (b)(1)(C);

''(C) certifies that its highway safety data and traffic records coordinating committee continues to operate and supports the multiyear plan;

''(D) specifies how the grant funds and any other funds of the State are to be used to address needs and goals identified in the multiyear plan;

''(E) demonstrates measurable progress toward achieving the goals and objectives identified in the multiyear plan; and

''(F) includes a current report on the progress in implementing the multiyear plan.

''(2) GRANT AMOUNT.—Subject to subsection (d)(3), the amount of a year grant made to a State for a fiscal year under this subsection shall equal the higher of—

''(A) the amount determined by multiplying—

''(i) the amount appropriated to carry out this section for such fiscal year, by

''(ii) the ratio that the funds apportioned to the State under section 402 of this title for fiscal year 2003 bears to the funds apportioned to all States under such section for fiscal year 2003; or

''(B) $500,000.

''(d) ADDITIONAL REQUIREMENTS AND LIMITATIONS.—

''(1) MODEL DATA ELEMENTS.—The Secretary, in consultation with States and other appropriate parties, shall determine the model data elements that are useful for the observation and analysis of State and national trends in occurrences, rates, outcomes, and circumstances of motor vehicle traffic accidents. In order to be eligible for a grant under this section, a State shall submit to the Secretary a certification that the State has adopted and uses such model data elements, or a certification that the State will use grant funds provided under this section toward adopting and using the maximum number of such model data elements as soon as practicable.

''(2) DATA ON USE OF ELECTRONIC DEVICES.—The model data elements required under paragraph (1) shall include data elements, as determined appropriate by the Secretary in consultation with the States and with appropriate elements of the law enforcement community, on the impact on traffic safety of the use of electronic devices while driving.

''(3) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all other sources for highway safety data programs at or above the average level of such expenditures maintained by such State in the 2 fiscal years preceding the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005.

''(4) FEDERAL SHARE.—The Federal share of the cost of adopting and implementing in a fiscal year a State program described in subsection (a) may not exceed 80 percent.

''(5) LIMITATION ON USE OF GRANT PROCEEDS.—A State may use the proceeds of a grant received under this section only to implement the program described in subsection (a) for which the grant is made.

''(e) APPLICABILITY OF CHAPTER 1.—Section 402(d) of this title shall apply in the administration of this section.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 4 is amended by adding at the end the following:

''412. State traffic safety information system improvements.''.

SEC. 7222. NHTSA ACCOUNTABILITY.

(a) IN GENERAL.—Chapter 4, as amended by section 7221, is amended by adding at the end the following:

''§ 413. Agency accountability

''(a) TRIENNIAL STATE MANAGEMENT REVIEWS.—At least once every 3 years the National Highway Traffic Safety Administration shall conduct a review of each State highway safety program. The review shall include a management evaluation of all grant programs partially or fully funded under this title. The Administrator shall provide review-based recommendations on how each State may improve the management and oversight of its grant activities and may provide a management and oversight plan.

''(b) RECOMMENDATIONS BEFORE SUBMISSION.—In order to provide guidance to State highway safety agencies on matters that should be addressed in the State highway safety program goals and initiatives as part of its highway safety plan before the plan is submitted for review, the Administrator shall provide data-based recommendations to each State at least 90 days before the date on which the plan is to be submitted for approval.

''(c) STATE PROGRAM REVIEW.—The Administrator shall—

''(1) conduct a program improvement review of any State that does not make substantial progress over a 3-year period in meeting its priority program goals; and

''(2) provide technical assistance and safety program requirements to be incorporated in a State's highway safety plan for any goal not achieved.

''(d) REGIONAL HARMONIZATION.—The Administration and the Inspector General of the Department of Transportation shall undertake a State grant administrative review of the practices and procedures of the management reviews and program reviews conducted by Administration regional offices and formulate a report of best practices to be completed within 180 days after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005.

''(e) BEST PRACTICES GUIDELINES.—

''(1) UNIFORM GUIDELINES.—The Administrator shall issue uniform management review guidelines and program review guidelines based on the report under subsection (d). Each regional office shall use the guidelines in executing its State administrative review duties.

''(2) PUBLICATION.—The Administrator shall make the following documents available via the Internet upon their completion:

''(A) The Administrator's management review guidelines and the program review guidelines.

''(B) State highway safety plans.

''(C) State annual accomplishment reports.

''(D) The Administration's Summary report of findings from Management Reviews and Improvement Plans.

''(3) REPORTS TO STATE HIGHWAY SAFETY AGENCIES.—The Administrator may not make a plan, report, or review available under paragraph (2) that is directed to a State highway safety agency until after it has been submitted to that agency.

''(f) GENERAL ACCOUNTING OFFICE REVIEW.—The General Accounting Office shall analyze the effectiveness of the National Highway Traffic Safety Administration's oversight of traffic safety grants by determining the usefulness of the Administration's advice to the States regarding grants administration and State activities, the extent to which the States incorporate the Administration's recommendation into their highway safety plans and programs, and improvements that result in a State's highway safety program that may be attributable to the Administration's recommendations. Based on this analysis, the General Accounting Office shall submit a report by not later than the end of fiscal year 2008 to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 4, as amended by section 7221, is amended by inserting after the item relating to section 412 the following:

''413. Agency accountability.''.

SEC. 7223. GRANTS FOR IMPROVING CHILD PASSENGER SAFETY PROGRAMS.

(a) IN GENERAL.—The Secretary of Transportation shall establish a program to provide grants to States to assist in the enactment and enforcement of laws implementing Anton's Law (49 U.S.C. 30127 note).

(b) ELIGIBILITY REQUIREMENTS.—

(1) IN GENERAL.—The Secretary shall make a grant to each State that, as determined by the Secretary, enacts or has enacted, has in effect, and is enforcing a law requiring that children riding in passenger motor vehicles (as defined in section 405(f)(4)) of title 23, United States Code, who are too large to be secured in a child safety seat be secured in a child restraint (as defined in section 7(1) of Anton's Law (49 U.S.C. 30127 note)) that meets requirements prescribed by the Secretary under section 3 of Anton's Law.

(2) YEAR IN WHICH FIRST ELIGIBLE.—

(A) EARLY QUALIFICATION.—A State that has enacted a law described in paragraph (1) that is in effect before October 1, 2005, is first eligible to receive a grant under subsection (a) in fiscal year 2006.

(B) SUBSEQUENT QUALIFICATION.—A State that enacts a law described in paragraph (1) that takes effect after September 30, 2005, is first eligible to receive a grant under subsection (a) in the first fiscal year beginning after the date on which the law is enacted.

(3) CONTINUING ELIGIBILITY.—A State that is eligible under paragraph (1) to receive a grant may receive a grant during each fiscal year listed in subsection (f) in which it is eligible.

(4) MAXIMUM NUMBER OF GRANTS.—A State may not receive more than 4 grants under this section.

(c) GRANT AMOUNT.—Amounts available for grants under this section in any fiscal year shall be apportioned among the eligible States on the basis of population.

(d) USE OF GRANT AMOUNTS.—

(1) IN GENERAL.—Of the amounts received by a State under this section for any fiscal year—

(A) 50 percent shall be used for the enforcement of, and education to promote public awareness of, State child passenger protection laws; and

(B) 50 percent shall be used to fund programs that purchase and distribute child booster seats, child safety seats, and other appropriate passenger motor vehicle child restraints to indigent families without charge.

(2) REPORT.—Within 60 days after the State fiscal year in which a State receives a grant under this section, the State shall transmit to the Secretary a report documenting the manner in which grant amounts were obligated or expended and identifying the 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(f)(6)) of title 23, United States Code, designed for use in a motor vehicle (as such term is defined in section 405(f)(4) of that title) to restrain, seat, or position a child who weighs 50 pounds or less.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation—

(1) $18,000,000 for fiscal year 2006;

(2) $20,000,000 for fiscal year 2007;

(3) $25,000,000 for fiscal year 2008; and

(4) $30,000,000 for fiscal year 2009.

SEC. 7224. MOTORCYCLIST SAFETY TRAINING AND MOTORIST AWARENESS PROGRAMS.

(a) IN GENERAL.—Chapter 4 of title 23, United States Code, as amended by section 7222, is amended by adding at the end the following:

''§ 414. Motorcyclist safety training and motorist awareness programs

''(a) DEFINITIONS.—In this section:

''(1) MOTORCYCLIST SAFETY TRAINING.—The term 'motorcyclist safety training' means any formal program of instruction that—

''(A) provides accident avoidance and other safety-oriented operational skills to motorcyclists, including innovative training opportunities to meet unique regional needs; and

''(B) is approved for use in a State by the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State Motorcycle Safety Administrator or a motorcycle advisory council appointed by the Governor of the State.

''(2) MOTORIST AWARENESS.—The term 'motorist awareness' means individual or collective motorist awareness of—

''(A) the presence of motorcycles on or near roadways; and

''(B) safe driving practices that avoid injury to motorcyclists, bicyclists, and pedestrians.

''(3) MOTORIST AWARENESS PROGRAM.—The term 'motorist awareness program' means any informational or public awareness program designed to enhance motorist awareness that is developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State Motorcycle Safety Administrator or, in the absence of a State Administrator, a motorcycle advisory council appointed by a Governor of the State.

''(4) STATE.—The term 'State' means—

''(A) a State;

''(B) the District of Columbia; and

''(C) the Commonwealth of Puerto Rico.

''(b) ELIGIBILITY.—Not later than 90 days after the date of enactment of this section and on September 1 of each fiscal year thereafter, based on a letter of certification provided by the Governor of each State, the Secretary shall develop and publish a list of States that, as of the date of publication of the list, have established motorcyclist safety training programs and motorist awareness programs, including information that indicates—

''(1) the level of base funding provided for each such program for the applicable fiscal year; and

''(2) whether the level of base funding provided for each such program for the applicable fiscal year was increased, decreased, or maintained from the level of funding provided for the program for the previous fiscal year.

''(c) ALLOCATION.—Not later than 120 days after the date of enactment of this section, on October 1 of each fiscal year, the Secretary shall allocate to each State for which the base funding allocated for motorcyclist safety training and motorist awareness programs was not less than the amount allocated for the previous year, not less than $100,000, to be used only for motorcyclist safety training and motorist awareness programs, including—

''(1) improvements to motorcyclist safety training curricula;

''(2) improvements in program delivery to both urban and rural areas, including—

''(A) procurement or repair of practice motorcycles;

''(B) instructional aides; and

''(C) mobile training units;

''(3) an increase in the recruitment or retention of motorcyclist safety training instructors certified by a State Motorcycle Safety Administrator or motorcycle advisory council appointed by the Governor; and

''(4) public awareness, public service announcements, and other outreach programs to enhance motorist awareness, such as the 'share-the-road' safety messages developed in subsection (f).

''(d) CONTRACTS WITH ORGANIZATIONS.—The Secretary may enter into an agreement with an organization that is recommended by and represents the interests of State Motorcycle Safety Administrators to review, determine, and disseminate a description of best practices in motorcycle safety training and motorist awareness, and to recommend such practices, to State administrators, governors, State legislative bodies, and chief licensing officers of States.

''(e) AUTHORIZATION OF APPROPRIATIONS.—From funds available to carry out section 406 of this title, $5,200,000 shall be made available for each of fiscal years 2006 through 2009 to carry out this section.

''(f) SHARE-THE-ROAD MODEL LANGUAGE.—Not later than 1 year after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2005, the Secretary, in consultation with the Administrator of the Natinoal Highway Traffice Safety Administration, shall develop and provide to the States model language for use in traffic safety education courses, driver's manuals, and other driver's training materials instructing the drivers of motor vehicles on the importance of sharing the roads safely with motorcyclists.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 4 of title 23, United States Code, as amended by section 7222, is amended by adding at the end the following:

''414. Motorcyclist safety training and motorist awareness programs.''.

CHAPTER 2—SPECIFIC VEHICLE SAFETY-RELATED RULINGS

SEC. 7251. VEHICLE ROLLOVER PREVENTION AND CRASH MITIGATION.

(a) IN GENERAL.—Subchapter II of chapter 301 is amended by adding at the end the following:

''§ 30128. Vehicle rollover prevention and crash mitigation

(a) IN GENERAL.—The Secretary shall initiate rulemaking proceedings, for the purpose of establishing rules or standards that will reduce vehicle rollover crashes and mitigate deaths and injuries associated with such crashes for motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds.

''(b) ROLLOVER PREVENTION.—One of the rulemaking proceedings initiated under subsection (a) shall be to establish performance criteria to reduce the occurrence of rollovers consistent with stability enhancing technologies. The Secretary shall issue a proposed rule in this proceeding by rule by October 1, 2006, and a final rule by April 1, 2009.

''(c) OCCUPANT EJECTION PREVENTION.—

''(1) IN GENERAL.—The Secretary shall also initiate a rulemaking proceeding to establish performance standards to reduce complete and partial ejections of vehicle occupants from outboard seating positions. In formulating the standards the Secretary shall consider various ejection mitigation systems. The Secretary shall issue a final rule under this paragraph no later than October 1, 2009.

''(2) DOOR LOCKS AND DOOR RETENTION.—The Secretary shall complete the rulemaking proceeding initiated to upgrade Federal Motor Vehicle Safety Standard No. 206, relating to door locks and door retention, no later than 30 months after the date of enactment of this Act.

''(d) PROTECTION OF OCCUPANTS.—One of the rulemaking proceedings initiated under subsection (a) shall be to establish performance criteria to upgrade Federal Motor Vehicle Safety Standard No. 216 relating to roof strength for driver and passenger sides. The Secretary may consider industry and independent dynamic tests that realistically duplicate the actual forces transmitted during a rollover crash. The Secretary shall issue a proposed rule by December 31, 2005, and a final rule by July 1, 2008.

''(e) DEADLINES.—If the Secretary determines that the deadline for a final rule under this section cannot be met, the Secretary shall—

''(1) notify the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce and explain why that deadline cannot be met; and

''(2) establish a new deadline.''.

SEC. 7252. SIDE-IMPACT CRASH PROTECTION RULEMAKING.

The Secretary of Transportation shall complete a rulemaking proceeding under chapter 301 of title 49, United States Code, to establish a standard designed to enhance passenger motor vehicle occupant protection, in all seating positions, in side impact crashes. The Secretary shall issue a final rule by July 1, 2008.

SEC. 7253. TIRE RESEARCH.

Within 2 years after the date of enactment of this Act, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce on research conducted to address tire aging. The report shall include a summary of any Federal agency findings, activities, conclusions, and recommendations concerning tire aging and recommendations for potential rulemaking regarding tire aging.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 301 is amended by inserting after the item relating to section 30127 the following:

''30128. Vehicle accident ejection protection''.

SEC. 7254. VEHICLE BACKOVER AVOIDANCE TECHNOLOGY STUDY.

(a) IN GENERAL.—The Administrator of the National Highway Traffic Safety Administration shall conduct a study of effective methods for reducing the incidence of injury and death outside of parked passenger motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds attributable to movement of such vehicles. The Administrator shall complete the study within 1 year after the date of enactment of this Act and report its findings to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce not later than 15 months after the date of enactment of this Act.

(b) SPECIFIC ISSUES TO BE COVERED.—The study required by subsection (a) shall—

(1) include an analysis of backover prevention technology;

(2) identify, evaluate, and compare the available technologies for detecting people or objects behind a motor vehicle with a gross vehicle weight rating of not more than 10,000 pounds for their accuracy, effectiveness, cost, and feasibility for installation; and

(3) provide an estimate of cost savings that would result from widespread use of backover prevention devices and technologies in motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds, including savings attributable to the prevention of—

(A) injuries and fatalities; and

(B) damage to bumpers and other motor vehicle parts and damage to other objects.

SEC. 7255. NONTRAFFIC INCIDENT DATA COLLECTION.

(a) IN GENERAL.—In conjunction with the study required in section 7254, the National Highway Traffic Safety Administration shall establish a method to collect and maintain data on the number and types of injuries and deaths involving motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds in non-traffic incidents.

(b) DATA COLLECTION AND PUBLICATION.—The Secretary of Transportation shall publish the data collected under subsection (a) no less frequently than biennially.

SEC. 7256. SAFETY BELT USE REMINDERS.

(a) BUZZER LAW.—

(1) IN GENERAL.—Section 30124 is amended—

(A) by striking ''not'' the first place it appears; and

(B) by striking ''except'' and inserting ''including''.

(2) CONFORMING AMENDMENT.—Section 30122 is amended by striking subsection (d).

(b) STUDY OF SAFETY BELT USE TECHNOLOGIES.—The Secretary of Transportation

shall conduct a review of safety belt use technologies to evaluate progress and to consider possible revisions in strategies for achieving further gains in safety belt use. The Secretary shall complete the study by July 1, 2008.

SEC. 7257. AMENDMENT OF AUTOMOBILE INFORMATION DISCLOSURE ACT.

(a) SAFETY LABELING REQUIREMENT.—Section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232) is amended—

(1) by striking ''and'' after the semicolon in subsection (e);

(2) by inserting ''and'' after the semicolon in subsection (f)(3);

(3) by striking ''(3).'' in subsection (f)(4) and inserting ''(3);''; and

(4) by adding at the end the following:

''(g) if 1 or more safety ratings for such automobile have been assigned and formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program, information about safety ratings that—

''(1) includes a graphic depiction of the number of stars, or other applicable rating, that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion indicating the maximum possible safety rating;

''(2) refers to frontal impact crash tests, side impact crash tests, and rollover resistance tests (whether or not such automobile has been assigned a safety rating for such tests);

''(3) contains information describing the nature and meaning of the crash test data presented and a reference to additional vehicle safety resources, including http://www.safecar.gov; and

''(4) is presented in a legible, visible, and prominent fashion and covers at least—

''(A) 8 percent of the total area of the label; or

''(B) an area with a minimum length of 4 ½ inches and a minimum height of 3 ½ inches; and

''(h) if an automobile has not been tested by the National Highway Traffic Safety Administration under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect.''.

(b) REGULATIONS.—Not later than January 1, 2006, the Secretary of Transportation shall issue regulations to implement the labeling requirements under subsections (g) and (h) of section 3 of the Automobile Information Disclosure Act, as added by subsection (a).

(c) APPLICABILITY.—The labeling requirements under subsections (g) and (h) of section 3 of such Act (as added by subsection (a)), and the regulations prescribed under subsection (b), shall apply to new automobiles delivered on or after—

(1) September 1, 2006, if the regulations under subsection (b) are prescribed not later than August 31, 2005; or

(2) September 1, 2007, if the regulations under subsection (b) are prescribed after August 31, 2005.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation, to accelerate the testing processes and increasing the number of vehicles tested under the New Car Assessment Program of the National Highway Traffic Safety Administration—

(1) $15,000,000 for fiscal year 2006;

(2) $8,134,065 for fiscal year 2007;

(3) $8,418,760 for fiscal year 2008;

(4) $8,713,410 for fiscal year 2009; and

(5) $9,018,385 for fiscal year 2010.

SEC. 7258. POWER WINDOW SWITCHES.

The Secretary of Transportation shall upgrade Federal Motor Vehicle Safety Standard 118 to require that power windows in motor vehicles not in excess of 10,000 pounds have switches that raise the window only when the switch is pulled up or out. The Secretary shall issue a final rule implementing this section by April 1, 2007.

SEC. 7259. 15-PASSENGER VAN SAFETY.

(a) TESTING.—

(1) IN GENERAL.—The Secretary of Transportation shall require the testing of 15-passenger vans as part of the rollover resistance program of the National Highway Traffic Safety Administration's new car assessment program.

(2) 15-PASSENGER VAN DEFINED.—In this subsection, the term ''15-passenger van'' means a vehicle that seats 10 to 14 passengers, not including the driver.

(b) PROHIBITION OF PURCHASE, RENTAL, OR LEASE OF NONCOMPLYING 15-PASSENGER VANS FOR SCHOOL USE.—Section 30112(a) is amended—

(1) by inserting ''(1)'' before ''Except as provided''; and

(2) by adding at the end the following:

''(2) Except as provided in this section, sections 30113 and 30114 of this title, and subchapter III of this chapter, a school or school system may not purchase or lease a new 15-passenger van if it will be used significantly by, or on behalf of, the school or school system to transport preprimary, primary, or secondary school students to or from school or an event related to school, unless the 15-passenger van complies with the motor vehicle standards prescribed for school buses and multifunction school activity buses under this title. This paragraph does not apply to the purchase or lease of a 15-passenger van under a contract executed before the date of enactment of the Surface Transportation Safety Improvement Act of 2005.''.

(c) PENALTY.—Section 30165(a) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

''(2) SCHOOL BUSES.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), the maximum amount of a civil penalty under this paragraph shall be $10,000 in the case of—

''(i) the manufacture, sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation of a school bus or school bus equipment (as those terms are defined in section 30125(a) of this title) in violation of section 30112(a)(1) of this title; or

''(ii) a violation of section 30112(a)(2) of this title.

''(B) RELATED SERIES OF VIOLATIONS.—A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by that section. The maximum penalty under this paragraph for a related series of violations is $15,000,000.''.

SEC. 7260. UPDATED FUEL ECONOMY LABELING PROCEDURES.

(a) IN GENERAL.—The Administrator of the Environmental Protection Agency shall, as appropriate and in consultation with the Administrator of the National Highway Traffic Safety Administration, update and revise the process used to determine fuel economy values for labeling purposes as set forth in sections 600.209–85 and 600.209.95 (40 C.F.R. 600.209–85 and 600.209.95) to take into consideration current factors such as speed limits, acceleration rates, braking, variations in weather and temperature, vehicle load, use of air conditioning, driving patterns, and the use of other fuel consuming features. The Administrator shall use existing emissions test cycles and, or, updated adjustment factors to implement the requirements of this subsection.

(b) DEADLINE.—The Administrator of the Environmental Protection Agency shall promulgate a notice of proposed rulemaking by December 31, 2005, and a final rule within 18 months after the date on which the Administrator issues the notice.

(c) REPORT.—Three years after issuing the final rule required by subsection (b) and every 3 years thereafter the Administrator of the Environmental Protection Agency shall reconsider the fuel economy labeling procedures required under subsection (a) to determine if the changes in the factors require revisting the process. The administrator shall report to the Senate Committee on Commerce, Science and Transportation and to the House of Representatives Committee on Energy and Commerce on the outcome of the reconsideration process.

SEC. 7261. IDENTIFICATION OF CERTAIN ALTERNATIVE FUELED VEHICLES.

(a) IN GENERAL.—Section 32908 of title 49, United States Code, is amended—

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

(2) by inserting after subsection (d) the following new subsection:

''(e) IDENTIFICATION OF CERTAIN ALTERNATIVE FUELED VEHICLES.—A manufacturer shall affix, or have affixed, to each dual fueled automobile manufactured by the manufacturer (including each light duty truck) that may be operated on the alternative fuel described in section 32901(a)(1)(D)—

''(1) a permanent label inside the automobile's fuel door compartment that—

''(A) meets the requirements of the regulations prescribed by the Administrator for such label; and

''(B) states that the automobile may be operated on the alternative fuel described in section 32901(a)(1)(D) and identifies such alternative fuel; and

''(2) a temporary label to the window or windshield of the automobile that—

''(A) meets the requirements of the regulations prescribed by the Administrator for such label; and

''(B) identifies the automobile as capable of operating on such alternative fuel.''.

(b) REGULATIONS.—Not later than March 1, 2006, the Administrator of the Environmental Protection Agency shall promulgate regulations—

(1) for the label referred to in paragraph (1) of section 32908(e) of title 49, United States Code, as amended by subsection (a), that describe—

(A) the language that shall be set out on the label, including a statement that the vehicle is capable of operating on a mixture of 85 percent ethanol blended with gasoline; and

(B) the appropriate size and color of the font of such language so that it is conspicuous to the individual introducing fuel into the vehicle; and

(2) for the temporary window or windshield label referred to in paragraph (2) of such section 32908(e), that—

(A) prohibit the label from being removed by any seller prior to the final sale of the vehicle to a consumer; and

(B) describe the specifications of the label, including that the label shall be—

(i) prominently displayed and conspicuous on the vehicle; and

(ii) separate from any other window or windshield sticker, decal, or label.

(c) COMPLIANCE.—

(1) IN GENERAL.—A manufacturer shall be required to comply with the requirements of section 32908(e) of title 49, United State Code, as amended by subsection (a), for a vehicle that is manufactured for a model year after model year 2006.

(2) MODEL YEAR DEFINED.—In this subsection, the term ''model year'' shall have the meaning given such term in section 32901(a) of such title.

(d) VIOLATIONS.—

(1) IN GENERAL.—Section 32908(f) of title 49, United States Code, as redesignated by subsection (a), is amended by inserting ''or (e)'' after ''subsection (b)''.

(2) CONFORMING AMENDMENT.—Section 32911(a) of such title is amended by inserting ''32908(e),'' after ''32908(b),''.

SEC. 7262. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Transportation to carry out this

chapter and chapter 301 of title 49, United States Code—

(1) $136,000,000 for fiscal year 2006;

(2) $142,800,000 for fiscal year 2007;

(3) $149,900,000 for fiscal year 2008; and

(4) $157,400,000 for fiscal year 2009.

Subtitle C—Hazardous Materials

SEC. 7301. SHORT TITLE.

This subtitle may be cited as the ''Hazardous Material Transportation Safety and Security Reauthorization Act of 2005''.

CHAPTER 1—GENERAL AUTHORITIES ON TRANSPORTATION OF HAZARDOUS MATERIALS

SEC. 7321. PURPOSE.

The text of section 5101 is amended to read as follows:

''The purpose of this chapter is to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in intrastate, interstate, and foreign commerce.''.

SEC. 7322. DEFINITIONS.

Section 5102 is amended as follows:

(1) COMMERCE.—Paragraph (1) is amended—

(A) by striking ''or'' after the semicolon in subparagraph (A);

(B) by striking the ''State.'' in subparagraph (B) and inserting ''State; or''; and

(C) by adding at the end the following:

''(C) on a United States-registered aircraft.''.

(2) HAZMAT EMPLOYEE.—Paragraph (3) is amended—

(A) by inserting ''on a fulltime, part time, or temporary basis'' after ''employed'' in subparagraph (A)(i);

(B) by redesignating clause (ii) of subparagraph (A) as clause (iii) and inserting after clause (i) the following:

''(ii) is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce; and'';

(C) by inserting ''such full time, part time, or temporary'' in clause (iii) of subparagraph (A), as redesignated, after ''course of'';

(D) by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B);

(E) by inserting ''on a full time, part time, or temporary basis'' after ''employed'' in subparagraph (B), as redesignated; and

(F) by striking clause (ii) of subparagraph (B), as redesignated, and inserting the following:

''(ii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce;''.

(3) HAZMAT EMPLOYER.—Paragraph (4) is amended to read as follows:

''(4) 'hazmat employer' means a person—

''(A) who—

''(i) employs or uses at least 1 hazmat employee on a full time, part time, or temporary basis, or

''(ii) is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce, and

''(B) who—

''(i) transports hazardous material in commerce,

''(ii) causes hazardous material to be transported in commerce, or

''(iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce, and

includes a department, agency, or instrumentality of the United States Government, or an authority of a State, political subdivision of a State, or Indian tribe, carrying out an activity described in subparagraph (B).''.

(4) IMMINENT HAZARD.—Paragraph (5) is amended by inserting ''relating to hazardous material'' after ''of a condition''.

(5) MOTOR CARRIER.—Paragraph (7) is amended to read as follows:

''(7) 'motor carrier'—

''(A) means a motor carrier, motor private carrier, and freight forwarder as those terms are defined in section 13102 of this title; but

''(B) does not include a freight forwarder, as so defined, if the freight forwarder is not performing a function relating to highway transportation.''.

(6) NATIONAL RESPONSE TEAM.—Paragraph (8) is amended—

(A) by striking ''national response team'' both places it appears and inserting ''National Response Team''; and

(B) by striking ''national contingency plan'' and inserting ''National Contingency Plan''.

(7) PERSON.—Paragraph (9)(A) is amended by striking ''offering'' and all that follows and inserting ''that—

''(i) offers hazardous material for transportation in commerce;

''(ii) transports hazardous material to further a commercial enterprise; or

''(iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce; but''.

(8) SECRETARY OF TRANSPORTATION.—Section 5102 is further amended—

(A) by redesignating paragraphs (11), (12), and (13), as paragraphs (12), (13), and (14), respectively; and

(B) by inserting after paragraph (10) the following:

''(11) 'Secretary' means the Secretary of Transportation except as otherwise provided.''.

SEC. 7323. GENERAL REGULATORY AUTHORITY.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5103(a) is amended by striking ''of Transportation''.

(b) DESIGNATING MATERIAL AS HAZARDOUS.—Section 5103(a) is further amended—

(1) by striking ''etiologic agent'' and all that follows through ''corrosive material,'' and inserting ''infectious substance, flammable or combustible liquid, solid, or gas, toxic, oxidizing, or corrosive material,''; and

(2) by striking ''decides'' and inserting ''determines''.

(c) REGULATIONS FOR SAFE TRANSPORTATION.—Section 5103(b)(1)(A) is amended to read as follows:

''(A) apply to a person who—

''(i) transports hazardous material in commerce;

''(ii) causes hazardous material to be transported in commerce;

''(iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce;

''(iv) prepares or accepts hazardous material for transportation in commerce;

''(v) is responsible for the safety of transporting hazardous material in commerce;

''(vi) certifies compliance with any requirement under this chapter; or

''(vii) misrepresents whether such person is engaged in any activity under clause (i) through (vi) of this subparagraph; and''.

(d) TECHNICAL AMENDMENT REGARDING CONSULTATION.—Section 5103 is amended—

(1) by striking subsection (b)(1)(C); and

(2) by adding at the end the following:

''(c) CONSULTATION.—When prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material, the Secretary of Homeland Security shall consult with the Secretary of Transportation.''.

SEC. 7324. LIMITATION ON ISSUANCE OF HAZMAT LICENSES.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5103a is amended by striking ''of Transportation'' each place it appears in subsections (a)(1), (c)(1)(B), and (d) and inserting ''of Homeland Security''.

(b) COVERED HAZARDOUS MATERIALS.—Section 5103a(b) is amended by striking ''with respect to—'' and all that follows and inserting ''with respect to any material defined as hazardous material by the Secretary for which the Secretary requires placarding of a commercial motor vehicle transporting that material in commerce.''.

(c) RECOMMENDATIONS ON CHEMICAL OR BIOLOGICAL MATERIALS.—Section 5103a is further amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

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

''(c) RECOMMENDATIONS ON CHEMICAL AND BIOLOGICAL MATERIALS.—The Secretary of Health and Human Services shall recommend to the Secretary any chemical or biological material or agent for regulation as a hazardous material under section 5103(a) of this title if the Secretary of Health and Human Services determines that such material or agent is a threat to the national security of the United States.''.

(d) CONFORMING AMENDMENT.—Section 5103a(a)(1) is amended by striking ''subsection (c)(1)(B),'' and inserting ''subsection (d)(1)(B),''.

SEC. 7325. BACKGROUND CHECKS FOR DRIVERS HAULING HAZARDOUS MATERIALS.

(a) FOREIGN DRIVERS.—

(1) IN GENERAL.—No commercial motor vehicle operator registered to operate in Mexico or Canada may operate a commercial motor vehicle transporting a hazardous material in commerce in the United States until the operator has undergone a background records check similar to the background records check required for commercial motor vehicle operators licensed in the United States to transport hazardous materials in commerce.

(2) DEFINITIONS.—In this subsection:

(A) HAZARDOUS MATERIALS.—The term ''hazardous material'' has the meaning given that term in section 5102(2) of title 49, United States Code.

(B) COMMERCIAL MOTOR VEHICLE.—The term ''commercial motor vehicle'' has the meaning given that term by section 31101 of title 49, United States Code.

(b) OTHER DRIVERS.—

(1) EMPLOYER NOTIFICATION.—Within 90 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security for Transportation Security shall develop and implement a process for the notification of a hazmat employer (as defined in section 5102(4) of title 49, United States Code), if appropriate considering the potential security implications, designated by an applicant seeking a threat assessment under part 1572 of title 49, Code of Federal Regulations, if the Transportation Security Administration, in an initial notification of threat assessment or a final notification of threat assessment, served on the applicant determines that the applicant does not meet the standards set forth in section 1572.5(d) of title 49, Code of Federal Regulations.

(2) RELATIONSHIP TO OTHER BACKGROUND RECORDS CHECKS.—

(A) ELIMINATION OF REDUNDANT CHECKS.—An individual with respect to whom the Transportation Security Administration—

(i) has performed a security threat assessment under part 1572 of title 49, Code of Federal Regulations, and

(ii) has issued a notification of no security threat under section 1572.5(g) of that title,

is deemed to have met the requirements of any other background check that is equivalent to, or

less stringent than, the background check performed under section 5103a of title 49, United States Code, that is required for purposes of any Federal law applicable to transportation workers.

(B) DETERMINATION BY ASSISTANT SECRETARY.—Within 30 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall initiate a rulemaking proceeding, including notice and opportunity for comment, that sets forth the background checks and other similar security or threat assessment requirements applicable to transportation workers under Federal law to which subparagraph (A) applies.

(C) FUTURE RULEMAKINGS.—The Assistant Secretary shall make a determination under the criteria established under subparagraph (B) with respect to any rulemaking proceeding to establish or modify required background checks for transportation workers initiated after the date of enactment of this Act.

(c) APPEALS PROCESS FOR MORE STRINGENT STATE PROCEDURES.—If a State establishes standards for applicants for a hazardous materials endorsement to a commercial driver's license that, as determined by the Secretary of Homeland Security, are more stringent than the standards set forth in section 1572.5(d) of title 49, Code of Federal Regulations, then the State shall also provide an appeals process similar to the process provided under section 1572.141 of title 49, Code of Federal Regulations, by which an applicant denied a hazardous materials endorsement to a commercial driver's license by that State may appeal that denial in a manner substantially similar to, and to the same extent as, an individual who received an initial notification of threat assessment under part 1572 of that title.

(d) CLARIFICATION OF TERM DEFINED IN REGULATIONS.—The term ''severe transportation security incident'', as defined in section 1572.3 of title 49, Code of Federal Regulations, does not include a work stoppage or other nonviolent employee-related action resulting from an employer-employee dispute. Within 30 days after the date of enactment of this Act, the Secretary of Homeland Security shall modify the definition of that term to reflect the preceding sentence.

(e) BACKGROUND CHECK CAPACITY.—The Assistant Secretary of Homeland Security (Transportation Security Administration) shall transmit a report by October 1, 2005, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Homeland Security on the implementation of fingerprint-based security threat assessments and the adequacy of fingerprinting locations, personnel, and resources to accomplish the timely processing of fingerprint-based security threat assessments for individuals holding commercial driver's licenses who are applying to renew hazardous materials endorsements.

SEC. 7326. REPRESENTATION AND TAMPERING.

(a) REPRESENTATION.—Section 5104(a) is amended—

(1) by striking ''a container,'' and all that follows through ''packaging) for'' and inserting ''a package, component of a package, or packaging for''; and

(2) by striking ''the container'' and all that follows through ''packaging) meets'' and inserting ''the package, component of a package, or packaging meets''.

(b) TAMPERING.—Section 5104(b) is amended—

(1) by striking ''A person may not'' and inserting ''No person may''; and

(2) by inserting ''component of a package, or packaging,'' after ''package,'' in paragraph (2).

SEC. 7327. TRANSPORTING CERTAIN MATERIAL.

Section 5105 is amended by striking subsection (d).

SEC. 7328. HAZMAT EMPLOYEE TRAINING REQUIREMENTS AND GRANTS.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5107 is amended by striking ''of Transportation'' each place it appears in subsections (a), (b), (c) (other than in paragraph (1)), (d), and (f).

(b) TRAINING GRANTS.—Section 5107(e) is amended—

(1) by striking ''section 5127(c)(3)'' and inserting ''section 5128(b)(1) of this title''; and

(2) by inserting ''and, to the extent determined appropriate by the Secretary, grants for such instructors to train hazmat employees'' after ''employees'' in the first sentence thereof.

SEC. 7329. REGISTRATION.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5108 is amended by striking ''of Transportation'' each place it appears in subsections (a), (b) (other than following ''Department''), (d), (e), (f), (g), (h), and (i).

(b) PERSONS REQUIRED TO FILE.—

(1) REQUIREMENT TO FILE.—Section 5108(a)(1)(B) is amended by striking ''class A or B explosive'' and inserting ''Division 1.1, 1.2, or 1.3 explosive material''.

(2) AUTHORITY TO REQUIRE TO FILE.—Section 5108(a)(2)(B) is amended to read as follows:

''(B) a person designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce.''.

(3) NO TRANSPORTATION WITHOUT FILING.—Section 5108(a)(3) is amended by striking ''fabricate,'' and all that follows through ''package or'' and inserting ''design, manufacture, fabricate, inspect, mark, maintain, recondition, repair, or test a package, container packaging component, or''.

(c) FORM AND CONTENT OF FILINGS.—Section 5108(b)(1)(C) by striking ''the activity.'' and inserting ''any of the activities.''.

(d) FILING.—Section 5108(c) is amended to read as follows:

''(c) FILING.—Each person required to file a registration statement under subsection (a) of this section shall file the statement in accordance with regulations prescribed by the Secretary.''.

(e) FEES.—Section 5108(g)(1) is amended by striking ''may establish,'' and inserting ''shall establish,''.

(f) RELATIONSHIP TO OTHER LAWS.—Section 5108(i)(2)(B) is amended by inserting ''an Indian tribe,'' after ''subdivision of a State,''.

(g) REGISTRATION AND ANNUAL FEES.—

(1) REDUCTION IN CAP.—Section 5108(g)(2)(A) is amended by striking ''$5,000'' and inserting ''$3,000''.

(2) RULEMAKING.—Any rule, regulation, or order issued by the Secretary of Transportation under which the assessment, payment, or collection of fees under section 5108(g) of title 49, United States Code, was suspended or terminated before the date of enactment of this Act is declared null and void effective 30 days after such date of enactment. Beginning on the 31st day after such date of enactment, the fee schedule established by the Secretary and set forth at 65 Federal Register 7297 (as modified by the rule set forth at 67 Federal Register 58343) shall take effect and apply until such time as it may be modified by a rulemaking proceeding.

(3) PLANNING AND TRAINING GRANTS.—Notwithstanding any other provision of law to the contrary, including any limitation on the amount of grants authorized by section 5116 of title 49, United States Code, not contained in that section, the Secretary shall make grants under that section from the account established under section 5116(i) to reduce the balance in that account over the 4 fiscal year period beginning with fiscal year 2006, but in no fiscal year shall the grants distributed exceed the level authorized by section 5116 of title 49, United States Code.

SEC. 7330. SHIPPING PAPERS AND DISCLOSURE.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5110(a) is amended by striking ''of Transportation''.

(b) DISCLOSURE CONSIDERATIONS AND REQUIREMENTS.—Section 5110 is amended—

(1) by striking ''under subsection (b) of this section.'' in subsection (a) and inserting ''in regulations.'';

(2) by striking subsection (b); and

(3) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively.

(c) RETENTION OF PAPERS.—Subsection (d) of section 5110, as redesignated by subsection (b)(3) of this section, is amended to read as follows:

''(d) RETENTION OF PAPERS.—

''(1) SHIPPERS.—The person who provides the shipping paper under this section shall retain the paper, or an electronic format of it, for a period of 3 years after the date that the shipping paper is provided to the carrier, with the paper or electronic format to be accessible through the shipper's principal place of business.

''(2) CARRIERS.—The carrier required to keep the shipping paper under this section, shall retain the paper, or an electronic format of it, for a period of 1 year after the date that the shipping paper is provided to the carrier, with the paper or electronic format to be accessible through the carrier's principal place of business.

''(3) AVAILABILITY TO GOVERNMENT AGENCIES.—Any person required to keep a shipping paper under this subsection shall, upon request, make it available to a Federal, State, or local government agency at reasonable times and locations.''.

SEC. 7331. RAIL TANK CARS.

(a) REPEAL OF REQUIREMENTS.—Section 5111 is repealed.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 51 is amended by striking the item relating to section 5111.

SEC. 7332. UNSATISFACTORY SAFETY RATINGS.

(a) IN GENERAL.—The text of section 5113 is amended to read as follows:

''A violation of section 31144(c)(3) of this title shall be considered a violation of this chapter, and shall be subject to the penalties in sections 5123 and 5124 of this title.''.

(b) CONFORMING AMENDMENTS.—The first subsection (c) of section 31144 is amended—

(1) by striking ''sections 521(b)(5)(A) and 5113'' in paragraph (1) and inserting ''section 521(b)(5)(A) of this title''; and

(2) by adding at the end of paragraph (3) ''A violation of this paragraph by an owner or operator transporting hazardous material shall be considered a violation of chapter 51 of this title, and shall be subject to the penalties in sections 5123 and 5124 of this title.''.

SEC. 7333. TRAINING CURRICULUM FOR THE PUBLIC SECTOR.

(a) IN GENERAL.—Section 5115(a) is amended to read as follows:

''(a) IN GENERAL.—In coordination with the Director of the Federal Emergency Management Agency, the Chairman of the Nuclear Regulatory Commission, the Administrator of the Environmental Protection Agency, the Secretaries of Labor, Energy, and Health and Human Services, and the Director of the National Institute of Environmental Health Sciences, and using existing coordinating mechanisms of the National Response Team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee, the Secretary shall maintain a current curriculum of lists of courses necessary to train public sector emergency response and preparedness teams in matters relating to the transportation of hazardous material.''.

(b) REQUIREMENTS.—Section 5115(b) is amended—

(1) by striking ''developed'' in the matter preceding paragraph (1) and inserting ''maintained''; and

(2) by striking ''under other United States Government grant programs'' in paragraph (1)(C) and all that follows and inserting ''with Federal assistance; and''.

(c) TRAINING ON COMPLIANCE WITH LEGAL REQUIREMENTS.—Section 5115(c)(3) is amended by

striking ''Association.'' and inserting ''Association or by any other voluntary organization establishing consensus-based standards that the Secretary considers appropriate.''.

(d) DISTRIBUTION AND PUBLICATION.—Section 5115(d) is amended—

(1) by striking ''national response team—'' and inserting ''National Response Team—''; and

(2) by striking ''publish a list'' in paragraph (2) and all that follows and inserting ''publish and distribute the list of courses maintained under this section, and of any programs utilizing such courses.''.

SEC. 7334. PLANNING AND TRAINING GRANTS; EMERGENCY PREPAREDNESS FUND.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5116 is amended by striking ''of Transportation'' each place it appears in subsections (a), (b), (c), (d), (g), and (i).

(b) GOVERNMENT SHARE OF COSTS.—Section 5116(e) is amended by striking the second sentence.

(c) MONITORING AND TECHNICAL ASSISTANCE.—Section 5116(f) is amended by striking ''national response team'' and inserting ''National Response Team''.

(d) DELEGATION OF AUTHORITY.—Section 5116(g) is amended by striking ''Government grant programs'' and inserting ''Federal financial assistance programs''.

(e) EMERGENCY PREPAREDNESS FUND.—

(1) NAME OF FUND.—Section 5116(i) is amended by inserting after ''an account'' the following: ''(to be known as the 'Emergency Preparedness Fund')''.

(2) PUBLICATION OF EMERGENCY RESPONSE GUIDE.—Section 5116(i) is further amended—

(A) by striking ''collects under section 5108(g)(2)(A) of this title and'';

(B) by striking ''and'' after the semicolon in paragraph (2);

(C) by redesignating paragraph (3) as paragraph (4); and

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

''(3) to publish and distribute an emergency response guide; and''.

(3) CONFORMING AMENDMENT.—Section 5108(g)(2)(C) is amended by striking ''the account the Secretary of the Treasury establishes'' and inserting ''the Emergency Response Fund established''.

(f) REPORTS.—Section 5116(k) is amended—

(1) by striking the first sentence and inserting ''The Secretary shall make available to the public annually information on the allocation and uses of the planning grants allocated under subsection (a), training grants under subsection (b), and grants under subsection (j) of this section and under section 5107 of this title.''; and

(2) by striking ''Such report'' in the second sentence and inserting ''The information''.

SEC. 7335. SPECIAL PERMITS AND EXCLUSIONS.

(a) SPECIAL PERMITS AND EXCLUSIONS.—

(1) IN GENERAL.—Section 5117(a)(1) is amended by striking ''the Secretary of Transportation may issue'' and all that follows through ''in a way'' and inserting ''the Secretary may issue, modify, or terminate a special permit authorizing variances from this chapter, or a regulation prescribed under section 5103(b), 5104, 5110, or 5112 of this title, to a person performing a function regulated by the Secretary under section 5103(b)(1) of this title in a way''.

(2) DURATION.—Section 5117(a)(2) is amended to read as follows:

''(2) A special permit under this subsection—

''(A) shall be effective when first issued for not more than 2 years; and

''(B) may be renewed for successive periods of not more than 4 years each.''.

(b) REFERENCES TO SPECIAL PERMITS.—Section 5117 is further amended—

(1) by striking ''an exemption'' each place it appears and inserting ''a special permit'';

(2) by striking ''the exemption'' each place it appears and inserting ''the special permit''; and

(3) by striking ''exempt'' in subsection (e) and inserting ''granted a variance''.

(c) CONFORMING AND CLERICAL AMENDMENTS.—

(1) CONFORMING AMENDMENT.—The heading of section 5117 is amended to read as follows:

''§ 5117. Special permits and exclusions''

(2) CLERICAL AMENDMENT.—The chapter analysis for chapter 51 is amended by striking the item relating to section 5117 and inserting the following:

''5117. Special permits and exclusions.''.

(3) SUBSECTION HEADING.—The heading for subsection (a) of section 5117 is amended by striking ''EXEMPT'' and inserting ''ISSUE SPECIAL PERMITS''.

(d) REPEAL OF SECTION 5118.—

(1) Section 5118 is repealed.

(2) The chapter analysis for chapter 51 is amended by striking the item relating to section 5118 and inserting the following:

''5118. Repealed.''.

SEC. 7336. UNIFORM FORMS AND PROCEDURES.

The text of section 5119 is amended to read as follows:

''(a) IN GENERAL.—The Secretary may prescribe regulations to establish uniform forms and regulations for States on the following:

''(1) To register and issue permits to persons that transport or cause to be transported hazardous material by motor vehicles in a State.

''(2) To permit the transportation of hazardous material in a State.

''(b) UNIFORMITY IN FORMS AND PROCEDURES.—In prescribing regulations under subsection (a) of this section, the Secretary shall develop procedures to eliminate discrepancies among the States in carrying out the activities covered by the regulations.

''(c) LIMITATION.—The regulations prescribed under subsection (a) of this section may not define or limit the amount of any fees imposed or collected by a State for any activities covered by the regulations.

''(d) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection, the regulations prescribed under subsection (a) of this section shall take effect 1 year after the date on which prescribed.

''(2) EXTENSION.—The Secretary may extend the 1-year period in subsection (a) for an additional year for good cause.

''(e) STATE REGULATIONS.—After the regulations prescribed under subsection (a) of this section take effect under subsection (d) of this section, a State may establish, maintain, or enforce a requirement relating to the same subject matter only if the 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. 7337. HAZARDOUS MATERIALS TRANSPORTATION SAFETY AND SECURITY.

The text of section 5121 is amended to read as follows:

''(a) GENERAL AUTHORITY.—

''(1) To carry out this chapter, the Secretary may investigate, conduct tests, make reports, issue subpoenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities.

''(2) Except as provided in subsections (c) and (d) of this section, the Secretary shall provide notice and an opportunity for a hearing before issuing an order directing compliance with this chapter, a regulation prescribed under this chapter, or an order, special permit, or approval issued under this chapter.

''(b) RECORDS, REPORTS, PROPERTY, AND INFORMATION.—A person subject to this chapter shall—

''(1) maintain records, make reports, and provide property and information that the Secretary by regulation or order requires; and

''(2) make the records, reports, property, and information available for inspection when the Secretary undertakes an inspection or investigation.

''(c) INSPECTIONS AND INVESTIGATIONS.—

''(1) A designated officer or employee of the Secretary may—

''(A) inspect and investigate, at a reasonable time and in a reasonable way, records and property relating to a function described in section 5103(b)(1) of this title;

''(B) except for packaging immediately adjacent to the hazardous material contents, gain access to, open, and examine a package offered for or in transportation when the officer or employees has an objectively reasonable and articulable belief that the package may contain hazardous material;

''(C) remove from transportation a package or related packages in a shipment offered for or in transportation for which—

''(i) such officer or employee has an objectively reasonable and articulable belief that the package may pose an imminent hazard; and

''(ii) such officer or employee contemporaneously documents such belief in accordance with procedures set forth in regulations prescribed under subsection (e) of this section;

''(D) gather information from the offeror, carrier, packaging manufacturer or tester, or other person responsible for a package or packages to ascertain the nature and hazards of the contents of the package or packages;

''(E) as necessary under terms and conditions prescribed by the Secretary, order the offeror, carrier, or other person responsible for a package or packages to have the package or packages transported to an appropriate facility, opened, examined, and analyzed; and

''(F) when safety might otherwise be compromised, authorize properly qualified personnel to assist in activities carried out under this paragraph.

''(2) An officer or employee acting under the authority of the Secretary under this subsection shall display proper credentials when requested.

''(3) In instances when, as a result of an inspection or investigation under this 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) describes the standards and procedures for obtaining relief from the order.

''(3) After taking action under paragraph (1) of this subsection, the Secretary shall provide for review of the action under section 554 of title 5 if a petition for review is filed within 20 calendar days of the issuance of the order for the action.

''(4) If a petition for review of an action is filed under paragraph (3) of this subsection and the review under that paragraph is not completed by the end of the 30-day period beginning

on the date the petition is filed, the action shall cease to be effective at the end of such period unless the Secretary determines, in writing, that the imminent hazard providing a basis for the action continues to exist.

''(5) In this subsection, the term 'out-of-service order' means a requirement that an aircraft, vessel, motor vehicle, train, railcar, locomotive, other vehicle, transport unit, transport vehicle, freight container, potable tank, or other package not be moved until specified conditions have been met.

''(e) REGULATIONS.—The Secretary shall prescribe in accordance with section 553 of title 5 regulations to carry out the authority in subsections (c) and (d) of this section.

''(f) FACILITY, STAFF, AND REPORTING SYSTEM ON RISKS, EMERGENCIES, AND ACTIONS.—

''(1) The Secretary shall—

''(A) maintain a facility and technical staff sufficient to provide, within the United States Government, the capability of evaluating a risk relating to the transportation of hazardous material and material alleged to be hazardous;

''(B) maintain a central reporting system and information center capable of providing information and advice to law enforcement and firefighting personnel, and other interested individuals, and officers and employees of the United States Government and State and local governments on meeting an emergency relating to the transportation of hazardous material; and

''(C) conduct a continuous review on all aspects of transporting hazardous material to decide on and take appropriate actions to ensure safe transportation of hazardous material.

''(2) Paragraph (1) of this subsection shall not prevent the Secretary from making a contract with a private entity for use of a supplemental reporting system and information center operated and maintained by the contractor.

''(g) GRANTS, COOPERATIVE AGREEMENTS, AND OTHER TRANSACTIONS.—The Secretary may enter into grants, cooperative agreements, and other transactions with a person, agency, or instrumentality of the United States, a unit of State or local government, an Indian tribe, a foreign government (in coordination with the Department of State), an educational institution, or other appropriate entity—

''(1) to expand risk assessment and emergency response capabilities with respect to the security of transportation of hazardous material;

''(2) to enhance emergency communications capacity as deemed necessary by the Secretary, including the use of integrated, interoperable emergency communications technologies where appropriate;

''(3) to conduct research, development, demonstration, risk assessment and emergency response planning and training activities; or

''(4) to otherwise carry out this chapter.

''(h) REPORTS.—

''(1) The Secretary shall, once every 2 years, submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a comprehensive report on the transportation of hazardous material during the preceding 2 calendar years. Each report shall include, for the period covered by such report—

''(A) a statistical compilation of the accidents, incidents, and casualties related to the transportation of hazardous material during such period;

''(B) a list and summary of applicable Government regulations, criteria, orders, and special permits;

''(C) a summary of the basis for each special permit issued;

''(D) an evaluation of the effectiveness of enforcement activities relating to the transportation of hazardous material during such period, and of the degree of voluntary compliance with regulations;

''(E) a summary of outstanding problems in carrying out this chapter, set forth in order of priority; and

''(F) any recommendations for legislative or administrative action that the Secretary considers appropriate.

''(2) Before December 31, 2007, and every 3 years thereafter, the Secretary, through the Bureau of Transportation Statistics and in consultation with other appropriate Federal departments and agencies, shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the transportation of hazardous material in all modes of transportation during the preceding 3 calendar years. Each report shall include, for the period covered by such report—

''(A) a summary of the hazardous material shipments, deliveries, and movements during such period, set forth by hazardous materials type, by tonnage and ton-miles, and by mode, both domestically and across United States borders; and

''(B) a summary of shipment estimates during such period as a proxy for risk.

''(i) SECURITY SENSITIVE INFORMATION.—

''(1) If the Secretary determines that particular information may reveal a vulnerability of a hazardous material to attack during transportation in commerce, or may facilitate the diversion of hazardous material during transportation in commerce for use in an attack on people or property, the Secretary may disclose such information, on the condition that such information may not be released to the public without prior authorization by the Secretary, only—

''(A) to the owner, custodian, offeror, or carrier of such hazardous material;

''(B) to an officer, employee, or agent of the United States Government, or a State or local government, including volunteer fire departments, concerned with carrying out transportation safety laws, protecting hazardous material in the course of transportation in commerce, protecting public safety or national security, or enforcing Federal law designed to protect public health or the environment; or

''(C) in an administrative or judicial proceeding brought under this chapter, under other Federal law intended to protect public health or the environment, or under other Federal law intended to address terrorist actions or threats of terrorist actions.

''(2) The Secretary may make determinations under paragraph (1) of this subsection with respect to categories of information in accordance with regulations prescribed by the Secretary.

''(3) A release of information pursuant to a determination under paragraph (1) of this subsection shall not be treated as a release of such information to the public for purposes of section 552 of title 5.''.

SEC. 7338. ENFORCEMENT.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5122(a) is amended by striking ''of Transportation''.

(b) GENERAL.—Section 5122(a) is further amended—

(1) by striking ''chapter or a regulation prescribed or order'' in the first sentence and inserting ''chapter, a regulation prescribed under this chapter, or an order, special permit, or approval''; and

(2) by striking the second sentence and inserting ''In an action under this subsection, the court may award appropriate relief, including a temporary or permanent injunction, civil penalties under section 5123 of this title, and punitive damages.''.

(c) IMMINENT HAZARDS.—Section 5122(b)(1)(B) is amended by striking ''ameliorate'' and inserting ''mitigate''.

SEC. 7339. CIVIL PENALTIES.

(a) PENALTY.—Section 5123(a) is amended—

(1) in paragraph (1)—

(A) by striking ''regulation prescribed or order issued'' and inserting ''regulation, order, special permit, or approval issued''; and

(B) by striking ''$25,000'' and inserting ''$32,500'';

(2) by redesignating paragraph (2) as paragraph (4); and

(3) by inserting after paragraph (1) the following:

''(2) If the Secretary finds that a violation under paragraph (1) results in death, serious illness, or severe injury to any person, the Secretary may increase the amount of the civil penalty for such violation to not more than $100,000.

''(3) If the violation is related to training, paragraph (1) shall be applied by substituting '$450' for '$250'.''.

(b) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5123(b) is amended by striking ''of Transportation''.

(c) HEARING REQUIREMENT.—Section 5123(b) is amended by striking ''chapter or a regulation prescribed'' and inserting ''chapter, a regulation prescribed under this chapter, or an order, special permit, or approval issued''.

(d) CIVIL ACTIONS TO COLLECT.—Section 5123(d) is amended by striking ''section.'' and inserting ''section and any accrued interest on the civil penalty as calculated in accordance with section 1005 of the Oil Pollution Act of 1990 (33 U.S.C. 2705). In the civil action, the amount and appropriateness of the civil penalty shall not be subject to review.''.

(e) EFFECTIVE DATE.—(1) The amendments made by subsections (b) and (c) of this 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. 7340. CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 5124 is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''A person''; and

(2) by striking ''chapter or a regulation prescribed or order'' and inserting ''chapter, a regulation prescribed under this chapter, or an order, special permit, or approval''.

(b) ADDITIONAL MATTERS.—Section 5124 is further amended by adding at the end the following:

''(b) AGGRAVATED VIOLATIONS.—A person knowingly violating section 5104(b) of this title or willfully violating this chapter or a regulation prescribed, or an order, special permit, or approval issued, under this chapter, who thereby causes the release of hazardous material shall be fined under title 18, imprisoned for not more than 20 years, or both.

''(c) SEPARATE VIOLATIONS.—A separate violation occurs for each day the violation, committed by a person who transports or causes to be transported hazardous material, continues.''.

SEC. 7341. PREEMPTION.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5125(b)(2) is amended by striking ''of Transportation''.

(b) PURPOSES.—Section 5125 is amended—

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

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

''(a) PURPOSES.—The Secretary shall exercise the authority in this section—

''(1) to achieve uniform regulation of the transportation of hazardous material;

''(2) to eliminate rules that are inconsistent with the regulations prescribed under this chapter; and

''(3) to otherwise promote the safe and efficient movement of hazardous material in commerce.'';

(3) by striking subsection (g), as redesignated; and

(4) by redesignating subsection (h), as redesignated, as subsection (g).

(c) GENERAL PREEMPTION.—Section 5125(b), as redesignated by subsection (b)(1) of this section, is further amended by striking ''GENERAL.—Except as provided in subsection (b), (c), and (e)'' and inserting ''PREEMPTION GENERALLY.—Except as provided in subsections (c), (d), and (f)''.

(d) SUBSTANTIVE DIFFERENCES.—Section 5125(c), as so redesignated, is further amended—

(1) in the matter preceding subparagraph (A) of paragraph (1), by striking ''subsection (c)'' and inserting ''subsection (d)'';

(2) by striking subparagraph (E) of paragraph (1) and inserting the following:

''(E) the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce.''; and

(3) by striking ''prescribes after November 16, 1990. However, the'' in paragraph (2) and inserting ''prescribes. The''.

(e) DECISIONS ON PREEMPTION.—Section 5125(e), as so redesignated, is further amended by striking ''subsection (a), (b)(1), or (c) of this section.'' in the first sentence and inserting ''subsection (b), (c)(1), or (d) of this section or section 5119(b) of this title.''.

(f) WAIVER OF PREEMPTION.—Section 5125(f), as so redesignated, is further amended by striking ''subsection (a), (b)(1), or (c) of this section.'' and inserting ''subsection (b), (c)(1), or (d) of this section or section 5119(b) of this title.''.

(g) STANDARDS.—Section 5125 is further amended by adding at the end the following:

''(h) APPLICATION OF EACH PREEMPTION STANDARD.—Each standard for preemption in subsection (b), (c)(1), or (d) of this section, and in section 5119(b) of this title, is independent in its application to a requirement of a State, political subdivision of a State, or Indian tribe.

''(i) NON-FEDERAL ENFORCEMENT STANDARDS.—This section does not apply to any procedure, penalty, required mental state, or other standard utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material.''.

SEC. 7342. RELATIONSHIP TO OTHER LAWS.

Section 5126 is amended—

(1) by striking ''or causes to be transported hazardous material,'' in subsection (a) and inserting ''hazardous material, or causes hazardous material to be transported,'';

(2) by striking ''manufactures,'' and all that follows through ''or sells'' in subsection (a) and inserting ''designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented'';

(3) by striking ''must'' in subsection (a) and inserting ''shall'';

(4) by striking ''manufacturing,'' in subsection (a) and all that follows through ''testing'' and inserting ''designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing''; and

(5) by striking ''39.'' in subsection (b)(2) and inserting ''39, except in the case of an imminent hazard.''.

SEC. 7343. JUDICIAL REVIEW.

(a) IN GENERAL.—Chapter 51 is amended—

(1) by redesignating section 5127 as section 5128; and

(2) by inserting after section 5126 the following:

''§ 5127. Judicial review

''(a) FILING AND VENUE.—Except as provided in section 20114(c) of this title, a person adversely affected or aggrieved by a final action of the Secretary under this chapter may petition for review of the final action in the United States Court of Appeals for the District of Columbia or in the court of appeals of the United States for the circuit in which the person resides or has a principal place of business. The petition shall be filed not more than 60 days after the action of the Secretary becomes final.

''(b) PROCEDURES.—When a petition on a final action is filed under subsection (a) of this section, the clerk of the court shall immediately send a copy of the petition to the Secretary. The Secretary shall file with the court a record of any proceeding in which the final action was issued as provided in section 2112 of title 28.

''(c) AUTHORITY OF COURT.—The court in which a petition on a final action is filed under subsection (a) of this section has exclusive jurisdiction, as provided in subchapter II of chapter 5 of title 5 to affirm or set aside any part of the final action and may order the Secretary to conduct further proceedings.

''(d) REQUIREMENT FOR PRIOR OBJECTIONS.—In reviewing a final action under this section, the court may consider an objection to the final action only if—

''(1) the objection was made in the course of a proceeding or review conducted by the Secretary; or

''(2) there was a reasonable ground for not making the objection in the proceeding.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 51 is amended by striking the item relating to section 5127 and inserting the following:

''5127. Judicial review.
''5128. Authorization of appropriations.''.

SEC. 7344. AUTHORIZATION OF APPROPRIATIONS.

Section 5128, as redesignated by section 7343 of this chapter, is amended to read as follows:

''§ 5128. Authorization of appropriations

''(a) GENERAL.—In order to carry out this chapter (except sections 5107(e), 5108(g), 5112, 5113, 5115, 5116, and 5119 of this title), the following amounts are authorized to be appropriated to the Secretary:

''(1) For fiscal year 2005, not more than $24,940,000.

''(2) For fiscal year 2006, not more than $29,000,000.

''(3) For each of fiscal years 2007 through 2009, not more than $30,000,000.

''(b) EMERGENCY PREPAREDNESS FUND.—There shall be available from the Emergency Preparedness Fund under section 5116(i) of this title, amounts as follows:

''(1) To carry out section 5107(e) of this title, $4,000,000 for each of fiscal years 2005 through 2009.

''(2) To carry out section 5115 of this title, $200,000 for each of fiscal years 2005 through 2009.

''(3) To carry out sections 5116(a) and (b) of this title, $21,800,000 for each of fiscal years 2005 through 2009, to be allocated as follows:

''(A) $5,000,000 to carry out section 5116(a).

''(B) $7,800,000 to carry out section 5116(b).

''(C) Of the amount provided for by this paragraph in excess of the suballocations in subparagraphs (A) and (B)—

''(i) 35 percent shall be used to carry out section 5116(a), and

''(ii) 65 percent shall be used to carry out section 5116(b),

except that the Secretary may increase the proportion to carry out section 5116(b) and decrease the proportion to carry out section 5116(a) if the Secretary determines that such reallocation is appropriate to carry out the intended uses of these funds as described in the applications submitted by States and Indian tribes.

''(4) To carry out section 5116(f) of this title, $150,000 for each of fiscal years 2005 through 2009.

''(5) To carry out section 5116(i)(4) of this title, $150,000 for each of fiscal years 2005 through 2009.

''(6) To carry out section 5116(j) of this title, $1,000,000 for each of fiscal years 2005 through 2009.

''(7) To publish and distribute an emergency response guidebook under section 5116(i)(3) of title 49, United States Code, $750,000 for each of fiscal years 2005 through 2009.

''(c) SECTION 5121 REPORTS.—There are authorized to be appropriated to the Secretary of Transportation for the use of the Bureau of Transportation Statistics such sums as may be necessary to carry out section 5121(h) of this title.''.

''(d) CREDIT TO APPROPRIATIONS.—The Secretary may credit to any appropriation to carry out this chapter an amount received from a State, political subdivision of a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, political subdivision, Indian tribe, or other authority or entity.

''(e) AVAILABILITY OF AMOUNTS.—Amounts available under subsections (a) and (b) of this section shall remain available until expended.''.

SEC. 7345. ADDITIONAL CIVIL AND CRIMINAL PENALTIES.

(a) TITLE 49 PENALTIES.—Section 46312 is amended—

(1) by striking ''part—'' in subsection (a) and inserting ''part or chapter 51 of this title—''; and

(2) by inserting ''or chapter 51 of this title'' in subsection (b) after ''under this part''.

(b) TITLE 18 PENALTIES.—Section 3663(a)(1)(A) of title 18, United States Code, is amended by inserting ''5124,'' before ''46312,''.

SEC. 7346. TECHNICAL CORRECTIONS.

(a) HIGHWAY ROUTING OF HAZARDOUS MATERIAL.—The second sentence of section 5112(a)(1) is amended by striking ''However, the Secretary of Transportation'' and inserting ''The Secretary''.

(b) AIR TRANSPORTATION OF IONIZING RADIATION MATERIAL.—Section 5114(b) is amended by striking ''of Transportation''.

(c) INTERNATIONAL UNIFORMITY OF STANDARDS AND REQUIREMENTS.—Section 5120 is amended by striking ''of Transportation'' each place it appears in subsections (a), (b), and (c)(1).

CHAPTER 2—OTHER MATTERS

SEC. 7361. ADMINISTRATIVE AUTHORITY FOR PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION.

Section 108 is amended by adding at the end the following:

''(h) ADMINISTRATIVE AUTHORITIES.—

''(1) GRANTS, COOPERATIVE AGREEMENTS, AND OTHER TRANSACTIONS.—The Administrator may enter into grants, cooperative agreements, and other transactions with Federal agencies, State and local government agencies, other public entities, private organizations, and other persons—

''(A) to conduct research into transportation service and infrastructure assurance; and

''(B) to carry out other research activities of the Administration.

''(2) LIMITATION ON DISCLOSURE OF CERTAIN INFORMATION.—

''(A) LIMITATION.—If the Administrator determines that particular information developed in research sponsored by the Administration may reveal a systemic vulnerability of transportation service or infrastructure, such information may be disclosed only to—

''(i) a person responsible for the security of the transportation service or infrastructure;

''(ii) a person responsible for protecting public safety; or

''(iii) an officer, employee, or agent of the Federal Government, or a State or local government, who, as determined by the Administrator, has need for such information in the performance of official duties.

''(B) TREATMENT OF RELEASE.—The release of information under subparagraph (A) shall not be treated as a release to the public for purposes of section 552 of title 5.''.

SEC. 7362. MAILABILITY OF HAZARDOUS MATERIALS.

(a) NONMAILABILITY GENERALLY.—Section 3001 of title 39, United States Code, is amended—

(1) by redesignating subsection (n) as subsection (o); and

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

''(n)(1) Except as otherwise authorized by law or regulations of the Postal Service under section 3018 of this title, hazardous material is nonmailable.

''(2) In this subsection, the term 'hazardous material' means a substance or material designated by the Secretary of Transportation as hazardous material under section 5103(a) of title 49.''.

(b) MAILABILITY.—

(1) IN GENERAL.—Chapter 30 of title 39, United States Code, is amended by adding at the end the following:

''§ 3018. Hazardous material

''(a) IN GENERAL.—The Postal Service shall prescribe regulations for the safe transportation of hazardous material in the mails.

''(b) PROHIBITIONS.—No person may—

''(1) mail or cause to be mailed hazardous material that has been declared by statute or Postal Service regulation to be 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. 7363. CRIMINAL MATTERS.

Section 845(a)(1) of title 18, United States Code, is amended by striking ''which are regulated'' and all that follows and inserting ''that is subject to the authority of the Departments of Transportation and Homeland Security;''.

SEC. 7364. CARGO INSPECTION PROGRAM.

(a) IN GENERAL.—The Secretary of Transportation may establish a program of random inspections of cargo at points of entry into the United States for the purpose of determining the extent to which undeclared hazardous material is being offered for transportation in commerce through such points of entry.

(b) INSPECTIONS.—Under the program under subsection (a)—

(1) an officer of the Department of Transportation who is not located at a point of entry into the United States may select at random cargo shipments at points of entry into the United States for inspection; and

(2) an officer or employee of the Department may open and inspect each cargo shipment so selected for the purpose described in subsection (a).

(c) COORDINATION.—The Secretary of Transportation shall coordinate any inspections under the program under subsection (a) with the Secretary of Homeland Security.

(d) DISPOSITION OF HAZARDOUS MATERIALS.—The Secretary of Transportation shall provide for the appropriate handling and disposition of any hazardous material discovered pursuant to inspections under the program under subsection (a).

SEC. 7365. INFORMATION ON HAZMAT REGISTRATIONS.

The Administrator of the Department of Transportation's Research and Special Programs Administration shall—

(1) transmit current hazardous material registrant information to the Federal Motor Carrier Safety Administration to cross reference the registrant's Federal motor carrier registration number; and

(2) notify the Federal Motor Carrier Safety Administration immediately, and provide a registrant's United States Department of Transportation identification number to the Administration, whenever a new registrant registers to transport hazardous materials as a motor carrier.

SEC. 7366. REPORT ON APPLYING HAZARDOUS MATERIALS REGULATIONS TO PERSONS WHO REJECT HAZARDOUS MATERIALS.

Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall complete an assessment of the costs and benefits of subjecting persons who reject hazardous material for transportation in commerce to the hazardous materials laws and regulations. In completing this assessment, the Secretary shall—

(1) estimate the number of affected employers and employees;

(2) determine what actions would be required by them to comply with such laws and regulations; and

(3) consider whether and to what extent the application of Federal hazardous materials laws and regulations should be limited to—

(A) particular modes of transportation;

(B) certain categories of employees; or

(C) certain classes or categories of hazardous materials.

SEC. 7367. NATIONAL FIRST RESPONDER TRANSPORTATION INCIDENT RESPONSE SYSTEM.

(a) IN GENERAL.—The Secretary of Transportation shall provide funding to the Operation Respond Institute to design, build, and operate a seamless first responder hazardous materials incident detection, preparedness, and response system.

(b) OREIS EXPANSION.—

(1) IN GENERAL.—The system designed, built, and operated by the Institute shall include an expansion of the Operation Respond Emergency Information System.

(2) FUNCTIONALITY.—The Secretary may require that the system designed by the Operation Respond Institute function across multiple transportation modes.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section $5,000,000 for each of fiscal years 2005 through 2009.

SEC. 7368. HAZARDOUS MATERIAL TRANSPORTATION PLAN REQUIREMENT.

(a) IN GENERAL.—Subpart I of part 172 of the Department of Transportation's regulations (49 C.F.R. 172.800 et seq.), or any subsequent Department of Transportation regulation in pari materia, does not apply to the surface transportation activities of a farmer that are—

(1) in direct support of the farmer's farming operations; and

(2) conducted within a 150-mile radius of those operations.

(b) FARMER DEFINED.—In this section, the term ''farmer'' means a person—

(1) actively engaged in the production or raising of crops, poultry, livestock, or other agricultural commodities; and

(2) whose gross receipts from the sale of such agricultural commodities or products do not exceed $500,000 annually.

SEC. 7369. WELDED RAIL AND TANK CAR SAFETY IMPROVEMENTS.

(a) TRACK STANDARDS.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Federal Railroad Administration shall—

(A) require each track owner using continuous welded rail track to include procedures (in its procedures filed with the Administration pursuant to section 213.119 of title 49, Code of Federal Regulations) to improve the identification of cracks in rail joint bars;

(B) instruct Administration track inspectors to obtain copies of the most recent continuous welded rail programs of each railroad within the inspectors' areas of responsibility and require that inspectors use those programs when conducting track inspections; and

(C) establish a program to review continuous welded rail joint bar inspection data from railroads and Administration track inspectors periodically.

(2) Whenever the Administration determines that it is necessary or appropriate the Administration may require railroads to increase the frequency of inspection, or improve the methods of inspection, of joint bars in continuous welded rail.

(b) TANK CAR STANDARDS.—The Federal Railroad Administration shall—

(1) validate a predictive model to quantify the relevant dynamic forces acting on railroad tank cars under accident conditions within 1 year after the date of enactment of this Act; and

(2) initiate a rulemaking to develop and implement appropriate design standards for pressurized tank cars within 18 months after the date of enactment of this Act.

(c) OLDER TANK CAR IMPACT RESISTANCE ANALYSIS AND REPORT.—Within 1 year after the date of enactment of this Act the Federal Railroad Administration shall conduct a comprehensive analysis to determine the impact resistance of the steels in the shells of pressure tank cars constructed before 1989. Within 6 months after completing that analysis the Administration shall—

(1) establish a program to rank those cars according to their risk of catastrophic fracture and separation;

(2) implement measures to eliminate or mitigate this risk; and

(3) transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure setting forth the measures implemented.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Railroad Administration $1,000,000 for fiscal year 2006 to carry out this section, such sums to remain available until expended.

SEC. 7370. HAZARDOUS MATERIALS COOPERATIVE RESEARCH PROGRAM.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Transportation $2,000,000 for each of fiscal years 2005 through 2009 to develop and administer a hazardous materials cooperative research program.

(b) GOVERNANCE.—The Secretary of Transportation shall establish an independent governing board to select projects and studies to be carried out under the hazardous materials cooperative research program. The Board shall be comprised of one voting representative from the following:

(1) The Federal Aviation Administration.

(2) The Federal Motor Carrier Administration.

(3) The Federal Transit Administration.

(4) The Federal Railroad Administration.

(5) The Maritime Administration.

(6) The Research and Innovative Technology Administration.

(7) The Pipeline and Hazardous Materials Safety Administration.

(8) The Department of Homeland Security.

(9) The Department of Energy.

(10) The Environmental Protection Agency.

(11) A State department of transportation.

(12) A State emergency management agency.

(13) A nonprofit organization representing emergency responders.

(14) A hazmat employer.

(15) A nonprofit organization representing hazmat employees.

(16) A hazardous materials shipper.

(17) A hazardous materials manufacturer.

(18) An organization representing the hazardous materials manufacturing industry.

(19) A research university or research institution.

(20) Additional representatives as the Secretary considers appropriate.

(c) RESEARCH STUDIES.—Under the cooperative research program, the governing board shall select cooperative research studies of hazardous materials transportation that are cross-cutting in nature and that consider issues not adequately addressed by existing Federal or private sector research programs. Priority shall be given to research studies that will yield results immediately applicable to risk analysis and mitigation or that will strengthen the ability of first responders to respond to incidents and accidents involving transportation of hazardous materials.

(d) SPECIAL RULES REGARDING STUDIES.—

(1) SAFETY AND SECURITY.—The purpose of at least one of the studies to be conducted under the cooperative research program shall be—

(A) to provide an assessment of opportunities for integrating and supplementing safety and security measures for hazardous materials transportation;

(B) to identify areas where safety and security measures currently utilized in the transportation of hazardous materials conflict or complement one another;

(C) to outline a comprehensive approach to hazardous materials transportation that effectively incorporates safety and security procedures;

(D) to produce a model of reasonable State and local risk response and management plans that effectively address safety and security of hazardous materials transportation; and

(E) to provide an assessment of the need and feasibility of substituting less lethal substances than toxic inhalation hazards in the manufacturing process.

(2) PERFORMANCE DATA FOR BULK CONTAINERS.—The purpose of at least one of the studies to be conducted under the research program shall be to provide—

(A) an analysis of, and recommendations for, the design and funding of a nationwide system capable of collecting and analyzing performance data from bulk containers involved in transportation accidents; and

(B) recommendations that can be used to develop conditional release probabilities for various container design specifications (by transport mode).

(3) PACKAGING REQUIREMENTS.—The purpose of at least one of the studies to be conducted under the research program shall be to provide an analysis of recommendations on appropriate packaging requirements for those hazardous materials that are most frequently involved in release incidents.

(4) ROUTING.—The purpose of at least one of the studies to be conducted under the research program shall be to identify the components that could comprise a model of risk and consequence analysis in rail and highway transportation and that can be used to facilitate decisionmaking regarding the routing of hazardous materials shipments and the development of regulations regarding mandatory routing decisions.

(5) RESPONSE COVERAGE.—The purpose of at least one of the studies to be conducted under the research program shall be to provide an assessment of the quality of response coverage for hazardous materials incidents, including cost-effective strategies for improving response capabilities and making recommendations on systematic approaches that could be used to allocate government funding to enhance response capability.

(e) IMPLEMENTATION.—The Secretary of Transportation shall make grants to, and enter a cooperative agreement with, the National Academy of Sciences to carry out activities under this Act.

(f) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the effectiveness of the program in meeting the needs of government and the private sector for cooperative research on hazardous materials transportation.

(g) DEFINITIONS.—In this section, the terms 'hazmat employer' and 'hazmat employee' have the meaning given those terms in section 5102 of title 49, United States Code.

CHAPTER 3—SANITARY FOOD TRANSPORTATION

SEC. 7381. SHORT TITLE.

This chapter may be cited as the ''Sanitary Food Transportation Act of 2005''.

SEC. 7382. RESPONSIBILITIES OF THE SECRETARY OF HEALTH AND HUMAN SERVICES.

(a) UNSANITARY TRANSPORT DEEMED ADULTERATION.—Section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) is amended by adding at the end the following:

''(i) NONCOMPLIANCE WITH SANITARY TRANSPORTATION PRACTICES.—If the food is transported under conditions that are not in compliance with the sanitary transportation practices prescribed by the Secretary under section 416.''.

(b) SANITARY TRANSPORTATION REQUIREMENTS.—Chapter IV of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341 et seq.) is amended by adding at the end the following:

''SEC. 416. SANITARY TRANSPORTATION PRACTICES.

''(a) DEFINITIONS.—In this section:

''(1) BULK VEHICLE.—The term 'bulk vehicle' includes a tank truck, hopper truck, rail tank car, hopper car, cargo tank, portable tank, freight container, or hopper bin, and any other vehicle in which food is shipped in bulk, with the food coming into direct contact with the vehicle.

''(2) TRANSPORTATION.—The term 'transportation' means any movement in commerce by motor vehicle or rail vehicle.

''(b) REGULATIONS.—The Secretary shall by regulation require shippers, carriers by motor vehicle or rail vehicle, receivers, and other persons engaged in the transportation of food to use sanitary transportation practices prescribed by the Secretary to ensure that food is not transported under conditions that may render the food adulterated.

''(c) CONTENTS.—The regulations shall—

''(1) prescribe such practices as the Secretary determines to be appropriate relating to—

''(A) sanitation;

''(B) packaging, isolation, and other protective measures;

''(C) limitations on the use of vehicles;

''(D) information to be disclosed—

''(i) to a carrier by a person arranging for the transport of food; and

''(ii) to a manufacturer or other person that—

''(I) arranges for the transportation of food by a carrier; or

''(II) furnishes a tank vehicle or bulk vehicle for the transportation of food; and

''(E) recordkeeping; and

''(2) include—

''(A) a list of nonfood products that the Secretary determines may, if shipped in a bulk vehicle, render adulterated food that is subsequently transported in the same vehicle; and

''(B) a list of nonfood products that the Secretary determines may, if shipped in a motor vehicle or rail vehicle (other than a tank vehicle or bulk vehicle), render adulterated food that is simultaneously or subsequently transported in the same vehicle.

''(d) WAIVERS.—

''(1) IN GENERAL.—The Secretary may waive any requirement under this section, with respect

to any class of persons, vehicles, food, or nonfood products, if the Secretary determines that the waiver—

''(A) will not result in the transportation of food under conditions that would be unsafe for human or animal health; and

''(B) will not be contrary to the public interest.

''(2) PUBLICATION.—The Secretary shall publish in the Federal Register any waiver and the reasons for the waiver.

''(e) PREEMPTION.—

''(1) IN GENERAL.—No State or political subdivision of a State may directly or indirectly establish or continue in effect, as to any food in interstate commerce, any authority or requirement concerning transportation of food that is not identical to an authority or requirement under this section.

''(2) APPLICABILITY.—This subsection applies to transportation that occurs on or after the effective date of the regulations promulgated under subsection (b).

''(f) ASSISTANCE OF OTHER AGENCIES.—The Secretary of Transportation, the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, and the heads of other Federal agencies, as appropriate, shall provide assistance on request, to the extent resources are available, to the Secretary for the purposes of carrying out this section.''.

(c) INSPECTION OF TRANSPORTATION RECORDS.—

(1) REQUIREMENT.—Section 703 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 373) is amended—

(A) by striking the section heading and all that follows through ''For the purpose'' and inserting the following:

''SEC. 703. RECORDS.

''(a) IN GENERAL.—For the purpose''; and

(B) by adding at the end the following:

''(b) FOOD TRANSPORTATION RECORDS.—A shipper, carrier by motor vehicle or rail vehicle, receiver, or other person subject to section 416 shall, on request of an officer or employee designated by the Secretary, permit the officer or employee, at reasonable times, to have access to and to copy all records that the Secretary requires to be kept under section 416(c)(1)(E).''.

(2) CONFORMING AMENDMENT.—Subsection (a) of section 703 of the Federal Food, Drug, and Cosmetic Act (as designated by paragraph (1)(A)) is amended by striking ''carriers.'' and inserting ''carriers, except as provided in subsection (b)''.

(d) PROHIBITED ACTS.—

(1) RECORDS INSPECTION.—Section 301(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(e)) is amended by inserting ''416,'' before ''504,'' each place it appears.

(2) UNSAFE FOOD TRANSPORTATION.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by adding at the end the following:

''(hh) NONCOMPLIANCE WITH SANITARY TRANSPORTATION PRACTICES.—The failure by a shipper, carrier by motor vehicle or rail vehicle, receiver, or any other person engaged in the transportation of food to comply with the sanitary transportation practices prescribed by the Secretary under section 416.''.

SEC. 7383. DEPARTMENT OF TRANSPORTATION REQUIREMENTS.

Chapter 57, is amended to read as follows:

''CHAPTER 57—SANITARY FOOD TRANSPORTATION

''Sec.

''5701. Food transportation safety inspections.

''§ 5701. Food transportation safety inspections

''(a) INSPECTION PROCEDURES.—

''(1) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture, shall—

''(A) establish procedures for transportation safety inspections for the purpose of identifying suspected incidents of contamination or adulteration of—

''(i) food in violation of regulations promulgated under section 416 of the Federal Food, Drug, and Cosmetic Act;

''(ii) meat subject to detention under section 402 of the Federal Meat Inspection Act (21 U.S.C. 672); and

''(iii) poultry products subject to detention under section 19 of the Poultry Products Inspection Act (21 U.S.C. 467a); and

''(B) train personnel of the Department of Transportation in the appropriate use of the procedures.

''(2) APPLICABILITY.—The procedures established under paragraph (1) of this subsection shall apply, at a minimum, to Department of Transportation personnel that perform commercial motor vehicle or railroad safety inspections.

''(b) NOTIFICATION OF SECRETARY OF HEALTH AND HUMAN SERVICES OR SECRETARY OF AGRICULTURE.—The Secretary of Transportation shall promptly notify the Secretary of Health and Human Services or the Secretary of Agriculture, as applicable, of any instances of potential food contamination or adulteration of a food identified during transportation safety inspections.

''(c) USE OF STATE EMPLOYEES.—The means by which the Secretary of Transportation carries out subsection (b) of this section may include inspections conducted by State employees using funds authorized to be appropriated under sections 31102 through 31104 of this title.''.

SEC. 7384. EFFECTIVE DATE.

This chapter takes effect on October 1, 2005.

CHAPTER 4—HOUSEHOLD GOODS MOVERS

SEC. 7401. SHORT TITLE.

This chapter may be cited as the ''Household Goods Mover Oversight Enforcement and Reform Act of 2005''.

SEC. 7402. DEFINITIONS; APPLICATION OF PROVISIONS.

(a) TERMS USED IN THIS CHAPTER.—In this chapter, the terms ''carrier'', ''household goods'', ''motor carrier'', ''Secretary'', and ''transportation'' have the meaning given such terms in section 13102 of title 49, United States Code.

(b) ''HOUSEHOLD GOODS MOTOR CARRIER'' IN PART B OF SUBTITLE IV OF TITLE 49.—Section 13102 is amended by redesignating paragraphs (12) through (24) as paragraphs (13) through (25) and by inserting after paragraph (11) the following:

''(12) HOUSEHOLD GOODS MOTOR CARRIER.—

''(A) IN GENERAL.—The term 'household goods motor carrier' means a motor carrier described in subparagraph (B) that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services:

''(i) Binding and nonbinding estimates.

''(ii) Inventorying.

''(iii) Protective packing and unpacking of individual items at personal residences.

''(iv) Loading and unloading at personal residences.

''(B) REGISTRATION REQUIREMENT.—A motor carrier is described in this subparagraph if its operations require it to register as a household goods motor carrier under—

''(i) section 13902 of this title; and

''(ii) regulations prescribed by the Secretary consistent with Federal agency determinations and decisions that were in effect on the date of enactment of the Household Goods Mover Oversight Enforcement and Reform Act of 2005.

''(C) LIMITED SERVICE EXCLUSION.—The term 'household goods motor carrier' does not include a motor carrier solely because it provides transportation of household goods entirely packed in, and unpacked from, 1 or more containers or trailers by the individual shipper.''.

(c) APPLICATION OF CERTAIN PROVISIONS OF LAW.—The provisions of title 49, United States Code, or of this chapter, relating to the transportation of household goods apply only to a household goods motor carrier (as defined in section 13102(12) of title 49, United States Code).

SEC. 7403. PAYMENT OF RATES.

Section 13707(b) is amended by adding at the end the following:

''(3) SHIPMENTS OF HOUSEHOLD GOODS.—

''(A) IN GENERAL.—A carrier providing transportation for a shipment of household goods shall give up possession of the household goods transported at the destination upon payment of—

''(i) 100 percent of the charges contained in a binding estimate provided by the carrier;

''(ii) not more than 110 percent of the charges contained in a nonbinding estimate provided by the carrier; or

''(iii) in the case of a partial delivery of the shipment, the prorated percentage of the charges calculated in accordance with subparagraph (B).

''(B) CALCULATION OF PRORATED CHARGES.—For purposes of subparagraph (A)(iii), the prorated percentage of the charges shall be the percentage of the total charges due to the carrier as described in clause (i) or (ii) of subparagraph (A) that is equal to the percentage of the weight of that portion of the shipment delivered to the total weight of the shipment.

''(C) POST-CONTRACT SERVICES.—Subparagraph (A) does not apply to additional services requested by a shipper after the contract of service is executed that were not included in the estimate.

''(D) IMPRACTICABLE OPERATIONS.—Subparagraph (A) does not apply to impracticable operations, as defined by the applicable carrier tariff, except that the charges collected at delivery for such operations shall not exceed 15 percent of all other charges due at delivery. Any remaining charges due shall be paid within 30 days after the carrier presents its freight bill.''.

SEC. 7404. HOUSEHOLD GOODS CARRIER OPERATIONS.

Section 14104(b) is amended—

(1) by striking ''135, upon request of a prospective shipper, may provide'' in paragraph (1) and inserting '' 135 shall provide'';

(2) by striking ''services.'' the first place it appears in paragraph (1) and inserting ''services in accordance with the requirements of sections 375.401, 375.403, 375.405, and 375.213 of title 49, Code of Federal Regulations, as those requirements were in effect on the date of enactment of the Surface Transportation Safety Improvement Act of 2005 or may thereafter be revised.'';

(3) by redesignating paragraph (2) as paragraph (4); and

(4) by inserting after paragraph (1) the following:

''(2) OTHER INFORMATION.—At the time that a motor carrier provides the written estimate required by paragraph (1), the motor carrier shall provide the shipper a copy of the Department of Transportation publication FMCSA–ESA–03–005 (or its successor edition or publication) entitled 'Ready to Move?'. Before the execution of a contract for service, a motor carrier shall provide the shipper a copy of the Department of Transportation publication OCE 100, entitled 'Your Rights and Responsibilities When You Move' required by section 375.2 of title 49, Code of Federal Regulations (or any corresponding similar regulation).

''(3) BINDING AND NONBINDING ESTIMATES.—The written estimate required by paragraph (1) may be either binding or nonbinding. The written estimate shall be based on a visual inspection of the household goods if the household goods are located within a 50-mile radius of the location of the carrier's household goods agent preparing the estimate. The Secretary may not prohibit any such carrier from charging a prospective shipper for providing a written, binding

estimate for the transportation and related services.''.

SEC. 7405. LIABILITY OF CARRIERS UNDER RECEIPTS AND BILLS OF LADING.

Section 14706(f) is amended—

(1) by resetting the text as a paragraph indented 2 ems from the left margin and inserting ''(1) IN GENERAL.—'' before ''A carrier''; and

(2) by adding at the end, the following:

''(2) FULL VALUE PROTECTION OBLIGATION.—Unless the carrier receives a waiver in writing under paragraph (3), a carrier's maximum liability for household goods that are lost, damaged, destroyed, or otherwise not delivered to the final destination is an amount equal to the replacement value of such goods, subject to a maximum amount equal to the declared value of the shipment, subject to rules issued by the Surface Transportation Board and applicable tariffs.

''(3) APPLICATION OF RATES.—The released rates established by the Board under paragraph (1) (commonly known as 'released rates') shall not apply to the transportation of household goods by a carrier unless the liability of the carrier for the full value of such household goods under paragraph (2) is waived in writing by the shipper.''.

SEC. 7406. ARBITRATION REQUIREMENTS.

(a) OFFERING SHIPPERS ARBITRATION.—Section 14708(a) is amended by inserting before the period at the end the following: ''and to determine whether carrier charges, in addition to those collected at delivery, must be paid by the shipper for transportation and services related to the transportation of household goods''.

(b) THRESHOLD FOR BINDING ARBITRATION.—Section 14708(b)(6) is amended by striking ''$5,000'' each place it appears and inserting ''$10,000''.

(c) DEADLINE FOR DECISION.—Section 14708(b)(8) is amended—

(1) by striking ''and''; and

(2) by inserting after ''for damages'' the following: '', and an order requiring the payment of additional carrier charges''.

(d) ATTORNEY'S FEES TO SHIPPERS.—Section 14708(d)(3) is amended—

(1) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and

(2) by inserting before subparagraph (B) (as so redesignated) the following:

''(A) the shipper was not advised by the carrier during the claim settlement process that a dispute settlement program was available to resolve the dispute;''

(e) REVIEW AND REPORT ON DISPUTE SETTLEMENT PROGRAMS.—

(1) REVIEW AND REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall complete a review of the outcomes and the effectiveness of the programs carried out under title 49, United States Code, to settle disputes between motor carriers and shippers and submit a report on the review to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The report shall describe—

(A) the subject of, and amounts at issue in, the disputes;

(B) patterns in disputes or settlements;

(C) the prevailing party in disputes, if identifiable; and

(D) any other matters the Secretary considers appropriate.

(2) REQUIREMENT FOR PUBLIC COMMENT.—The Secretary shall publish notice of the review required by paragraph (1) and provide an opportunity for the public to submit comments on the effectiveness of such programs. Notwithstanding any confidentiality or non-disclosure 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 other identifying information concerning, motor carriers or shippers that submitted comments or information under this subsection.

SEC. 7407. ENFORCEMENT OF REGULATIONS RELATED TO TRANSPORTATION OF HOUSEHOLD GOODS.

(a) NONPREEMPTION OF INTRASTATE TRANSPORTATION OF HOUSEHOLD GOODS.—Section 14501(c)(2)(B) is amended by inserting ''intrastate'' before ''transportation''.

(b) ENFORCEMENT OF FEDERAL LAW WITH RESPECT TO INTERSTATE HOUSEHOLD GOODS CARRIERS.—

(1) IN GENERAL.—Chapter 147 is amended by adding at the end the following:

''§ 14710. Enforcement of Federal laws and regulations with respect to transportation of household goods

''(a) ENFORCEMENT BY STATES.—Notwithstanding any other provision of this title, a State authority may enforce the consumer protection provisions that apply to individual shippers, as determined by the Secretary of Transportation, of this title that are related to the delivery and transportation of household goods in interstate commerce. Any fine or penalty imposed on a carrier in a proceeding under this subsection shall, notwithstanding any provision of law to the contrary, be paid to and retained by the State.

''(b) NOTICE.—The State shall serve written notice to the Secretary or the Board, as the case may be, of any civil action under subsection (a) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such civil action.

''(c) ENFORCEMENT ASSISTANCE OUTREACH PLAN.—The Federal Motor Carrier Safety Administration shall implement an outreach plan to enhance the coordination and effective enforcement of Federal laws and regulations with respect to transportation of household goods between and among Federal and State law enforcement and consumer protection authorities. The outreach shall include, as appropriate, local law enforcement and consumer protection authorities.

''(d) STATE AUTHORITY DEFINED.—The term 'State authority' means an agency of a State that has authority under the laws of the State to regulate the intrastate movement of household goods.

''§ 14711. Enforcement by State attorneys general

''(a) IN GENERAL.—A State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enforce the consumer protection provisions that apply to individual shippers, as determined by the Secretary of Transportation, of this title that are related to the delivery and transportation of household goods in interstate commerce, or regulations or orders of the 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 AND CONSENT.—

''(1) IN GENERAL.—The State shall serve written notice to the Secretary or the Board, as the case may be, of any civil action under subsection (a) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action.

''(2) CONDITIONS.—The Secretary or the Board—

''(A) shall review the initiation of the action by the State if—

''(i) the carrier or broker (as such terms are defined in section 13102 of this title) is not registered with the Department of Transportation;

''(ii) the license of a carrier or broker for failure to file proof of required bodily injury or cargo liability insurance is pending, or the license has been revoked for any other reason by the Department of Transportation;

''(iii) the carrier is not rated or has received a conditional or unsatisfactory safety rating by the Department of Transportation; or

''(iv) the carrier or broker has been licensed with the Department of Transportation for less than 5 years; and

''(B) may review if the carrier or broker fails to meet criteria developed by the Secretary that are consistent with this section.

''(3) CONGRESSIONAL NOTIFICATION.—The Secretary shall notify the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Transportation and Infrastructure of any criteria developed by the Secretary under paragraph (2)(B).

''(4) 60-DAY DEADLINE.—The Secretary or the Board shall be considered to have consented to any such action if the Secretary or the Board has taken no action with respect to the notice within 60 calendar days after the date on which the Secretary or the Board received notice under paragraph (1).

''(c) AUTHORITY TO INTERVENE.—

''(1) IN GENERAL.—Upon receiving the notice required by subsection (b), the Secretary or Board may intervene in such civil action and upon intervening—

''(A) be heard on all matters arising in such civil action;

''(B) file petitions for appeal of a decision in such civil action; and

''(C) be substituted, upon the filing of a motion with the court, for the State as parens patriae in the action.

''(2) SUBSTITUTION.—If the Secretary or the Board files a motion under paragraph (1)(C), the court shall—

''(A) grant the motion without further hearing or procedure;

''(B) substitute the Secretary or the Board, as appropriate, for the State as plaintiff; and

''(C) if requested by the Secretary or the Board, dismiss the State as a party to the action.

''(d) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this section shall—

''(1) convey a right to initiate or maintain a class action lawsuit in the enforcement of a Federal law or regulation; or

''(2) prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

''(e) VENUE; SERVICE OF PROCESS.—In a civil action brought under subsection (a)—

''(1) the venue shall be a Federal judicial district in which—

''(A) the carrier, foreign motor carrier, or broker operates;

''(B) the carrier, foreign motor carrier, or broker was authorized to provide transportation at the time the complaint arose; or

''(C) where the defendant in the civil action is found;

''(2) process may be served without regard to the territorial limits of the district or of the State in which the civil action is instituted; and

''(3) a person who participated with a carrier or broker in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

''(f) ENFORCEMENT OF STATE LAW.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court to enforce a criminal statute of such State.''.

(c) INDIVIDUAL SHIPPER DEFINED.—Section 13102 is amended by redesignating paragraphs (12) through (24) as paragraphs (13) through (25) and by inserting after paragraph (11) the following:

''(12) INDIVIDUAL SHIPPER.—The term 'individual shipper' means any person who—

''(A) is the shipper, consignor, or consignee of a household goods shipment;

''(B) is identified as the shipper, consignor, or consignee on the face of the bill of lading;

''(C) owns the goods being transported; and

''(D) pays his or her own tariff transportation charges.''.

(d) CONFORMING AMENDMENT.—The analysis for chapter 147 is amended by inserting after the item relating to section 14709 the following:

''14710. Enforcement of Federal laws and regulations with respect to transportation of household goods.

''14711. Enforcement by State attorneys general.''.

SEC. 7408. WORKING GROUP FOR DEVELOPMENT OF PRACTICES AND PROCEDURES TO ENHANCE FEDERAL-STATE RELATIONS.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall establish a working group of State attorneys general, State authorities that regulate the movement of household goods, and Federal and local law enforcement officials for the purpose of developing practices and procedures to enhance the Federal-State partnership in enforcement efforts, exchange of information, and coordination of enforcement efforts with respect to interstate transportation of household goods and making legislative and regulatory recommendations to the Secretary concerning such enforcement efforts.

(b) CONSULTATION.—In carrying out subsection (a), the working group shall consult with industries involved in the transportation of household goods, the public, and other interested parties.

SEC. 7409. INFORMATION ABOUT HOUSEHOLD GOODS TRANSPORTATION ON CARRIERS' WEBSITES.

Not later than 1 year after the date of enactment of this Act, the Secretary shall modify the regulations contained in part 375 of title 49, Code of Federal Regulations, to require a motor carrier or broker that is subject to such regulations and that establishes (or has established) and maintains a website to prominently display on the website—

(1) the number assigned to the motor carrier or broker by the Department of Transportation;

(2) the OCE 100 publication referred to in section 14104(b)(2) of title 49, United States Code; and

(3) in the case of a broker, a list of all motor carriers providing transportation of household goods used by the broker and a statement that the broker is not a motor carrier providing transportation of household goods.

SEC. 7410. CONSUMER COMPLAINTS.

(a) REQUIREMENT FOR DATABASE.—Subchapter II of chapter 141 is amended by adding at the end the following:

''§ 14124. Consumer complaints

''(a) ESTABLISHMENT OF SYSTEM AND DATABASE.—The Secretary of Transportation shall—

''(1) establish a system to—

''(A) file and log a complaint made by a shipper that relates to motor carrier transportation of household goods; and

''(B) to solicit information gathered by a State regarding the number and type of complaints involving the interstate transportation of household goods;

''(2) establish a database of such complaints; and

''(3) develop a procedure—

''(A) to provide public access to the database, subject to section 522a of title 5;

''(B) to forward a complaint, including the motor carrier bill of lading number, if known, related to the complaint to a motor carrier named in such complaint and to an appropriate State authority (as defined in section 14710(c) in the State in which the complainant resides; and

''(C) to permit a motor carrier to challenge information in the database.

''(b) SUMMARY TO CONGRESS.—The Secretary shall transmit a summary each year of the complaints filed and logged under subsection (a) for the preceding calendar year to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 141 is amended by inserting after the item relating to section 14123 the following:

''14124. Consumer complaints.''.

SEC. 7411. REVIEW OF LIABILITY OF CARRIERS.

(a) REVIEW.—Not later than 1 year after the date of enactment of this Act, the Surface Transportation Board shall complete a review of the current Federal regulations regarding the level of liability protection provided by motor carriers that provide transportation of household goods and revise such regulations, if necessary, to provide enhanced protection in the case of loss or damage.

(b) DETERMINATIONS.—The review required by subsection (a) shall include a determination of—

(1) whether the current regulations provide adequate protection;

(2) the benefits of purchase by a shipper of insurance to supplement the carrier's limitations on liability;

(3) whether there are abuses of the current regulations that leave the shipper unprotected in the event of loss and damage to a shipment of household goods; and

(4) whether the section 14706 of title 49, United States Code, should be modified.

SEC. 7412. CIVIL PENALTIES RELATING TO HOUSEHOLD GOODS BROKERS.

Section 14901(d) is amended—

(1) by resetting the text as a paragraph indented 2 ems from the left margin and inserting ''(1) IN GENERAL.—'' before ''If a carrier''; and

(2) by adding at the end the following:

''(2) ESTIMATE OF BROKER WITHOUT CARRIER AGREEMENT.—If a broker for transportation of household goods subject to jurisdiction under subchapter I of chapter 135 of this title makes an estimate of the cost of transporting any such goods before entering into an agreement with a carrier to provide transportation of household goods subject to such jurisdiction, the broker is liable to the United States for a civil penalty of not less than $10,000 for each violation.

''(3) UNAUTHORIZED TRANSPORTATION.—If a person provides transportation of household goods subject to jurisdiction under subchapter I of chapter 135 this title or provides broker services for such transportation without being registered under chapter 139 of this title to provide such transportation or services as a motor carrier or broker, as the case may be, such person is liable to the United States for a civil penalty of not less than $25,000 for each violation.''.

SEC. 7413. CIVIL AND CRIMINAL PENALTY FOR FAILING TO GIVE UP POSSESSION OF HOUSEHOLD GOODS.

(a) IN GENERAL.—Chapter 149 is amended by adding at the end the following:

''§ 14915. Penalties for failure to give up possession of household goods

''(a) CIVIL PENALTY.—Whoever is found to have failed to give up possession of household goods is liable to the United States for a civil penalty of not less than $10,000. Each day a carrier is found to have failed to give up possession of household goods may constitute a separate violation. If such person is a carrier or broker, the Secretary may suspend the registration of such carrier or broker under chapter 139 of this title for a period of not less than 12 months nor more than 36 months. The force and effect of such suspension of a carrier or broker shall extend to and include any carrier or broker having the same ownership or operational control as the suspended carrier or broker.

''(b) CRIMINAL PENALTY.—Whoever has been convicted of having failed to give up possession of household goods shall be fined under title 18 or imprisoned for not more than 5 years, or both.

''(c) FAILURE TO GIVE UP POSSESSION OF HOUSEHOLD GOODS DEFINED.—For purposes of this section, the term 'failed to give up possession of household goods' means the knowing and willful failure, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods that is subject to jurisdiction under subchapter I or III of chapter 135 of this title, for which charges have been estimated by the motor carrier providing transportation of such goods, and for which the shipper has tendered a payment described in clause (i), (ii), or (iii) of section 13707(b)(3)(A) of this title.''.

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

''14915. Penalties for failure to give up possession of household goods.''.

SEC. 7414. PROGRESS REPORT.

Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the progress being made in implementing the provisions of this chapter.

SEC. 7415. ADDITIONAL REGISTRATION REQUIREMENTS FOR MOTOR CARRIERS OF HOUSEHOLD GOODS.

Section 13902(a) is amended—

(1) by striking paragraphs (2) and (3);

(2) by redesignating paragraph (4) as paragraph (5) and inserting after paragraph (1) the following:

''(2) ADDITIONAL REGISTRATION REQUIREMENTS FOR HOUSEHOLD GOODS TRANSPORTATION.—Notwithstanding paragraph (1), the Secretary may register a person to provide transportation of household goods (as defined in section 13102(10) of this title) only after that person—

''(A) provides evidence of participation in an arbitration program and provides a copy of the notice of that program as required by section 14708(b)(2) of this title;

''(B) identifies its tariff and provides a copy of the notice of the availability of that tariff for inspection as required by section 13702(c) of this title;

''(C) provides evidence that it has access to, has read, is familiar with, and will observe all laws relating to consumer protection, estimating, consumers' rights and responsibilities, and options for limitations of liability for loss and damage; and

''(D) discloses any relationship involving common stock, common ownership, common management, or common familial relationships between that person and any other motor carrier, freight forwarder, or broker of household goods within the past 3 years.

''(3) CONSIDERATION OF EVIDENCE; FINDINGS.—The Secretary shall consider, and, to the extent applicable, make findings on any evidence demonstrating that the registrant is unable to comply with any applicable requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2).

''(4) WITHHOLDING.—If the Secretary determines that a registrant under this section does not meet, or is not able to meet, any requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2), the Secretary shall withhold registration.''; and

(3) by adding at the end of paragraph (5), as redesignated, ''In the case of a registration for the transportation of household goods (as defined in section 13102(10 of this title), the Secretary may also hear a complaint on the ground that the registrant fails or will fail to comply with the requirements of paragraph (2) of this subsection.''.

Subtitle E—Sportfishing and Recreational Boating Safety

SEC. 7501. SHORT TITLE.

This subtitle may be cited as the ''Sportfishing and Recreational Boating Safety Act of 2005''.

CHAPTER 1—FEDERAL AID IN SPORT FISH RESTORATION ACT AMENDMENTS

SEC. 7511. AMENDMENT OF FEDERAL AID IN SPORT FISH RESTORATION ACT.

Except as otherwise expressly provided, whenever in this chapter an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 et seq.).

SEC. 7512. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 3 (16 U.S.C. 777b) is amended—

(1) by striking ''the succeeding fiscal year.'' in the third sentence and inserting ''succeeding fiscal years.''; and

(2) by striking ''in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport and recreation.'' and inserting ''to supplement the 57 percent of the balance of each annual appropriation to be apportioned among the States, as provided for in section 4(c).''.

(b) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—The first sentence of section 3 (16 U.S.C. 777b) is amended—

(A) by striking ''Sport Fish Restoration Account'' and inserting ''Sport Fish Restoration and Boating Trust Fund''; and

(B) by striking ''that Account'' and inserting ''that Trust Fund, except as provided in section 9504(c) of the Internal Revenue Code of 1986''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) take effect on October 1, 2005.

SEC. 7513. DIVISION OF ANNUAL APPROPRIATIONS.

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

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

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

''(a) IN GENERAL.—For fiscal years 2005 through 2019, the balance of each annual appropriation made in accordance with the provisions of section 3 remaining after the distributions for administrative expenses and other purposes under subsection (b) and for multistate conservation grants under section 14 shall be distributed as follows:

''(1) COASTAL WETLANDS.—18.5 percent to the Secretary of the Interior for distribution as provided in the Coastal Wetlands Planning, Protection, and Restoration Act (16 U.S.C. 3951 et seq.).

''(2) BOATING SAFETY.—18.5 percent to the Secretary of Homeland Security for State recreational boating safety programs under section 13106 of title 46, United States Code.

''(3) CLEAN VESSEL ACT.—2.0 percent to the Secretary of the Interior for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

''(4) BOATING INFRASTRUCTURE.—2.0 percent to the Secretary of the Interior for obligation for qualified projects under section 7404(d) of the Sportfishing and Boating Safety Act of 1998 (16 U.S.C. 777g–1(d)).

''(5) NATIONAL OUTREACH AND COMMUNICATIONS.—2.0 percent to the Secretary of the Interior for the National Outreach and Communications Program under section 8(d) of this Act. Such amounts shall remain available for 3 fiscal years, after which any portion thereof that is unobligated by the Secretary for that program may be expended by the Secretary under subsection (c) of this section.'';

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

''(A) SET-ASIDE.—For fiscal year 2005 and each subsequent fiscal year, the Secretary of the Interior may use no more than the amount specified in subparagraph (B) for the fiscal year for expenses of administration incurred in the implementation of this Act, in accordance with this section and section 9. The amount specified in subparagraph (B) for a fiscal year may not be included in the amount of the annual appropriation distributed under subsection (a) for the fiscal year.'';

(4) by striking ''Secretary of the Interior, after the distribution, transfer, use, and deduction under subsections (a), (b), (c), and (d), respectively, and after deducting amounts used for grants under section 14, shall apportion the remainder'' in subsection (c), as redesignated by paragraph (1), and inserting ''Secretary, for fiscal year 2005 and each subsequent fiscal year, after the distribution, transfer, use and deduction under subsection (b), and after deducting amounts used for grants under section 14 of this title, shall apportion 57 percent of the balance'';

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

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

(7) by adding at the end the following:

''(f) TRANSFER OF CERTAIN FUNDS.—Amounts available under paragraphs (3) and (4) of subsection (a) that are unobligated by the Secretary of the Interior after 3 fiscal years shall be transferred to the Secretary of Homeland Security and shall be expended for State recreational boating safety programs under section 13106(a) of title 46, United States Code.''.

SEC. 7514. MAINTENANCE OF PROJECTS.

Section 8 (16 U.S.C. 777g) is amended—

(1) by striking ''in carrying out the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.'' in subsection (b)(2) and inserting ''to supplement the 57 percent of the balance of each annual appropriation to be apportioned among the States under section 4(c).''; and

(2) by striking ''subsection (c) or (d)'' in subsection (d)(3) and inserting ''subsection (a)(5) or subsection (b)''.

SEC. 7515. BOATING INFRASTRUCTURE.

Section 7404(d)(1) of the Sportfishing and Boating Safety Act of 1998 (16 U.S.C. 777g–1(d)(1)) is amended by striking ''section 4(b)(3)(B) of the Act entitled 'An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes,' approved August 9, 1950, as amended by this Act,'' and inserting ''section 4(a)(4) of the Dingell-Johnson Sport Fish Restoration Act''.

SEC. 7516. REQUIREMENTS AND RESTRICTIONS CONCERNING USE OF AMOUNTS FOR EXPENSES FOR ADMINISTRATION.

Section 9 (16 U.S.C. 777h) is amended—

(1) by striking ''section 4(d)(1)'' in subsection (a) and inserting ''section 4(b)''; and

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

SEC. 7517. PAYMENTS OF FUNDS TO AND COOPERATION WITH PUERTO RICO, THE DISTRICT OF COLUMBIA, GUAM, AMERICAN SAMOA, THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, AND THE VIRGIN ISLANDS.

Section 12 (16 U.S.C. 777k) is amended by striking ''in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.'' and inserting ''to supplement the 57 percent of the balance of each annual appropriation to be apportioned among the States under section 4(b) of this Act.''.

SEC. 7518. MULTISTATE CONSERVATION GRANT PROGRAM.

Section 14 (16 U.S.C. 777m) is amended—

(1) by striking so much of subsection (a) as precedes paragraph (2) and inserting the following:

''(a) IN GENERAL.—

''(1) AMOUNT FOR GRANTS.—For fiscal year 2005 and each subsequent fiscal year, not more than $3,000,000 of each annual appropriation made in accordance with the provisions of section 3 shall be distributed to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.'';

(2) by striking ''section 4(e)'' each place it appears in subsection (a)(2)(B) and inserting ''section 4(c)''; and

(3) by striking ''Of the balance of each annual appropriation made under section 3 remaining after the distribution and use under subsections (a), (b), and (c) of section 4 for each fiscal year and after deducting amounts used for grants under subsection (a)—'' in subsection (e) and inserting ''Of amounts made available under section 4(b) for each fiscal year—''.

SEC. 7519. EXPENDITURES FROM BOAT SAFETY ACCOUNT.

The Act is amended by adding at the end the following:

''SEC. 15. EXPENDITURES FROM BOAT SAFETY ACCOUNT.

''The following amounts in the boating safety account under section 9504(c) of the Internal Revenue Code of 1986 shall be made available without further appropriation and shall be distributed as follows:

''(1) In fiscal year 2006, $28,155,000 shall be distributed—

''(A) under section 4 of this Act in the following manner:

''(i) $11,200,000 to be added to funds available under subsection (a)(2) of that section;

''(ii) $1,245,000 to be added to funds available under subsection (a)(3) of that section;

''(iii) $1,245,000 to be added to funds available under subsection (a)(4) of that section;

''(iv) $1,245,000 to be added to funds available under subsection (a)(5) of that section; and

''(v) $12,800,000 to be added to funds available under subsection (b) of that section; and

''(B) under section 14 of this Act, $420,000, to be added to funds available under subsection (a)(1) of that section.

''(2) In fiscal year 2007, $22,419,000 shall be distributed—

''(A) under section 4 of this Act in the following manner:

''(i) $8,075,000 to be added to funds available under subsection (a)(2) of that section;

''(ii) $713,000 to be added to funds available under subsection (a)(3) of that section;

''(iii) $713,000 to be added to funds available under subsection (a)(4) of that section;

''(iv) $713,000 to be added to funds available under subsection (a)(5) of that section; and

''(v) $11,925,000 to be added to funds available under subsection (b) of this Act; and

''(B) under section 14 of this Act, $280,000 to be added to funds available under subsection (a)(1) of that section.

''(3) In fiscal year 2008, $17,139,000 shall be distributed—

''(A) under section 4 of this Act in the following manner:

''(i) $6,800,000 to be added to funds available under subsection (a)(2) of that section;

''(ii) $333,000 to be added to funds available under subsection (a)(3) of that section;

''(iii) $333,000 to be added to funds available under subsection (a)(4) of that section;

''(iv) $333,000 to be added to funds available under subsection (a)(5) of that section; and

''(v) $9,200,000 to be added to funds available under subsection (b) of that section; and

''(B) under section 14 of this Act, $140,000, to be added to funds available under subsection (a)(1) of that section.

''(4) In fiscal year 2009, $12,287,000 shall be distributed—

''(A) under section 4 of this Act in the following manner:

''(i) $5,100,000 to be added to funds available under subsection (a)(2) of that section;

''(ii) $48,000 to be added to funds available under subsection (a)(3) of that section;

''(iii) $48,000 to be added to funds available under subsection (a)(4) of that section;

''(iv) $48,000 to be added to funds available under subsection (a)(5) of that section; and

''(v) $6,900,000 to be added to funds available under subsection (b) of that section; and

''(B) under section 14 of this Act, $143,000, to be added to funds available under subsection (a)(1) of that section.

''(5) In fiscal year 2010, all remaining funds in the Account shall be distributed under section 4 of this Act in the following manner:

''(A) one-third to be added to funds available under subsection (b); and

''(B) two-thirds to be added to funds available under subsection (h).''.

CHAPTER 2—CLEAN VESSEL ACT AMENDMENTS

SEC. 7531. GRANT PROGRAM.

Section 5604(c)(2) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note) is amended—

(1) by striking subparagraph (A); and

(2) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

CHAPTER 3—RECREATIONAL BOATING SAFETY PROGRAM AMENDMENTS

SEC. 7551. STATE MATCHING FUNDS REQUIREMENT.

Section 13103(b) of title 46, United States Code, is amended by striking ''one-half'' and inserting ''75 percent''.

SEC. 7552. AVAILABILITY OF ALLOCATIONS.

Section 13104(a) of title 46, United States Code, is amended—

(1) by striking ''2 years'' in paragraph (1) and inserting ''3 years''; and

(2) by striking ''2-year'' in paragraph (2) and inserting ''3-year''.

SEC. 7553. AUTHORIZATION OF APPROPRIATIONS FOR STATE RECREATIONAL BOATING SAFETY PROGRAMS.

Section 13106 of title 46, United States Code, is amended—

(1) by striking ''section 4(b) of the Act of August 9, 1950 (16 U.S.C. 777c(b))''in subsection (a)(1) and inserting ''subsections (a)(2) and (f) of section 4 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(a)(2) and (f))'';

(2) by striking ''not less than one percent and'' in subsection (a)(2);

(3) in subsection (c)(1)—

(A) by striking ''Secretary of Transportation under paragraph (5)(C) of section 4(b)'' and inserting ''Secretary under subsection (a)(2) of section 4'';

(B) by striking ''(16 U.S.C. 777c(b))'' and inserting ''(16 U.S.C. 777c(a)(2)'';

(C) by striking ''$3,333,336'' and inserting ''not more than 5 percent'';

(D) by striking ''$1,333,336'' and inserting ''not less than $2,000,000''; and

(4) by striking ''until expended.'' in subsection (c)(3) and inserting ''during the 2 succeeding fiscal years. Any amount that is unexpected or unobligated at the end of the 3-year period during which it is available shall be withdrawn by the Secretary and allocated to the States in addition to any other amounts available for allocation in the fiscal year in which they are withdrawn or the following fiscal year.''.

SEC. 7554. MAINTENANCE OF EFFORT FOR STATE RECREATIONAL BOATING SAFETY PROGRAMS.

(a) IN GENERAL.—Chapter 131 of title 46, United States Code, is amended by inserting after section 13106 the following:

''§ 13107. Maintenance of effort for State recreational boating safety programs

''(a) IN GENERAL.—The amount payable to a State for a fiscal year from an allocation under section 13103 of this chapter shall be reduced if the usual amounts expended by the State for the State's recreational boating safety program, as determined under section 13105 of this chapter, for the previous fiscal year is less than the average of the total of such expenditures for the 3 fiscal years immediately preceding that previous fiscal year. The reduction shall be proportionate, as a percentage, to the amount by which the level of State expenditures for such previous fiscal year is less than the average of the total of such expenditures for the 3 fiscal years immediately preceding that previous fiscal year.

''(b) REDUCTION OF THRESHOLD.—If the total amount available for allocation and distribution under this chapter in a fiscal year for all participating State recreational boating safety programs is less than such amount for the preceding fiscal year, the level of State expenditures required under subsection (a) of this section for the preceding fiscal year shall be decreased proportionately.

''(c) WAIVER.—

''(1) IN GENERAL.—Upon the written request of a State, the Secretary may waive the provisions of subsection (a) of this section for 1 fiscal year if the Secretary determines that a reduction in expenditures for the State's recreational boating safety program is attributable to a non-selective reduction in expenditures for the programs of all Executive branch agencies of the State government, or for other reasons if the State demonstrates to the Secretary's satisfaction that such waiver is warranted.

''(2) 30-DAY DECISION.—The Secretary shall approve or deny a request for a waiver not later than 30 days after the date the request is received.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 131 of title 46, United States Code, is amended by inserting after the item relating to section 13106 the following:

''13107. Maintenance of effort for State recreational boating safety programs.''.

Subtitle F—Miscellaneous Provisions

SEC. 7601. OFFICE OF INTERMODALISM.

(a) IN GENERAL.—Section 5503 is amended—

(1) by inserting ''Amounts reserved under section 5504(d) not awarded to States as grants may be used by the Director to provide technical assistance under this subsection.'' after ''organizations.'' in subsection (e);

(2) by redesignating subsection (f) as subsection (h), and inserting after subsection (e) the following:

''(f) NATIONAL INTERMODAL SYSTEM IMPROVEMENT PLAN.—

''(1) IN GENERAL.—The Director, in consultation with the advisory board established under section 5502 of this title and other public and private transportation interests, shall develop a plan to improve the national intermodal transportation system. The plan shall include—

''(A) an assessment and forecast of the national intermodal transportation system's impact on mobility, safety, energy consumption, the environment, technology, international trade, economic activity, and quality of life in the United States;

''(B) an assessment of the operational and economic attributes of each passenger and freight mode of transportation and the optimal role of each mode in the national intermodal transportation system;

''(C) a description of recommended intermodal and multi-modal research and development projects;

''(D) a description of emerging trends that have an impact on the national intermodal transportation system;

''(E) recommendations for improving intermodal policy, transportation decisionmaking, and financing to maximize mobility and the return on investment of Federal spending on transportation;

''(F) an estimate of the impact of current Federal and State transportation policy on the national intermodal transportation system; and

''(G) specific near and long-term goals for the national intermodal transportation system.

''(2) PROGRESS REPORTS.—The Director shall submit an initial report on the plan to improve the national intermodal transportation system 2 years after the date of enactment of the Surface Transportation Safety Improvement Act of 2005, and a follow-up report 2 years after that, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The progress report shall—

''(A) describe progress made toward achieving the plan's goals;

''(B) describe challenges and obstacles to achieving the plan's goals;

''(C) update the plan to reflect changed circumstances or new developments; and

''(D) make policy and legislative recommendations the Director believes are necessary and appropriate to achieve the goals of the plan.

''(3) PLAN DEVELOPMENT FUNDING.—Such sums as may be necessary from the administrative expenses of the Research and Innovative Technology Administration shall be reserved each year for the purpose of completing and updating the plan to improve the national intermodal transportation plan.

''(g) IMPACT MEASUREMENT METHODOLOGY; IMPACT REVIEW.—The Director and the Director of the Bureau of Transportation Statistics shall jointly—

''(1) develop, in consultation with the modal administrations, and State and local planning organizations, common measures to compare transportation investment decisions across the various modes of transportation; and

''(2) formulate a methodology for measuring the impact of intermodal transportation on—

''(A) the environment;

''(B) public health and welfare;

''(C) energy consumption;

''(D) the operation and efficiency of the transportation system;

''(E) congestion, including congestion at the Nation's ports; and

''(F) the economy and employment.''.

SEC. 7602. CAPITAL GRANTS FOR RAIL LINE RELOCATION PROJECTS.

(a) ESTABLISHMENT OF PROGRAM.—

(1) PROGRAM REQUIREMENTS.—Chapter 201 of title 49, United States Code, is amended by adding at the end of subchapter II the following:

''§ 20154. Capital grants for rail line relocation projects

''(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Transportation shall carry out a grant program to provide financial assistance for local rail line relocation projects.

''(b) ELIGIBILITY.—A State is eligible for a grant under this section for any construction project for the improvement of the route or structure of a rail line passing through a municipality of the State that—

''(1) either—

''(A) is carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, or economic development in the municipality; or

''(B) involves a lateral or vertical relocation of any portion of the rail line within the municipality to avoid a closing of a grade crossing or the construction of a road underpass or overpass; and

''(2) meets the costs-benefits requirement set forth in subsection (c).

''(c) COSTS-BENEFITS REQUIREMENT.—A grant may be awarded under this section for a project for the relocation of a rail line only if the benefits of the project for the period equal to the estimated economic life of the relocated rail line exceed the costs of the project for that period, as determined by the Secretary considering the following factors:

''(1) The effects of the rail line and the rail traffic on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce if the rail line were not so relocated.

''(2) The effects of the rail line, relocated as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce.

''(3) The effects of the rail line, relocated as proposed, on the freight and passenger rail operations on the rail line.

''(d) CONSIDERATIONS FOR APPROVAL OF GRANT APPLICATIONS.—In addition to considering the relationship of benefits to costs in determining whether to award a grant to an eligible State under this section, the Secretary shall consider the following factors:

''(1) The capability of the State to fund the rail line relocation project without Federal grant funding.

''(2) The requirement and limitation relating to allocation of grant funds provided in subsection (e).

''(3) Equitable treatment of the various regions of the United States.

''(e) ALLOCATION REQUIREMENTS.—

''(1) GRANTS NOT GREATER THAN $20,000,000.—At least 50 percent of all grant funds awarded under this section out of funds appropriated for a fiscal year shall be provided as grant awards of not more than $20,000,000 each.

''(2) LIMITATION PER PROJECT.—Not more than 25 percent of the total amount available for carrying out this section for a fiscal year may be provided for any 1 project in that fiscal year.

''(f) FEDERAL SHARE.—The total amount of a grant awarded under this section for a rail line relocation project shall be equal to a percentage of the shared costs of the project, as determined under subsection (g)(4).

''(g) NON-FEDERAL SHARE.—

''(1) PERCENTAGE.—A State or other non-Federal entity shall pay at least 10 percent of the shared costs of a project that is funded in part by a grant awarded under this section.

''(2) FORMS OF CONTRIBUTIONS.—The share required by paragraph (1) may be paid in cash or in kind.

''(3) IN-KIND CONTRIBUTIONS.—The in-kind contributions that are permitted to be counted under paragraph (2) for a project for a State or other non-Federal entity are as follows:

''(A) A contribution of real property or tangible personal property (whether provided by the State or a person for the State).

''(B) A contribution of the services of employees of the State or other non-Federal entity, calculated on the basis of costs incurred by the State or other non-Federal entity for the pay and benefits of the employees, but excluding overhead and general administrative costs.

''(C) A payment of any costs that were incurred for the project before the filing of an application for a grant for the project under this section, and any in-kind contributions that were made for the project before the filing of the application, if and to the extent that the costs were incurred or in-kind contributions were made, as the case may be, to comply with a provision of a statute required to be satisfied in order to carry out the project.

''(4) FEDERAL PERCENTAGE; COSTS NOT SHARED.—

''(A) IN GENERAL.—The Secretary shall determine the percentage of the shared costs of a project eligible for a grant under this section, which may not exceed 90 percent of those costs, after considering—

''(i) the level of participation by the State, local government, and private sector participation in the project; and

''(ii) the relative public and private benefits excepted to be derived from the project.

''(B) COSTS NOT SHARED.—For the purposes of subsection (f) and this subsection, the shared costs of a project in a municipality do not include any cost that is defrayed with any funds or in-kind contribution that a source other than the municipality makes available for the use of the municipality without imposing at least 1 of the following conditions:

''(i) The condition that the municipality use the funds or contribution only for the project.

''(ii) The condition that the availability of the funds or contribution to the municipality is contingent on the execution of the project.

''(C) DETERMINATIONS OF THE SECRETARY.—The Secretary shall determine the amount of the costs, if any, that are not shared costs under this paragraph and the total amount of the shared costs. A determination of the Secretary shall be final.

''(h) MULTISTATE AGREEMENTS TO COMBINE AMOUNTS.—Two or more States (not including political subdivisions of States) may, pursuant to an agreement entered into by the States, combine any part of the amounts provided through grants for a project under this section if—

''(1) the project will benefit each of the States entering into the agreement; and

''(2) the agreement is not a violation of a law of any such State.

''(i) REGULATIONS.—The Secretary shall prescribe regulations for carrying out this section.

''(j) DEFINITIONS.—In this section:

''(1) CONSTRUCTION.—The term 'construction' means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a project described under subsection (b)(1) or (2) of this section, including bond costs and other costs relating to the issuance of bonds or other debt financing instruments and costs incurred by the State in performing project related audits, and includes—

''(A) locating, surveying, and mapping;

''(B) track installment, restoration and rehabilitation;

''(C) acquisition of rights-of-way;

''(D) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

''(E) elimination of obstacles; and

''(G) and other activities defined by the Secretary.

''(2) STATE.—The term 'State' includes, except as otherwise specifically provided, a political subdivision of a State.

''(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for use in carrying out this section $350,000,000 for each of the fiscal years 2006 through 2009.''.

(2) CLERICAL AMENDMENT.—The chapter analysis for such chapter is amended by adding at the end the following:

''20154. Capital grants for rail line relocation projects.''.

(b) REGULATIONS.—

(1) INTERIM REGULATIONS.—Not later than April 1, 2006, the Secretary of Transportation shall issue temporary regulations to implement the grant program under section 20154 of title 49, United States Code, as added by subsection (a). Subchapter II of chapter 5 of title 5, United States Code, shall not apply to the issuance of a temporary regulation under this subsection or of any amendment of such a temporary regulation.

(2) FINAL REGULATIONS.—Not later than October 1, 2006, the Secretary shall issue final regulations implementing the program.

SEC. 7603. REHABILITATION AND IMPROVEMENT FINANCING.

(a) DEFINITIONS.—Section 102(7) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 802(7)) is amended to read as follows:

''(7) 'railroad' has the meaning given that term in section 20102 of title 49, United States Code; and''.

(b) GENERAL AUTHORITY.—Section 502(a) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(a)) is amended by striking ''Secretary may provide direct loans and loan guarantees to State and local governments,'' and inserting ''Secretary shall provide direct loans and loan guarantees to State and local governments, agreements or interstate compacts consented to by Congress under section 410(a) of Public Law 105–134 (49 U.S.C. 24101 nt),''.

(c) PRIORITY PROJECTS.—Section 502(c) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(c) is amended—

(1) by striking ''or'' after the semicolon in subsection (5);

(2) by striking ''areas.'' in subsection (6) and inserting ''areas; or''; and

(3) by adding at the end the following:

''(7) enhance service and capacity in the national rail system.''.

(d) EXTENT OF AUTHORITY.—Section 502(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(d)) is amended—

(1) by striking ''$3,500,000,000'' and inserting ''$6,000,000,000'';

(2) by striking ''$1,000,000,000'' and inserting ''$3,000,000,000''; and

(3) by adding at the end ''The Secretary shall not establish any limit on the proportion of the unused amount authorized under this subsection that may be used for 1 loan or loan guarantee.''.

(e) COHORTS OF LOANS.—Section 502(f) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(f)) is amended—

(1) by striking ''and'' after the semicolon in subparagraph (D) of paragraph (1);

(2) by redesignating subparagraph (E) of paragraph (1) as subparagraph (F);

(3) by inserting adding after subparagraph (D) of paragraph (1) the following:

''(E) the size and characteristics of the cohort of which the loan or loan guarantee is a member; and''; and

(4) by adding at the end of paragraph (4) ''A cohort may include loans and loan guarantees. The Secretary shall not establish any limit on the proportion of a cohort that may be used for 1 loan or loan guarantee.''.

(f) CONDITIONS OF ASSISTANCE.—

(1) ASSURANCES.—Section 502(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822) is amended—

(A) by inserting ''(1)'' before ''The Secretary'';

(B) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C); and

(C) by adding at the end the following:

''(2) The Secretary shall not require an applicant for a direct loan or loan guarantee under this section to provide collateral. Any collateral provided or thereafter enhanced shall be valued as a going concern after giving effect to the present value of improvements contemplated by the completion and operation of the project. The Secretary shall not require that an applicant for a direct loan or loan guarantee under this section have previously sought the financial assistance requested from another source.

''(3) The Secretary shall require recipients of direct loans or loan guarantees under this section to comply with—

''(A) the standards of section 24312 of title 49, United States Code, as in effect on September 1, 2002, with respect to the project in the same manner that the National Railroad Passenger Corporation is required to comply with such standards for construction work financed under an agreement made under section 24308(a) of that title, and

''(B) the protective arrangements established under section 504 of this Act,

with respect to employees affected by actions taken in connection with the project to be financed by the loan or loan guarantee.''.

(2) TECHNICAL CORRECTION.—Section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822) is amended by striking ''offered;'' in subsection (f)(2)(A) and inserting ''offered, if any;''.

(g) TIME LIMIT FOR APPROVAL OR DISAPPROVAL.—Section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822) is amended by adding at the end the following:

''(i) TIME LIMIT FOR APPROVAL OR DISAPPROVAL.—Not later than 90 days after receiving a complete application for a direct loan or loan guarantee under this section, the Secretary shall approve or disapprove the application.

''(j) CONSTRUCTION PROJECTS.—

''(1) IN GENERAL.—For loans involving construction projects that require more than one year to complete, the Secretary shall establish a repayment schedule requiring payments to commence not later than the sixth anniversary date of the original loan issuance.

''(2) ADDITIONS.—The Secretary shall add to the outstanding balance of the loan on the first anniversary date of the original loan issuance on which payments are made, the product of (A) the loan principal, (B) the annual rate of interest on the loan, and (C) the number of years payments were deferred under the repayment schedule.''.

(h) INTEREST RATE.—Paragraph (1) of section 822(e) the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(e)) is amended to read as follows:

''(1) DIRECT LOANS.—For Class III railroads, as defined by the Surface Transportation Board, the Secretary shall require interest to be paid on a direct loan made under this section at a rate not more than 3 percentage points below the yield on marketable United States Treasury securities of a maturity similar to the maturity of the loan on the date on which the loan agreement was executed.''.

(i) FEES AND CHARGES.—Section 503 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 823) is amended by adding at the end the following new subsection:

''(l) FEES AND CHARGES.—Except as provided in this title, the Secretary may not assess any fees, including user fees, or charges in connection with a direct loan or loan guarantee provided under section 502.''.

(j) SUBSTANTIVE CRITERIA AND STANDARDS.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Transportation shall publish in the Federal Register and post on the Department of Transportation website the substantive criteria and standards used by the Secretary to determine whether to approve or disapprove applications submitted under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822). The Secretary of Transportation shall ensure adequate procedures and guidelines are in place to permit the filing of complete applications within 30 days of such publication.

SEC. 7604. REPORT REGARDING IMPACT ON PUBLIC SAFETY OF TRAIN TRAVEL IN COMMUNITIES WITHOUT GRADE SEPARATION.

(a) STUDY.—The Secretary of Transportation shall, in consultation with State and local government officials, conduct a study of the impact of blocked highway-railroad grade crossings on the ability of emergency responders to perform public safety and security duties.

(b) REPORT ON THE IMPACT OF BLOCKED HIGHWAY-RAILROAD GRADE CROSSINGS ON EMERGENCY RESPONDERS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit the results of the study and recommendations for reducing the impact of blocked crossings on emergency response to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

SEC. 7605. FIRST RESPONDER VEHICLE SAFETY PROGRAM.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Administrator of the National Highway Traffic Safety Administration, shall—

(1) develop and implement a comprehensive program to promote compliance with State and local laws intended to increase the safe and efficient operation of first responder vehicles;

(2) compile a list of best practices by State and local governments to promote compliance with the laws described in paragraph (1);

(3) analyze State and local laws intended to increase the safe and efficient operation of first responder vehicles; and

(4) develop model legislation to increase the safe and efficient operation of first responder vehicles.

(b) PARTNERSHIPS.—The Secretary may enter into partnerships with qualified organizations to carry out this section.

(c) PUBLIC OUTREACH.—The Secretary shall use a variety of public outreach strategies to carry out this section, including public service announcements, publication of informational materials, and posting information on the Internet.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for fiscal year 2006 to carry out this section.

SEC. 7606. FEDERAL SCHOOL BUS DRIVER QUALIFICATIONS.

The effective date of section 383.123 of volume 49, Code of Federal Regulations (as in effect on the date of enactment of this Act), shall be September 30, 2006.

MEASURES PLACED ON THE CALENDAR—S. 1084 AND S. 1085

Mr. CORNYN. I understand there are two bills at the desk that are due for a second reading. I ask unanimous consent they be read for a second time en bloc.

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

The assistant legislative clerk read as follows:

A bill (S. 1084) to eliminate child poverty, and for other purposes.

A bill (S. 1085) to provide for paid sick leave to ensure that Americans can address their own health needs and the health needs of their families.

Mr. CORNYN. In order to place the bills on the calendar under the provisions of rule XIV, I object to further proceeding, en bloc.

The PRESIDENT pro tempore. Objection is heard. The bills will be placed on the calendar.

ORDERS FOR MONDAY, MAY 23, 2005

Mr. CORNYN. I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11:30 a.m. on Monday, May 23. I further ask 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, and that the Senate then return to executive session and resume consideration of the nomination of Priscilla Owen to the Fifth Circuit Court of Appeals, provided that the time from 12 noon until 1 p.m. be under the control of the majority leader or his designee and, at 1 p.m., the Democratic leader or his designee be recognized; provided that floor time then rotate between the two leaders or their designees every 60 minutes until 4 p.m., at which time the majority leader or his designee be recognized until 4:45 p.m., to be followed by the Democrat leader or his designee from 4:45 p.m. until 5:30 p.m.

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

PROGRAM

Mr. CORNYN. Mr. President, on Monday, the Senate will resume consideration of the nomination of Priscilla Owen to serve as a circuit judge on the Fifth Circuit Court of Appeals. Monday will be the fourth consecutive day the Senate considers the Owen nomination.

Over the past 3 days, a number of Members, on both sides of the aisle, have come to the floor to speak on the nomination. We have conducted over 25 hours of debate, and we will continue on Monday. Moments ago, we filed a cloture motion on the nomination, and that will ripen on Tuesday of next week.

On behalf of the majority leader, I remind my colleagues the leader has announced our next rollcall vote will occur Monday afternoon at 5:30. That vote will be on a motion to instruct the Sergeant at Arms to request Senators' attendance. Senator FRIST will have more to say about next week's session on Monday.

ADJOURNMENT UNTIL MONDAY, MAY 23, 2005, AT 11:30 A.M.

Mr. CORNYN. If there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 2:23 p.m., adjourned until May 23, 2005, at 11:30 a.m.